



Public Notice

**US Army Corps
of Engineers**
Fort Worth District

Applicant: Wilbarger Creek Mitigation Group 1, LP

Permit Application No.: SWF-2009-00265

Date: December 22, 2009

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Mr. Brent Jasper

Phone Number: (817) 886-1733

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS FORT WORTH AND GALVESTON DISTRICTS

SUBJECT: This public notice is being issued to provide interested parties an opportunity to comment on a proposal to create the Wilbarger Creek Mitigation Bank (WCMB), a stream and wetland mitigation bank in Bastrop County, Texas

APPLICANT: Wilbarger Creek Mitigation Group 1, LP
Johnny Mack Powers
1150 Highway 205 South
Rockwall, Texas 75032

APPLICATION NUMBER: SWF-2009-00265

DATE ISSUED: December 22, 2009

LOCATION: The proposed WCMB is located adjacent to Wilbarger Creek, approximately six miles southwest of the City of Elgin, Bastrop County, Texas. The property is approximately 144.5 acres in size and located approximately 0.7 miles south of the intersection of Upper Elgin and Balch roads (**Sheet 1 of 9**). The proposed mitigation bank would occupy approximately 113 acres within the property (**Sheets 2 and 3 of 9**). The proposed project would be located approximately at UTM coordinates 650025.0 East and 3350891.0 North (Zone 14) on the Elgin West 7.5-minute USGS quadrangle map in the Lower Colorado Drainage Basin (USGS Hydrologic Unit 120903) (**Sheets 3 and 8 of 9**). The proposed project is also located on the border of the Texas Blackland Prairies and the East Central Texas Plains Ecoregions (Griffith et al. 2004) (**Sheet 8 of 9**).

PROJECT DESCRIPTION: The applicant proposes to establish a compensatory mitigation bank for the purposes of restoring, enhancing, and preserving the functions of streams, wetlands, and other waters to provide compensation for adverse impacts to waters of the United States pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The WCMB would generate mitigation bank credits to provide compensatory mitigation for adverse stream and wetland impacts to private and public entities within the boundaries of the United States Army Corps of Engineers (USACE) Fort Worth District and Galveston District in the state of Texas.

The proposed mitigation bank would occupy approximately 113 acres. The plant community and aquatic functions within the property are primarily a factor of the edaphic/geological position in the landscape. In addition to this, the secondary factors affecting the plant community and aquatic functions is the typical agricultural land-use history within the property. Most of the site is located

within the floodplain of Wilbarger Creek and its tributaries. The wooded riparian community to Wilbarger Creek and its tributaries has been significantly reduced to less than 40 feet on each bank to promote the agricultural revenue (i.e., farming and grazing). The floodplain was historically cleared to grow cultivated crops, but cultivation has ceased and the property has been managed as pasture land. The site is currently grazed by cattle, which appears to have been the condition for a long duration due to the observed open understory within the riparian community.

The existing wooded riparian community is dominated by medium to large trees with an herbaceous understory of Canada wildrye (*Elymus canadensis*). Green ash (*Fraxinus pennsylvanica*) trees dominate the riparian woods, but others with a lower dominance include cedar elm (*Ulmus crassifolia*) and hackberry (*Celtis laevigata*). There are numerous other species within the woods; however, their presence is inconsistent and sparse. The midstory and underbrush community is generally lacking within these woods, likely a result of the current and historic agricultural land use.

Field investigations identified 12 water features within the property – 4 ponds, 1 wetland, and 7 tributaries (Sheet 6 of 9). Table 1 provides a quantitative description of each water feature.

Table 1.
Summary of Water Features Delineated

Water Feature	Water of the United States	Classification ¹	Length (Feet)	Area (Acres)
Pond 1	Yes	Permanently Flooded	NA	3.66
Pond 2	Yes	Seasonally Flooded	NA	0.28
Pond 3	Yes	Seasonally Flooded	NA	1.12
Pond 4	No	Seasonally Flooded	NA	0.03
Wetland 1	Yes	Herbaceous	NA	2.25
Wilbarger Creek	Yes	Perennial	6,858	2.80
Overflow Creek	Yes	Intermittent	2,899	0.80
Tributary 1	Yes	Ephemeral	344	0.02
Tributary 2	Yes	Ephemeral	677	0.04
Tributary 3	Yes	Ephemeral	122	0.01
Tributary 4	Yes	Ephemeral	457	0.09
Tributary 5	Yes	Ephemeral	212	0.01

¹Classification is based on hydrology for tributaries and ponds and cover dominance for wetlands
NA – Not Applicable; these are areal features that have no linear properties

The grasslands located within the floodplain of these tributaries are dominated by early successional species. Natural succession was apparent as honey mesquite (*Prosopis glandulosa*), honey locust (*Gleditsia triacanthos*), western soapberry (*Sapindus saponaria*), and cedar elm shrubs were present in various densities throughout. The herbaceous community was dominated

by Texas wintergrass (*Stipa leucotricha*), meadow dropseed (*Sporobolus cryptandrus*), Bermudagrass (*Cynodon dactylon*), western ragweed (*Ambrosia psilostachya*), and doveweed (*Croton monanthogynus*).

Three on-channel impoundments have been constructed along a tributary of Wilbarger Creek. The largest (Pond 1) had an unstable spillway that had an unvegetated-headcut approximately eight feet deep. The other two on-channel ponds (Ponds 2 and 3) do not have sufficient watershed to sustain water for a duration through the year.

The Bastrop County Soil Survey identifies the site to contain six soils: Tinn clay, 0-1 percent slopes, frequently flooded; Ferris Clay, 5-20 percent slopes, eroded; Wilson gravelly clay loam, 3-5 percent slopes; Heiden Clay, 3-5 percent slopes, eroded; Crockett gravelly fine sandy loam, 1-5 percent slopes; and Crockett fine sandy loam, 2-5 percent slopes, eroded (**Sheet 5 of 9**).

The goal for the WCMB is to restore the natural aquatic ecosystems on the site. To accomplish this, there are several objectives for the WCMB: 1). restore the native Southern Post Oak Savannah and Blackland Prairie communities on the site; 2). restore the riparian and wetland functions on the site; and 3). restore the natural drainage patterns within the site (**Sheet 7 of 9**). The native community would include two sub-communities – the wildrye – sedge savannah at topographic high points and green ash – cedar elm woodland at the topographic low points. The riparian and wetland functions would also be restored through re-establishing the natural micro-topography associated with these bottomlands. This micro-topography would aid in restoring the smaller habitat structures needed for the diverse plant and animal ecosystems. Finally, a tributary would be restored through the removal of impoundments, the creation of a channel matching the bank-full dimensions upstream, and restoration of the riparian community.

The proposed service area includes a primary and secondary within the boundaries of the USACE Fort Worth and Galveston Districts. The primary service area is the area identified within the intersection of the Lower Colorado (HUC 120903) and the Texas Blackland Prairies and East Central Texas Plains ecoregions (Griffith et al. 2004) within the Fort Worth and Galveston Districts (**Sheets 8 and 9 of 9**). This area would include portions of Austin, Bastrop, Caldwell, Colorado, Fayette, Lee, Travis, Williamson, and Washington Counties. The secondary service would encompass the area within the intersection of the Lavaca (121001), Guadalupe (121002), Middle Colorado-Llano (120902), Little (120702), Lower Brazos (120701), and San Bernard (120904) basins, and the Texas Blackland Prairies and East Central Texas Plains ecoregions within the Fort Worth and Galveston Districts. This area would include Brazos, Burleson, Gonzales, Milam and Robertson Counties in their entirety, and portions of Austin, Bastrop, Bell, Caldwell, Colorado, Comal, DeWitt, Falls, Fayette, Freestone, Grime, Guadalupe, Harris, Hays, Hill, Jackson, Karnes, Lavaca, Lee, Leon, Limestone, Madison, McLennan, Travis, Victoria, Waller, Washington, Williamson, and Wilson Counties.

The proposed WCMB would be established and operated through the development of a mitigation banking instrument (MBI) that would outline the guidelines, terms, conditions, and agreements that would be common to individual mitigation areas comprising the bank. The instrument would contain general provisions such as the legal authorities pertaining to mitigation banking, the goals and objectives of the WCMB, bank sponsorship, the procedures for adding mitigation sites to the instrument, ownership of bank lands and credits, permittee impacts to aquatic resources suitable for compensation, establishment of geographic service areas, assessment of mitigation area function/performance, accounting procedures, financial assurances, development of contingency and remedial actions, development of long-term maintenance and protection plans, and transfer of bank ownership.

The MBI would be developed in accordance with Compensatory Mitigation for Losses of Aquatic Resources (Federal Register, Thursday, April 10, 2008, Vol. 73, No. 70, pp. 19670-19705). The U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Texas Commission on Environmental Quality, Railroad Commission of Texas, and Texas Parks and Wildlife Department, who comprise the Interagency Review Team (IRT), would be involved in developing the MBI and may be signatories to the final document. The IRT would be involved in developing SDPs for future mitigation areas proposed for addition to the bank.

Implementation of the proposed mitigation work would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears that the proposed bank may be authorized by Nationwide Permit 27 for Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in Bastrop County where the Houston toad (*Bufo houstonensis*), Navasota ladies'-tresses (*Spiranthes parksii*), and whooping crane (*Grus americana*) are known to occur or may occur as migrants. The Houston toad, Navasota ladies'-tresses and whooping crane are listed as endangered species. The bald eagle (*Haliaeetus leucocephalus*) has been delisted; however, the eagle will maintain a listed status of a period of five years due to monitoring. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The area of the proposed mitigation bank has not been formally surveyed for the presence of historic and prehistoric cultural resources. The area would undergo some surface modifications and stream channelization as part of the planned mitigation bank. Historic and prehistoric sites are known from similar areas within the Wilbarger and Cottonwood Creek drainages. Survey for the presence of sites would be necessary prior to ground-disturbing activities. Any identified sites would have to be assessed for eligibility to the National Register of Historic Places (NRHP). Sites identified as NRHP eligible would require treatment or avoidance. If, during construction, previously unidentified

sites are encountered, they would be assessed for eligibility to the National Register of Historic Places and the need for additional treatment prior to impacts.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the IRT in developing the final MBI. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before January 22, 2010, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Brent Jasper; Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1733. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

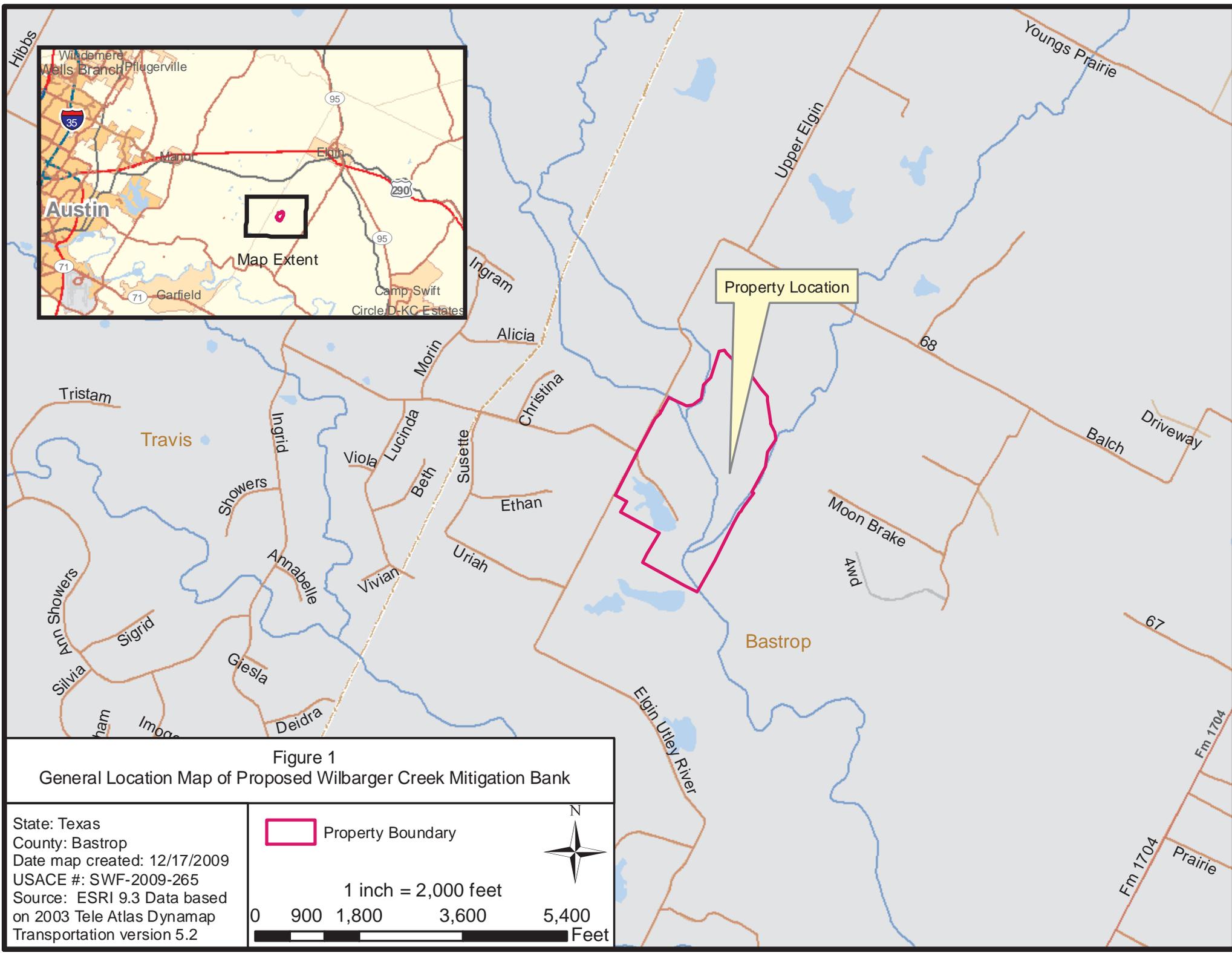


Figure 1

General Location Map of Proposed Wilbarger Creek Mitigation Bank

State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: ESRI 9.3 Data based on 2003 Tele Atlas Dynamap Transportation version 5.2

 Property Boundary



1 inch = 2,000 feet

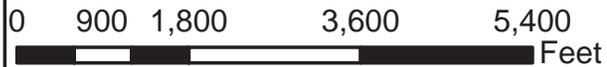
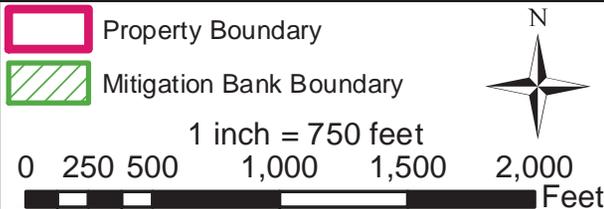




Figure 2
Aerial Photograph of the Proposed Wilbarger Creek Mitigation Bank

State: Texas
County: Bastrop
Date map created: 12/17/2009
USACE #: SWF-2009-265
Source: CAPCOG 2008
Aerial Photography



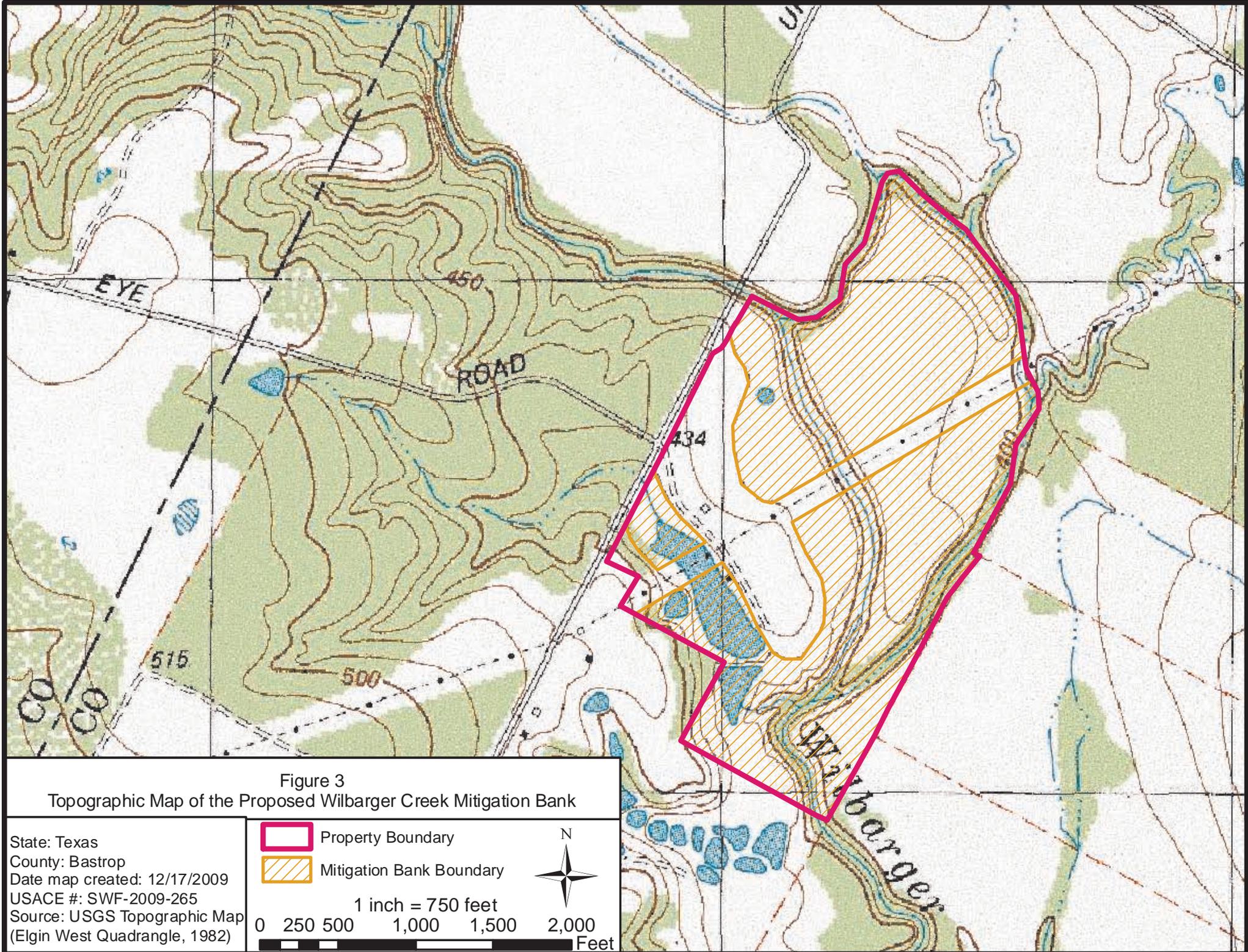
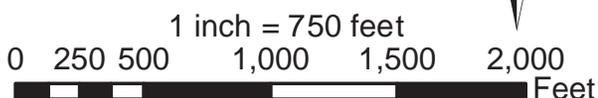


Figure 3
 Topographic Map of the Proposed Wilbarger Creek Mitigation Bank

State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: USGS Topographic Map
 (Elgin West Quadrangle, 1982)

- Property Boundary
- Mitigation Bank Boundary



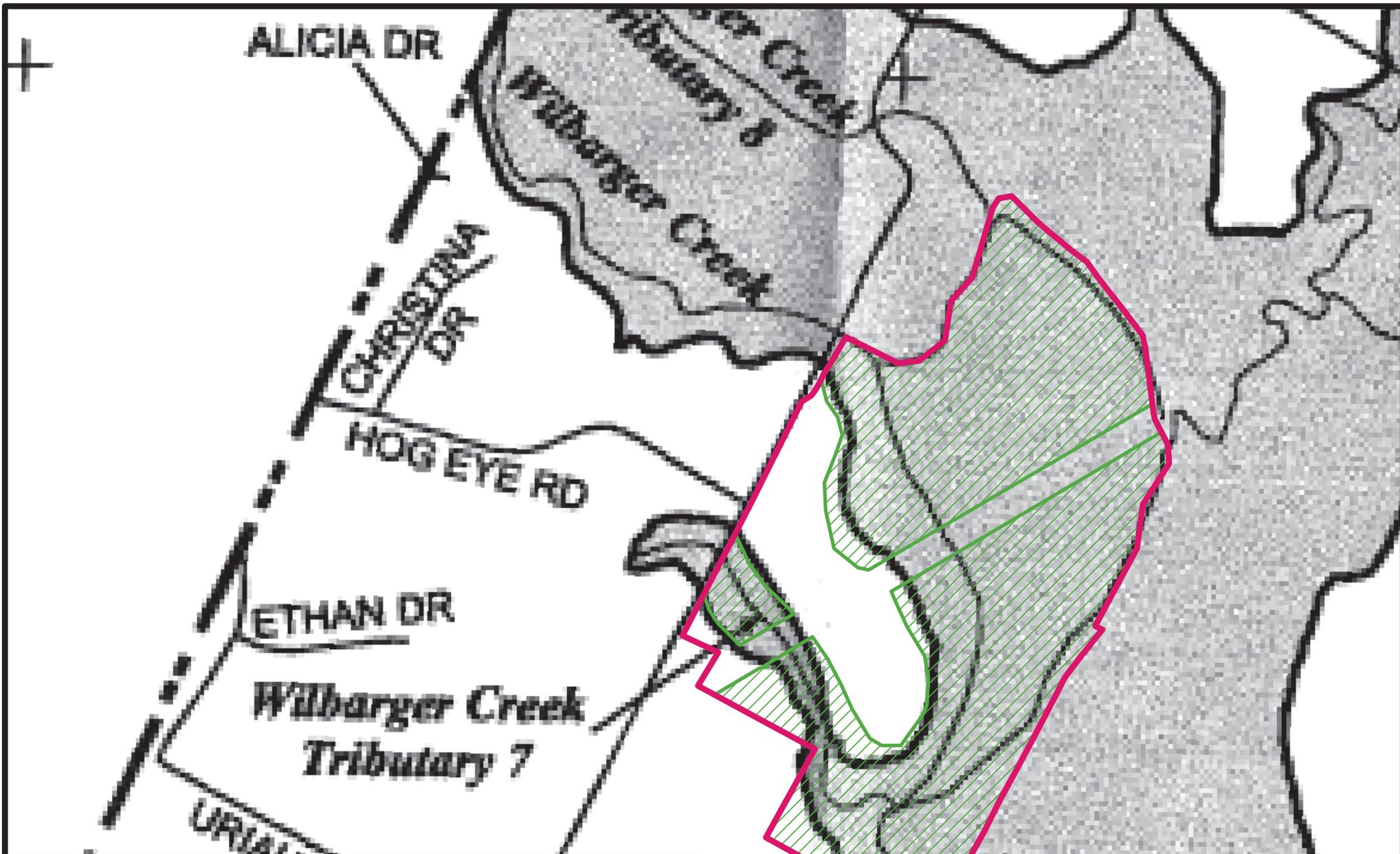
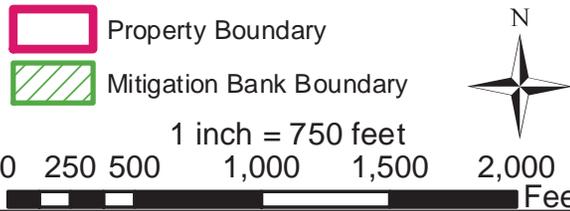


Figure 4
 FEMA FIRM of the Proposed Wilbarger Creek Mitigation Bank

State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: Federal Emergency
 Management Agency Flood
 Insurance Rate Map Digital Data



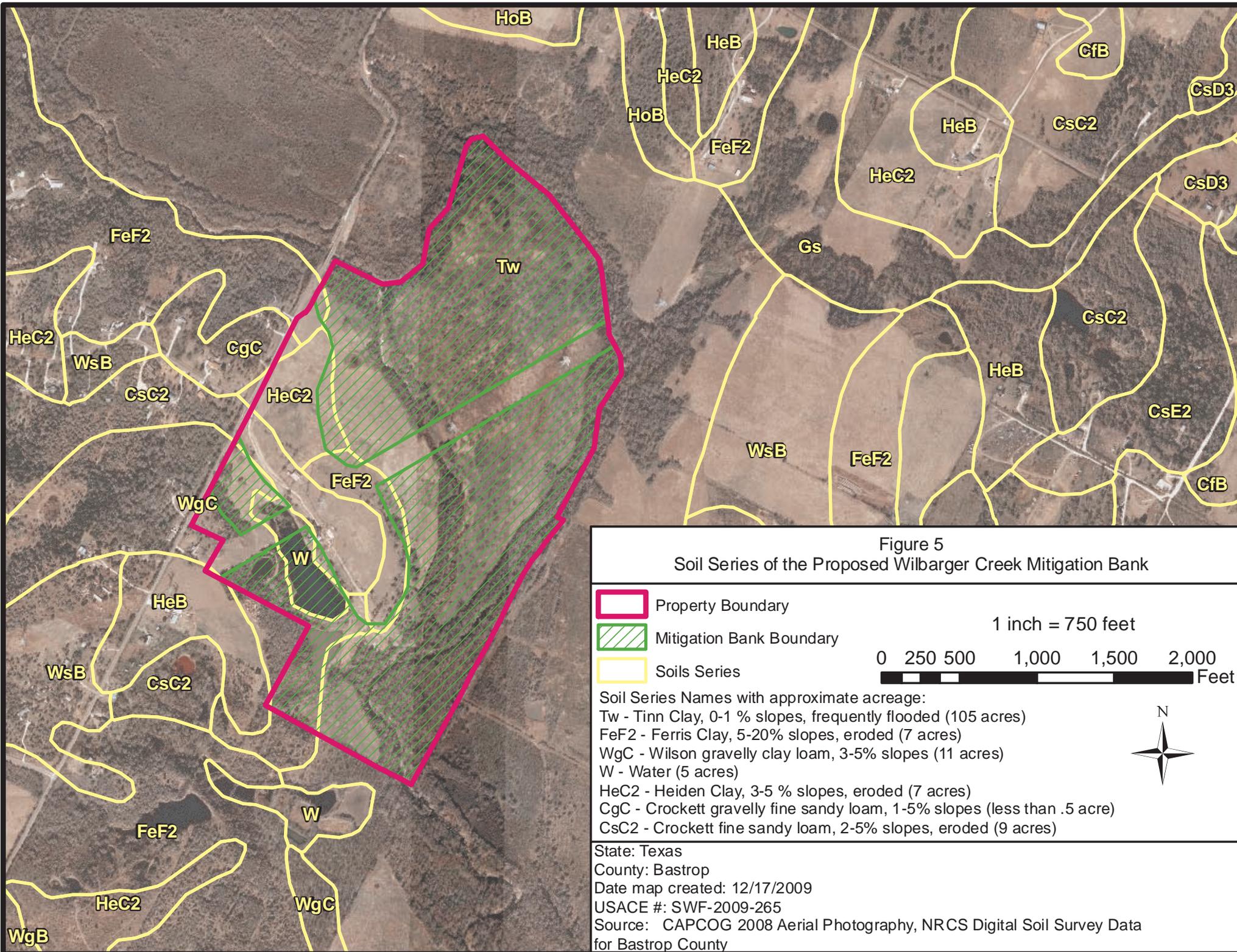
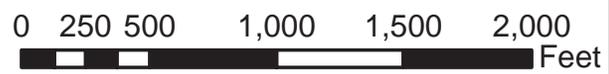


Figure 5
Soil Series of the Proposed Wilbarger Creek Mitigation Bank

-  Property Boundary
-  Mitigation Bank Boundary
-  Soils Series

1 inch = 750 feet



Soil Series Names with approximate acreage:
 Tw - Tinn Clay, 0-1 % slopes, frequently flooded (105 acres)
 FeF2 - Ferris Clay, 5-20% slopes, eroded (7 acres)
 WgC - Wilson gravelly clay loam, 3-5% slopes (11 acres)
 W - Water (5 acres)
 HeC2 - Heiden Clay, 3-5 % slopes, eroded (7 acres)
 CgC - Crockett gravelly fine sandy loam, 1-5% slopes (less than .5 acre)
 CsC2 - Crockett fine sandy loam, 2-5% slopes, eroded (9 acres)



State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: CAPCOG 2008 Aerial Photography, NRCS Digital Soil Survey Data for Bastrop County

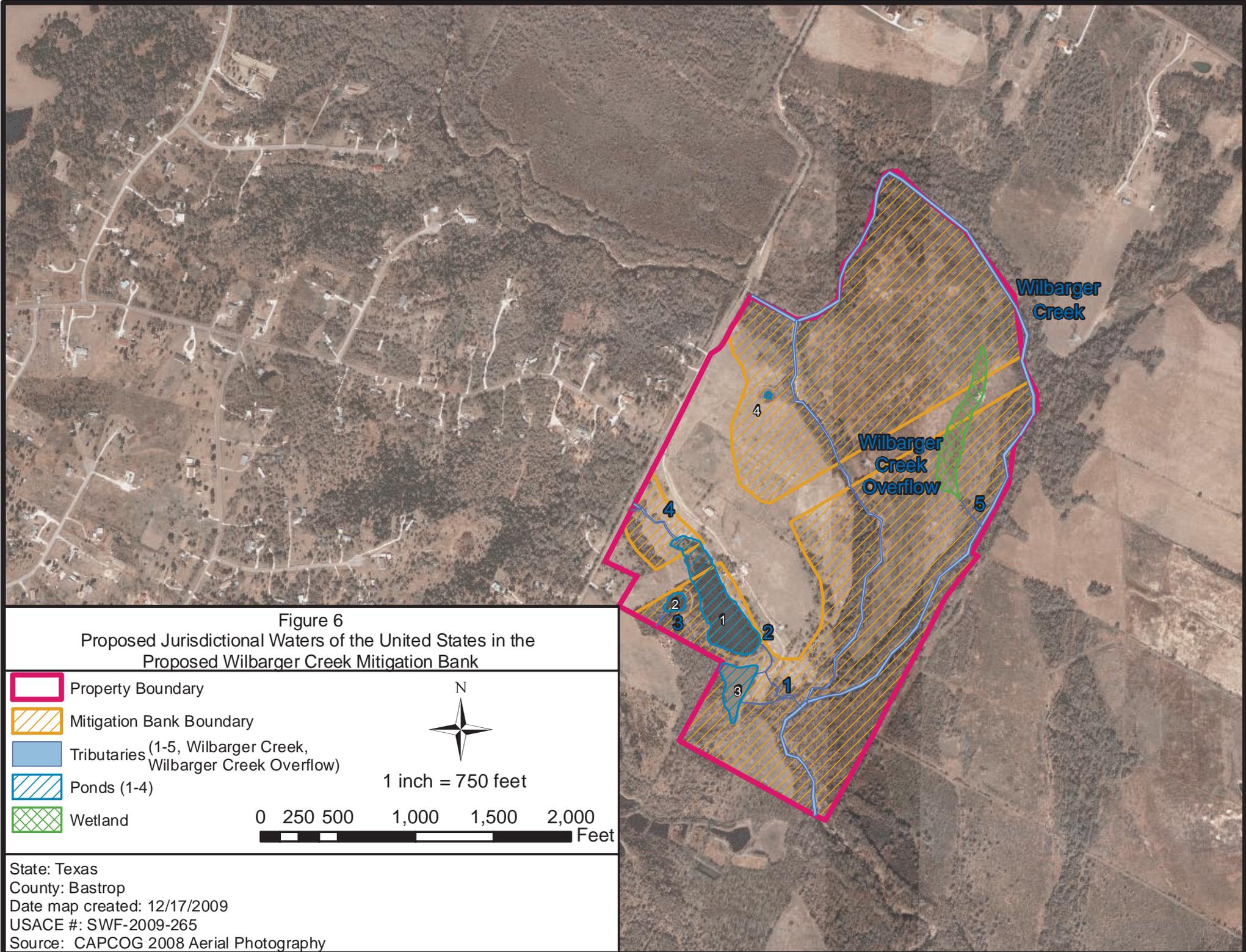


Figure 6
 Proposed Jurisdictional Waters of the United States in the
 Proposed Wilbarger Creek Mitigation Bank

Property Boundary
 Mitigation Bank Boundary
 Tributaries (1-5, Wilbarger Creek, Wilbarger Creek Overflow)
 Ponds (1-4)
 Wetland

N



1 inch = 750 feet

0 250 500 1,000 1,500 2,000 Feet



State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: CAPCOG 2008 Aerial Photography

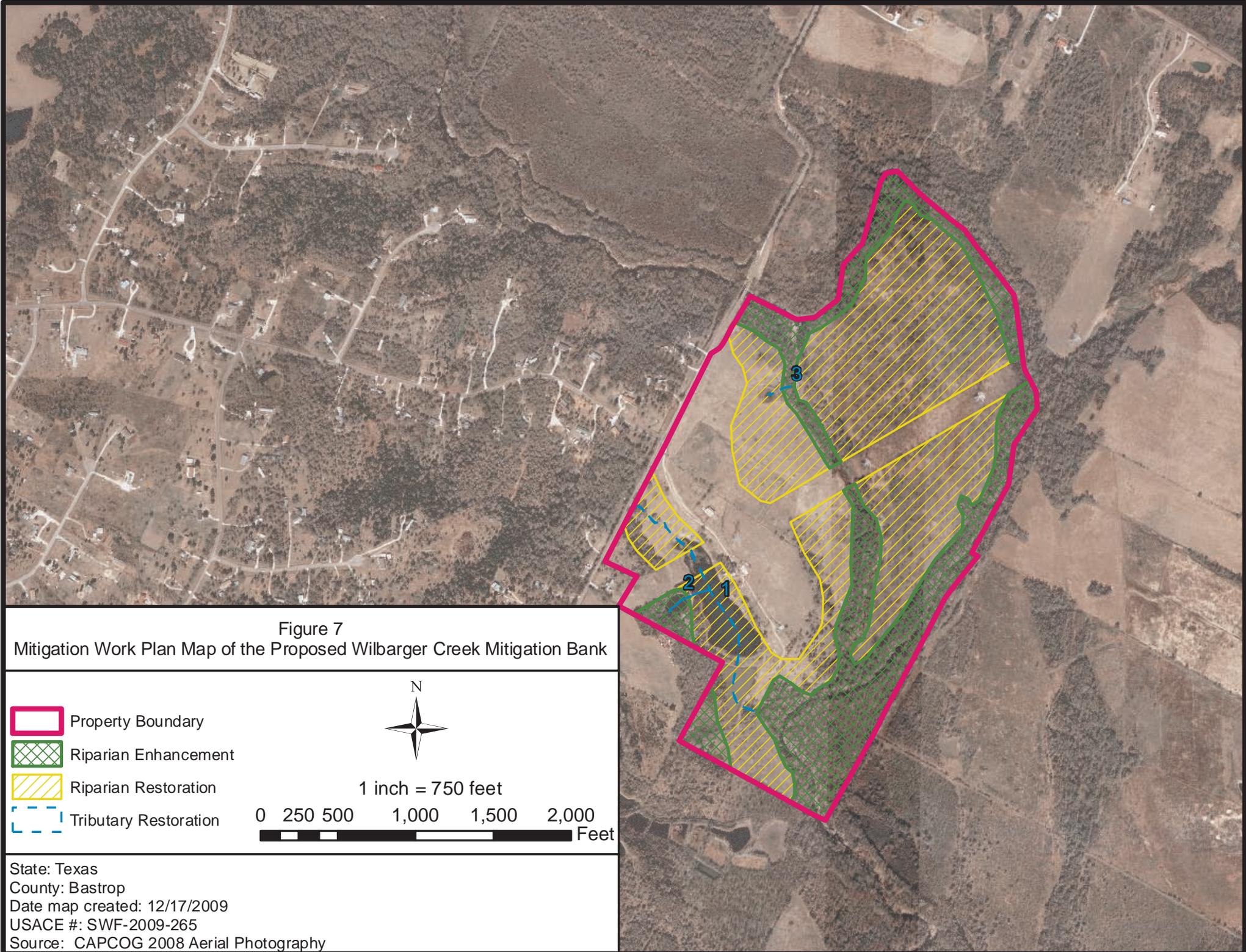


Figure 7
Mitigation Work Plan Map of the Proposed Wilbarger Creek Mitigation Bank

-  Property Boundary
-  Riparian Enhancement
-  Riparian Restoration
-  Tributary Restoration



1 inch = 750 feet



State: Texas
County: Bastrop
Date map created: 12/17/2009
USACE #: SWF-2009-265
Source: CAPCOG 2008 Aerial Photography

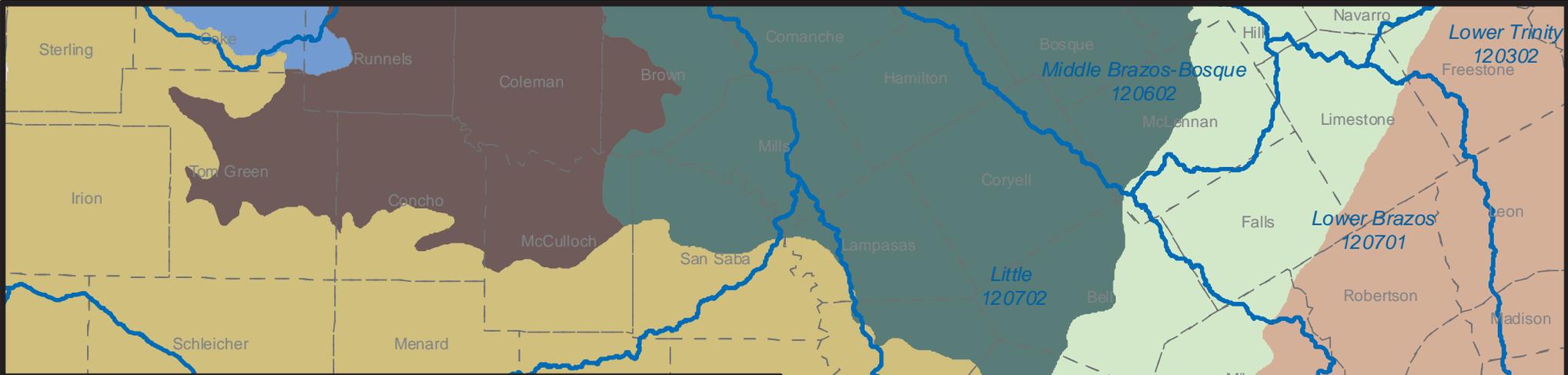


Figure 8
 Hydrologic Unit Codes and Level III Ecoregions
 in the Vicinity of the Proposed Wilbarger Creek Mitigation Bank

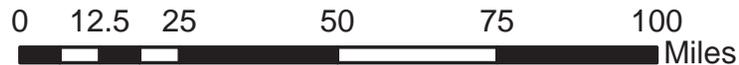
Level III Ecoregion

-  Central Great Plains
-  Cross Timbers
-  East Central Texas Plains
-  Edwards Plateau
-  Southern Texas Plains
-  Southwestern Tablelands
-  Texas Blackland Prairies
-  Western Gulf Coastal Plain

-  6 Digit Hydrologic Unit Code
-  Fort Worth/ Galveston District Boundary
-  Counties



1 in = 30 miles



State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: US Environmental Protection Agency, 2004
 USDA/NRCS - National Cartography & Geospatial Center

Bank Location



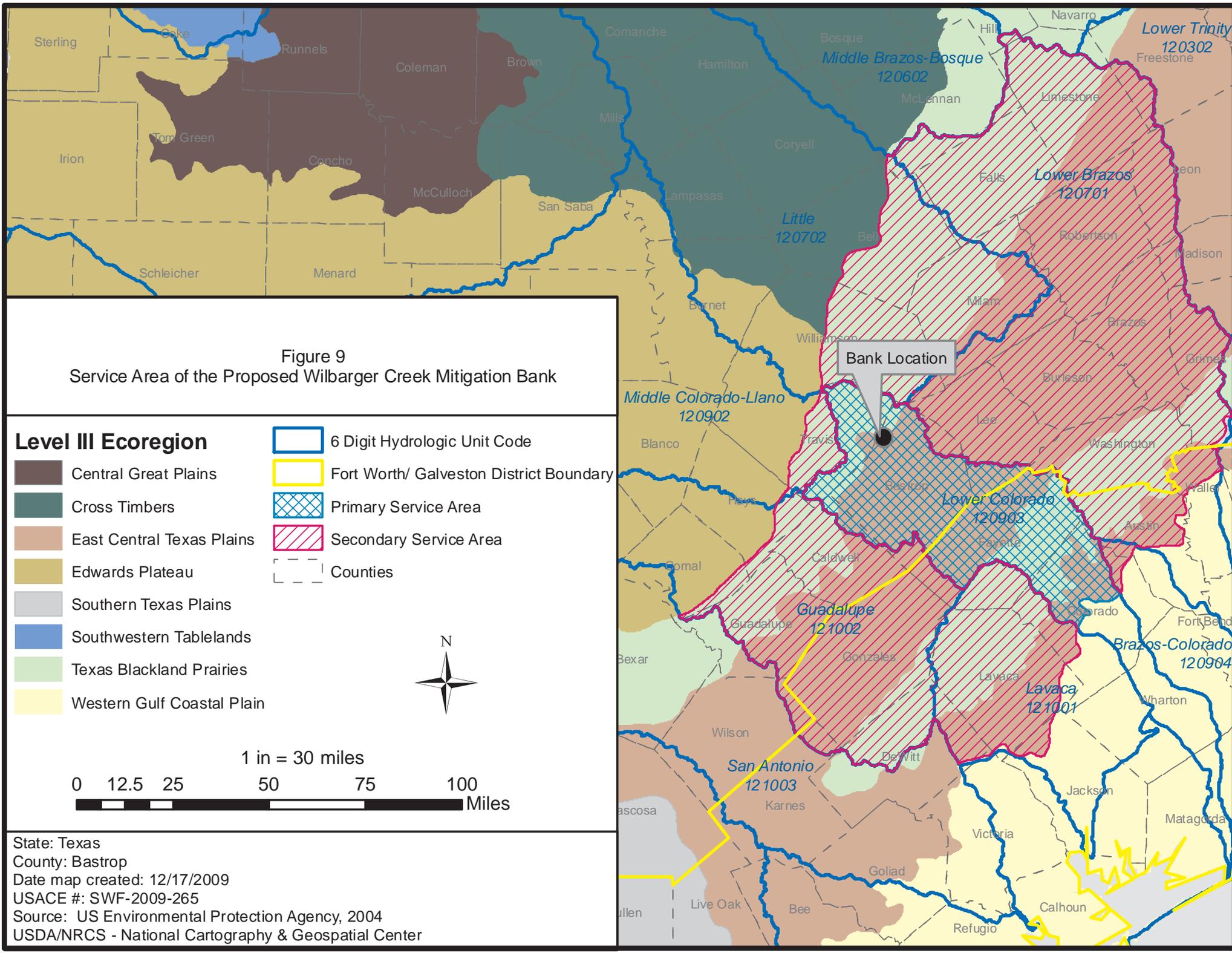


Figure 9
 Service Area of the Proposed Wilbarger Creek Mitigation Bank

Level III Ecoregion

- Central Great Plains
- Cross Timbers
- East Central Texas Plains
- Edwards Plateau
- Southern Texas Plains
- Southwestern Tablelands
- Texas Blackland Prairies
- Western Gulf Coastal Plain

- 6 Digit Hydrologic Unit Code
- Fort Worth/ Galveston District Boundary
- Primary Service Area
- Secondary Service Area
- Counties



1 in = 30 miles



State: Texas
 County: Bastrop
 Date map created: 12/17/2009
 USACE #: SWF-2009-265
 Source: US Environmental Protection Agency, 2004
 USDA/NRCS - National Cartography & Geospatial Center