



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

Public Notice

Applicant: Scott Shaver Trust No. Two, c/o Scott Shaver

Project No.: SWF-2014-00105

Date: March 11, 2015

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

PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

SUBJECT: This public notice is being issued to provide interested parties an opportunity to comment on a proposal to establish the Flat Creek Mitigation Bank (FCMB), a mitigation bank located east of the town of Leagueville, Henderson County, Texas.

APPLICANT: The Scott Shaver Trust No. Two
C/o Scott Shaver
977 Pruitt Place
Tyler, Texas 75703

APPLICATION NUMBER: SWF-2014-00105

DATE ISSUED: March 11, 2015

LOCATION: The proposed bank is located along Flat Creek in the eastern part of Henderson County, approximately 3.1 miles east of Leagueville on Farm to Market 317. The approximate center of the FCMB is located at latitude 32.2157° north and longitude -95.6060° east on the Leagueville / Moore Station 7.5-minute USGS quadrangle maps. The site is located on both sides of Flat Creek and within the Upper Neches Basin (8-digit HUC 12020001) and the South Central Plains EPA Level III Ecoregion (Griffith et al., 2003). The overall property encompasses approximately 829.7 acres, of which, approximately 586 acres would be included in the bank. A vicinity map of the proposed bank site is depicted via Figure 1.

PROJECT DESCRIPTION: The purpose of the proposed bank is to provide offsite compensatory mitigation for unavoidable impacts to waters of the United States (WOUS), including wetlands, which result from activities authorized under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, provided such use has met all applicable requirements and is authorized by the U.S. Army Corps of Engineers (USACE). The goal of the proposed bank is to successfully rehabilitate, enhance, and protect WOUS, namely, bottomland hardwood forested wetlands including baldcypress-tupelo swamps within the Flat Creek floodplain and, also, ephemeral tributaries. Aquatic habitat in the bank site would be designed in an ecologically sound and economically feasible manner, and would be divided and sold in units referred to as credits.

The overall objective of the bank site is the rehabilitation and enhancement of a historic bottomland hardwood forest and baldcypress-tupelo swamp wetland ecosystem and its associated streams. Stream enhancement would occur through riparian buffer reestablishment and enhancement. Achieving this objective would provide mitigation for unavoidable impacts to aquatic resources such as palustrine forested (PFO) wetlands, palustrine emergent (PEM) wetlands, palustrine scrub-shrub (PSS) wetlands, and perennial and ephemeral streams.

Historical aerial photography indicates that from before the 1940's through the late 1960's the site had never been cleared or significantly timbered except for small pastures on the upland periphery. In the late 1960's or early 1970's most of the site was cleared, stumped, levelled, channelized, drained, and converted into pasture. Streams were diverted into the site and channelized to Flat Creek in order to drain the forested wetlands. The site remained pasture throughout the 1970's and 1980's. In the early 1990's the pasture became fallow. With abandonment of the site for agriculture many of the channelized stream reaches silted in or otherwise became blocked, restoring the prolonged hydroperiod. Light-seeded vegetation particularly river birch (*Betula nigra*), sweetgum (*Liquidambar styraciflua*), and elm (*Ulmus* spp.) colonized the upland and temporarily flooded portions of the site at this time. As a result of the increased hydroperiod, forests have not reestablished on nearly half of the property and these areas currently exist as a mosaic of seasonally to semi-permanently flooded PEM and PSS wetlands. Figures 2 and 3 show historical aerial photography of the site and Figure 4 is a USGS topographic map of the site.

The association of soils found in the bank site is typical to their relative location in the landscape, loam in the floodplain, fine sandy loam and loamy fine sand on the hills and ridges. Soils within the bank site include Nahatche loam, frequently flooded, Cuthbert fine sandy loam, 8 to 20 percent slopes, Wolfpen loamy fine sand, 1 to 5 percent slopes, and minor amounts of steeper Wolfpen and Pickton loamy fine sands. Of these soils, the Nahatche series are listed as partially hydric according to the National List of Hydric Soils. Approximately 91 percent of the site is mapped as having these soils types (NRCS 2011). Figure 5 shows the locations of these mapped soils within the bank site.

At the site, PFO wetlands are typically temporarily flooded or saturated and PSS and PEM wetlands are typically seasonally to semi-permanently flooded or saturated. Hydrology is supported by precipitation, a shallow groundwater table, and the overbank flooding of the five named perennial streams that converge on the site. Figure 6 is a National Wetlands Inventory map of the site.

The proposed 586 acre bank site is composed of an estimated 157 acres of PEM wetlands, 257 acres of PFO wetlands, 71 acres of PSS wetlands, 19 acres of deciduous forested uplands, 44 acres of riparian buffer, and 38 acres of non-credited areas. The non-credited areas include a pipeline right-of-way, perimeter road, and wildlife food plots. Within the riparian buffers there are an estimated 8,370 linear feet of the perennial Flat Creek and 1,866 linear feet of ephemeral streams. The proposed bank would surround, but not overlap, a number of streams and associated riparian buffers used as permittee-responsible mitigation for impacts authorized by a separate USACE permit issued in 2013. Figure 7 is a map showing the preliminary delineation of waters of the U.S. at the site.

Within the 586 acre bank site an estimated twenty-six acres of the site were disturbed in 2011 for the purpose of constructing forest trails for silvicultural activities (twenty-three acres) and for wetland wildlife habitat management (three acres). The USACE has determined that the disturbance did not require USACE authorization. Of the disturbed area an estimated eighteen acres are proposed for crediting (two of the acres used for wetland wildlife habitat management and sixteen of the acres used for trails). See Figure 11 for a map of disturbed areas.

Stream buffer, upland buffer, and wetland mitigation would be accomplished by a combination of prescribed burning, chemical and mechanical vegetation control, and planting of native, desirable, tree species. The goal of the mitigation plan would be to establish late successional tree species, particularly hard mast species, in temporarily and seasonally flooded areas currently dominated by light-seeded early successional species. Seasonally and semi-permanently flooded emergent and scrub-shrub wetlands would be enhanced by planting containerized hydrophytic species at a low density, in particular baldcypress (*Taxodium distichum*), swamp tupelo (*Nyssa biflora*), and nuttall oak (*Quercus texana*). Reference sites would be used to determine the appropriate density and performance standards for the survival and composition of the plantings. These practices would result in the generation of forested and emergent/scrub-shrub wetland credit types. Enhancement occurring within stream buffers would generate perennial and ephemeral TXRAM riparian buffer credits in accordance with CESWF-13-MIT-1. Figure 8 is a map of the conceptual work plan.

Upland buffer credits are proposed for small uplands occurring within the bank site and along the wetland boundary. Upland credit areas would constitute three percent of the total bank area. Wetland preservation credits are proposed on approximately 65 acres of high quality forested wetlands that have not been significantly disturbed for over 80 years. Preservation credit areas would constitute eleven percent of the total bank area. All credit types would be maintained separately on the ledger.

The proposed service areas for the FCMB are restricted to the boundaries of the Fort Worth District of the USACE within the state of Texas. Primary and secondary services areas were determined using the USGS eight-digit Hydrologic Unit Codes (HUCs) and USEPA Level III Ecoregions (Omernik 2004, revised 2007). The primary service area for the proposed bank is the Upper Neches Basin, HUC 12020001, which includes parts of Henderson, Anderson, Smith, Houston, Van Zandt, and Cherokee Counties. The proposed secondary service area is within portions of the Upper Angelina Basin (HUC #12020004) and Middle Neches Basin (HUC #12020002), within the Neches River Basin, the South Central Plains Ecoregion, and within the Fort Worth District regulatory boundary. Counties within the secondary service area include portions of Nacogdoches, Smith, Cherokee, Rusk, Houston, and Angelina Counties. Figure 9 shows the 6- and 8-digit HUCs and the USEPA Level III Ecoregions as they relate to the site. The proposed primary and secondary service areas are shown on Figure 10.

A mitigation banking instrument (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 19594-19705). The MBI would detail the legal and physical characteristics of the bank and how the bank would be established and operated. Subjects addressed in detail in the MBI would include development of the site, service area, credit determination, financial assurances, scope of agreement, purpose and goals of the bank, baseline conditions, performance standards for enhancement activities, accounting procedures, monitoring and reporting, long-term maintenance and protection, and transfer of bank ownership or sponsorship.

The 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.

Implementation of the proposed mitigation bank would require Department of the Army Authorization under Section 404 of the Clean Water Act. Based on preliminary evaluation by the USACE, it appears 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 a county where the whooping crane (*Grus americana*), is known to occur or may occur as a migrant. The whooping crane is an endangered species. Our initial review indicates that the proposed work would have no effects on any federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The proposed Flat Creek Mitigation Bank has never been formally surveyed for the presence of historic or prehistoric cultural resources. No previously recorded prehistoric or historic sites are currently known to be located within the mitigation bank boundaries. Formal archeological surveys from nearby Lake Palestine and Lake Athens have identified multiple prehistoric and historic sites, including sites culturally affiliated with the Caddo Tribe of Oklahoma. Similar cultural resources can be expected to be located in this area. Additional work to identify historic properties would be required.

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.

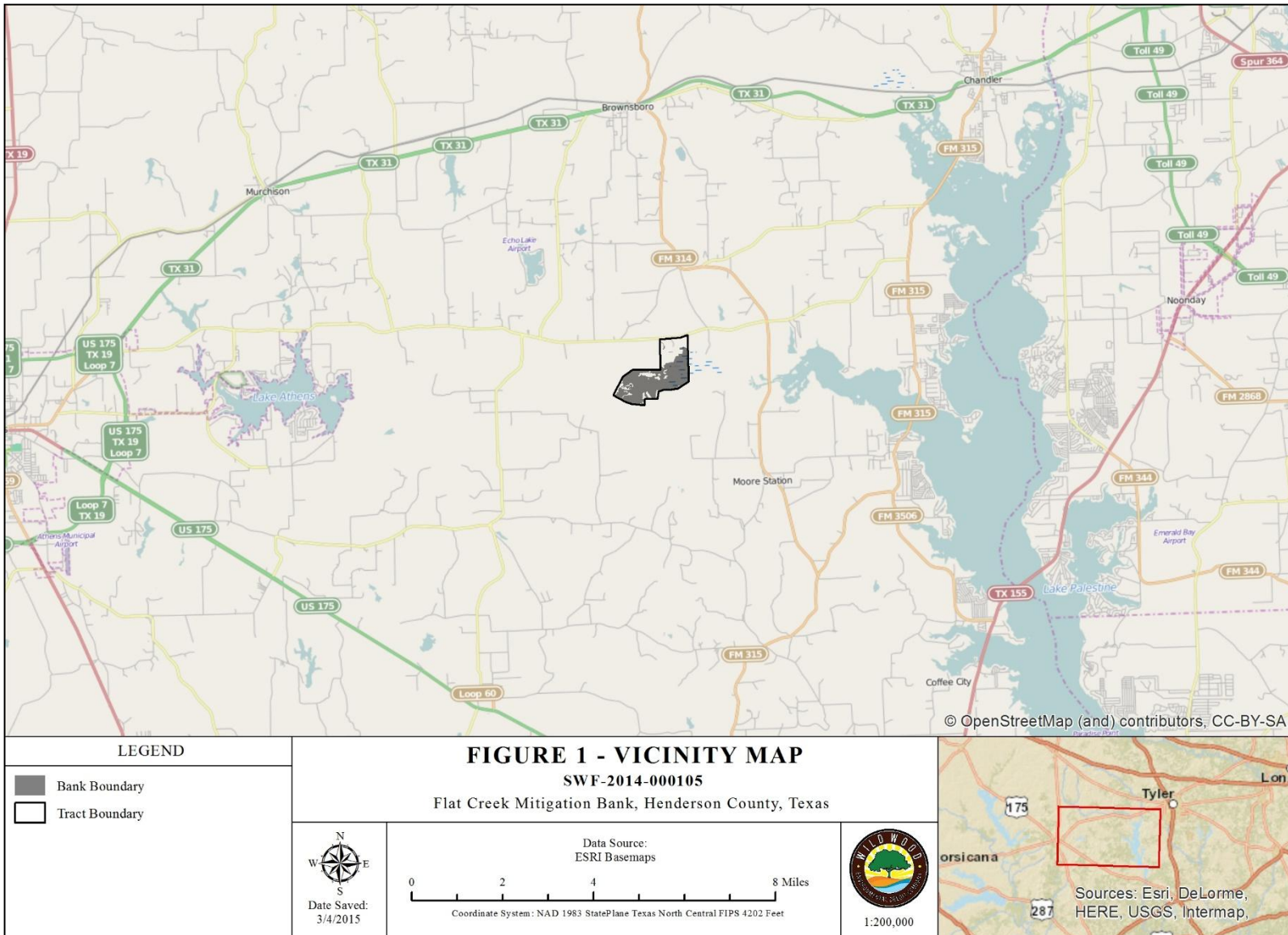
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

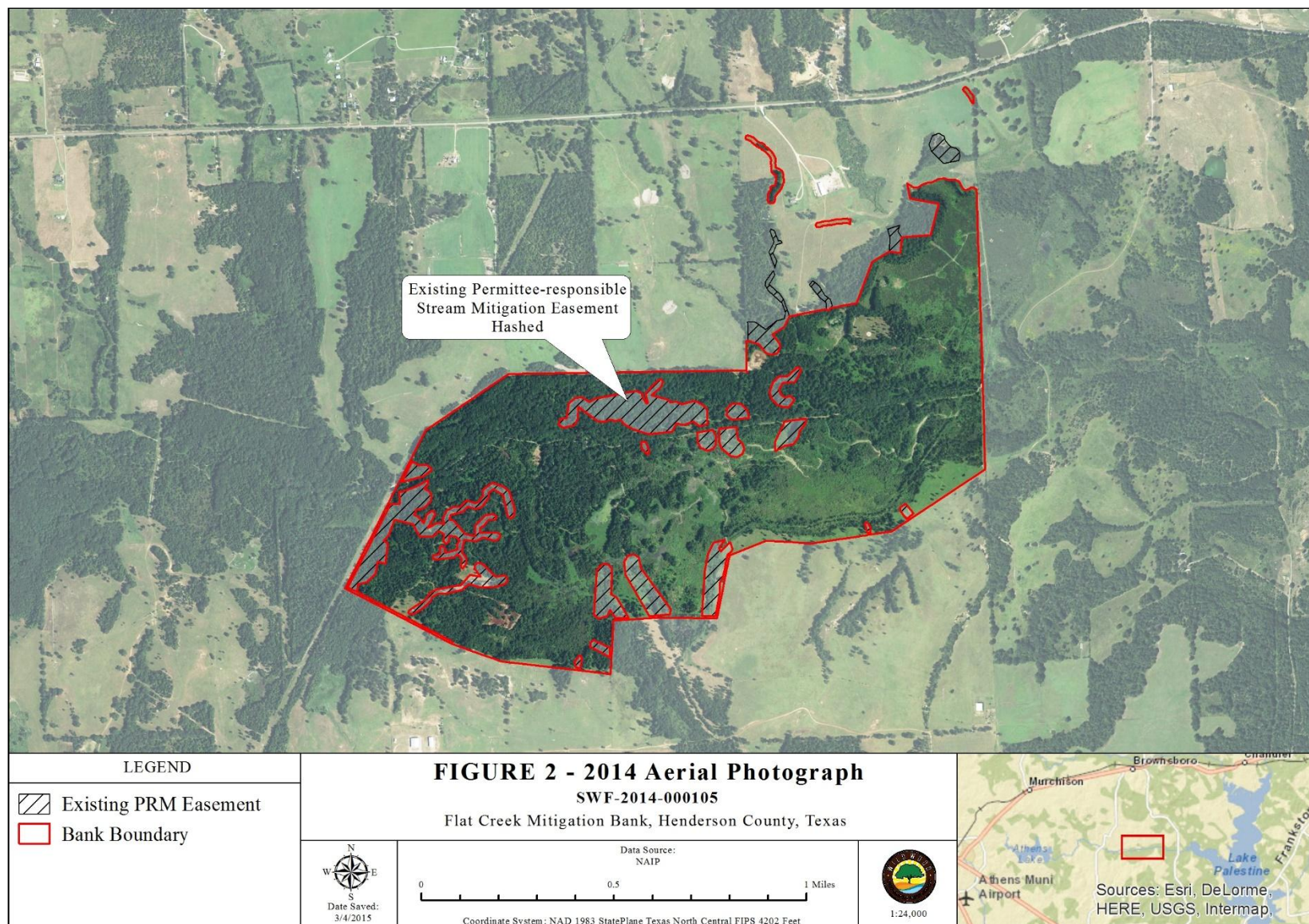
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If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

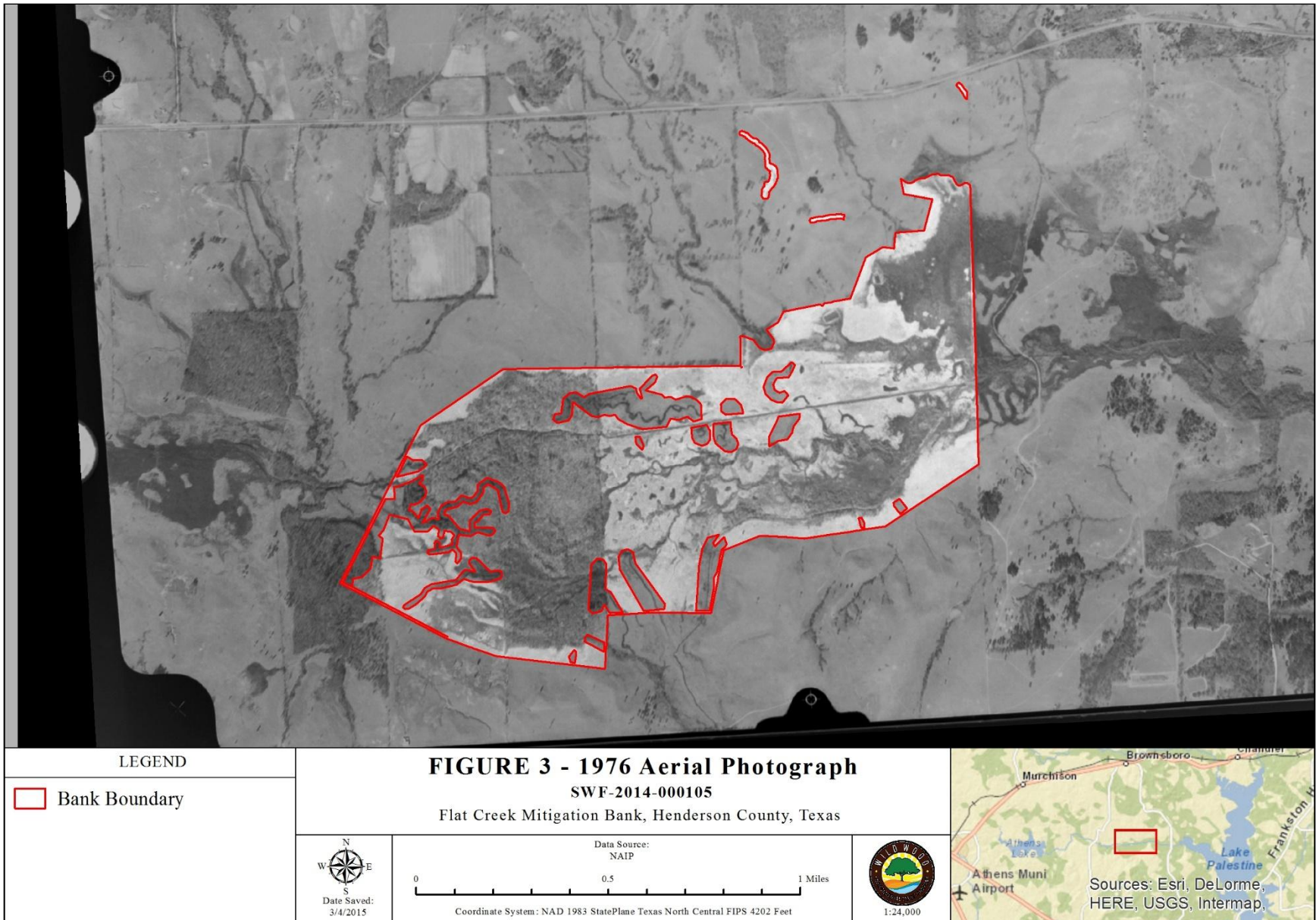
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before April 10, 2015, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments 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-DE-R;

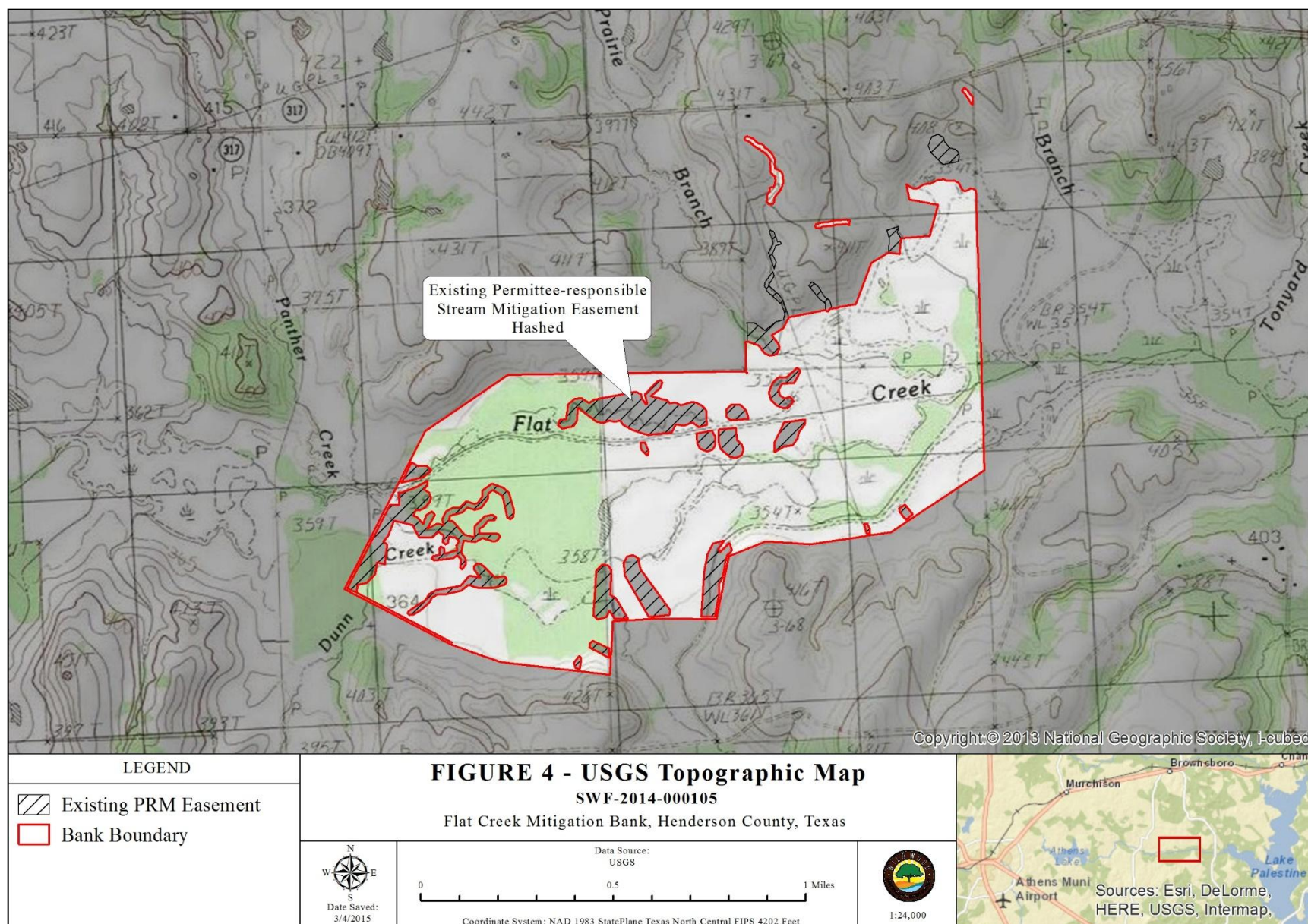
U.S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1733. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

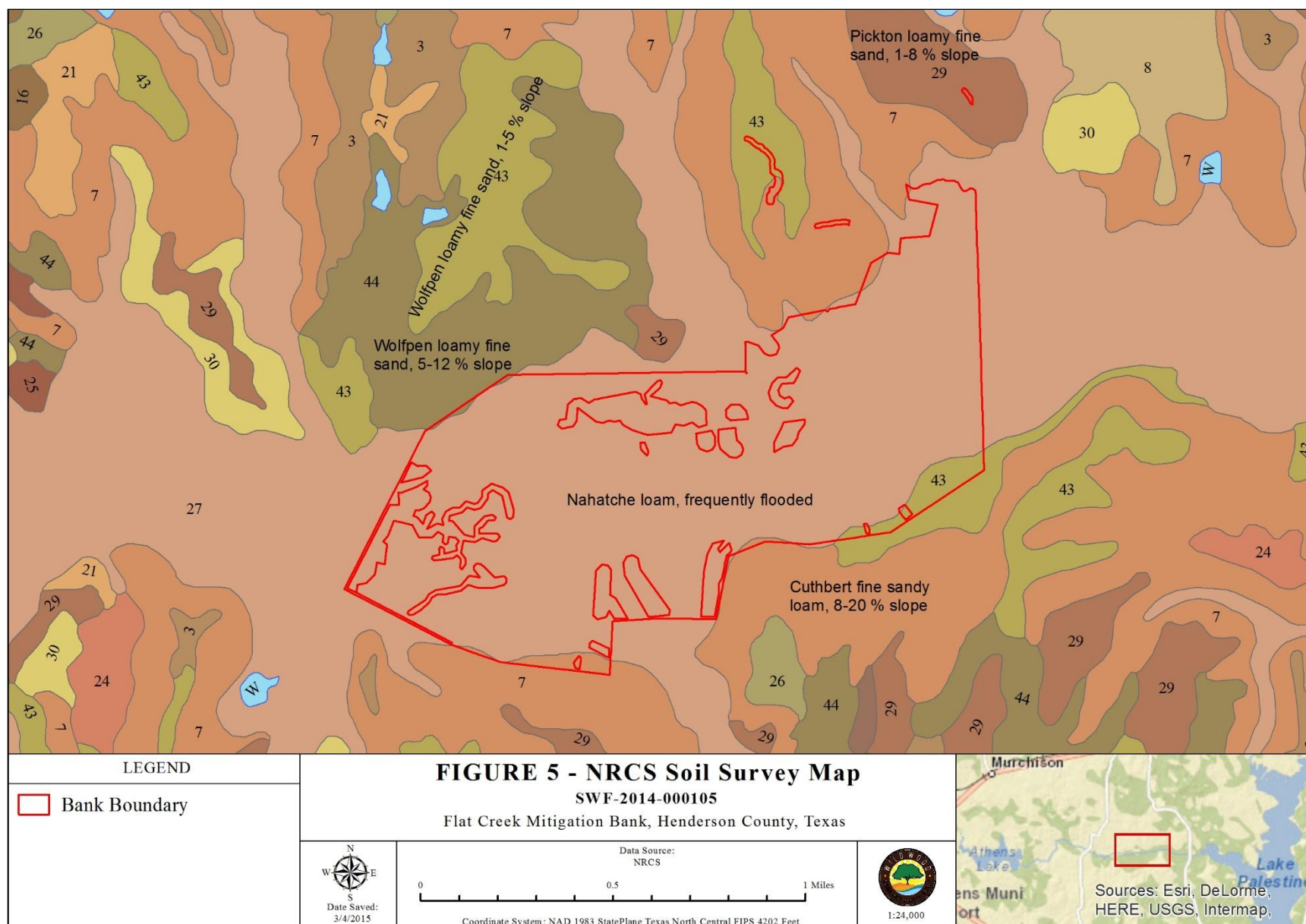
DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

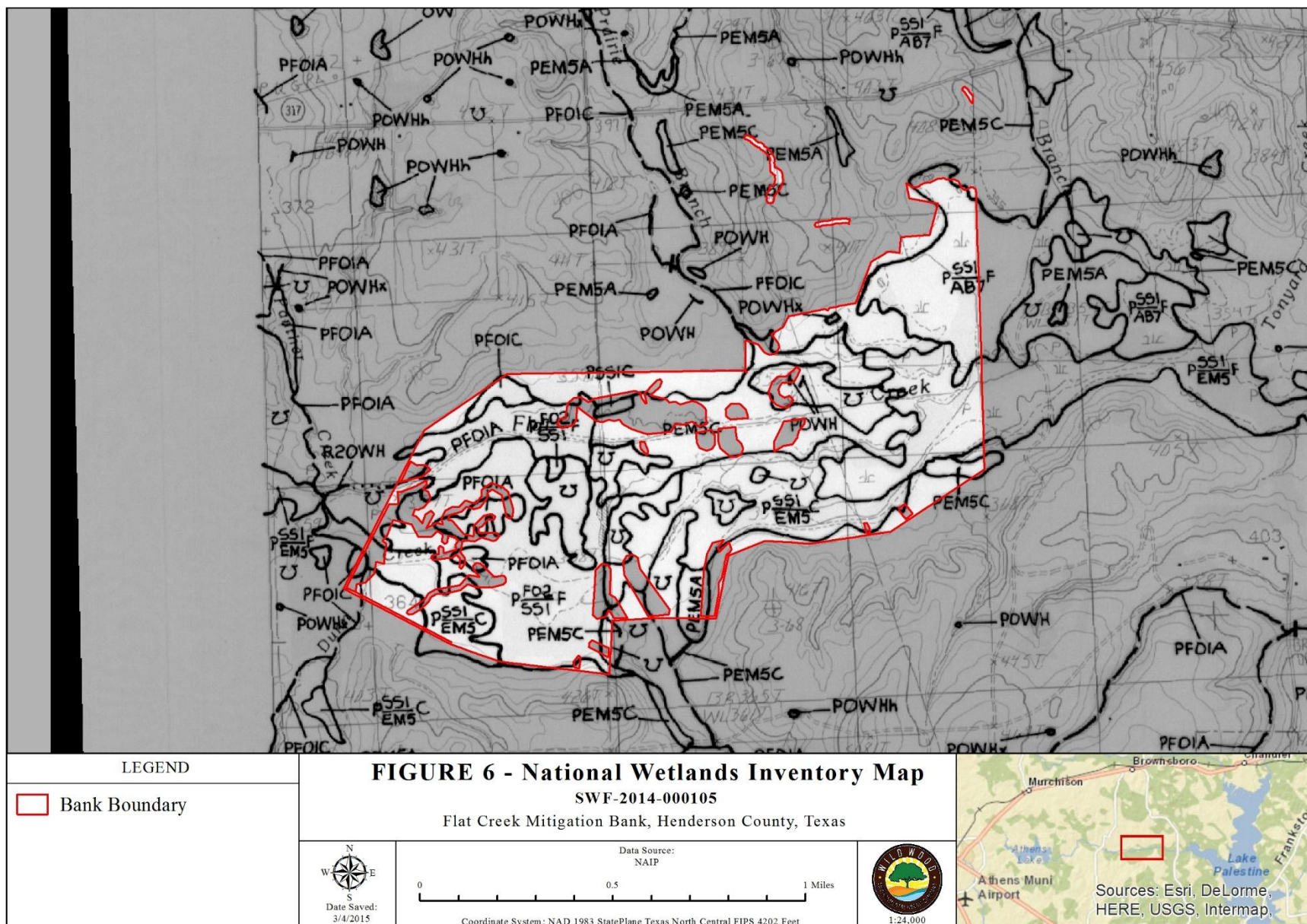


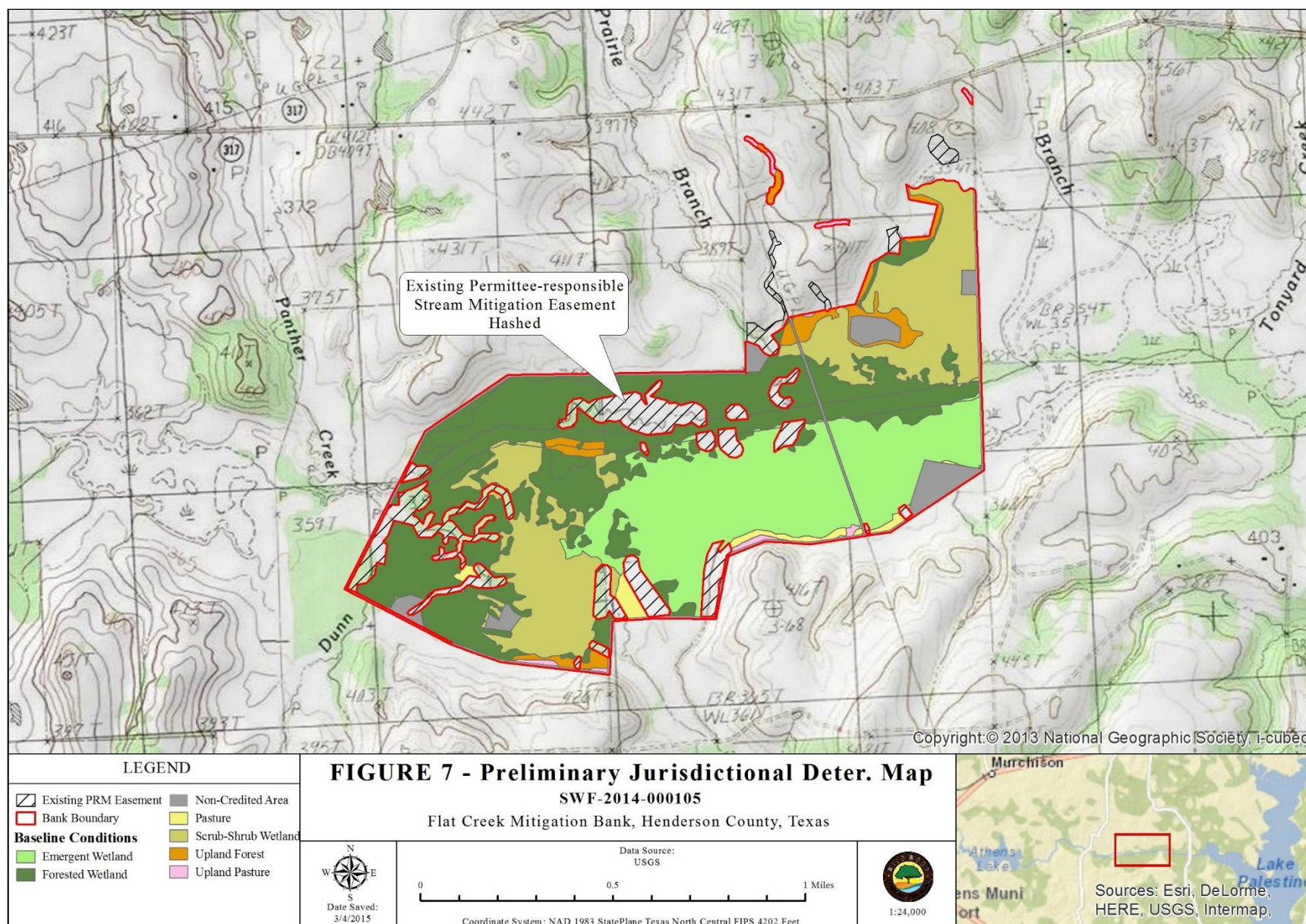












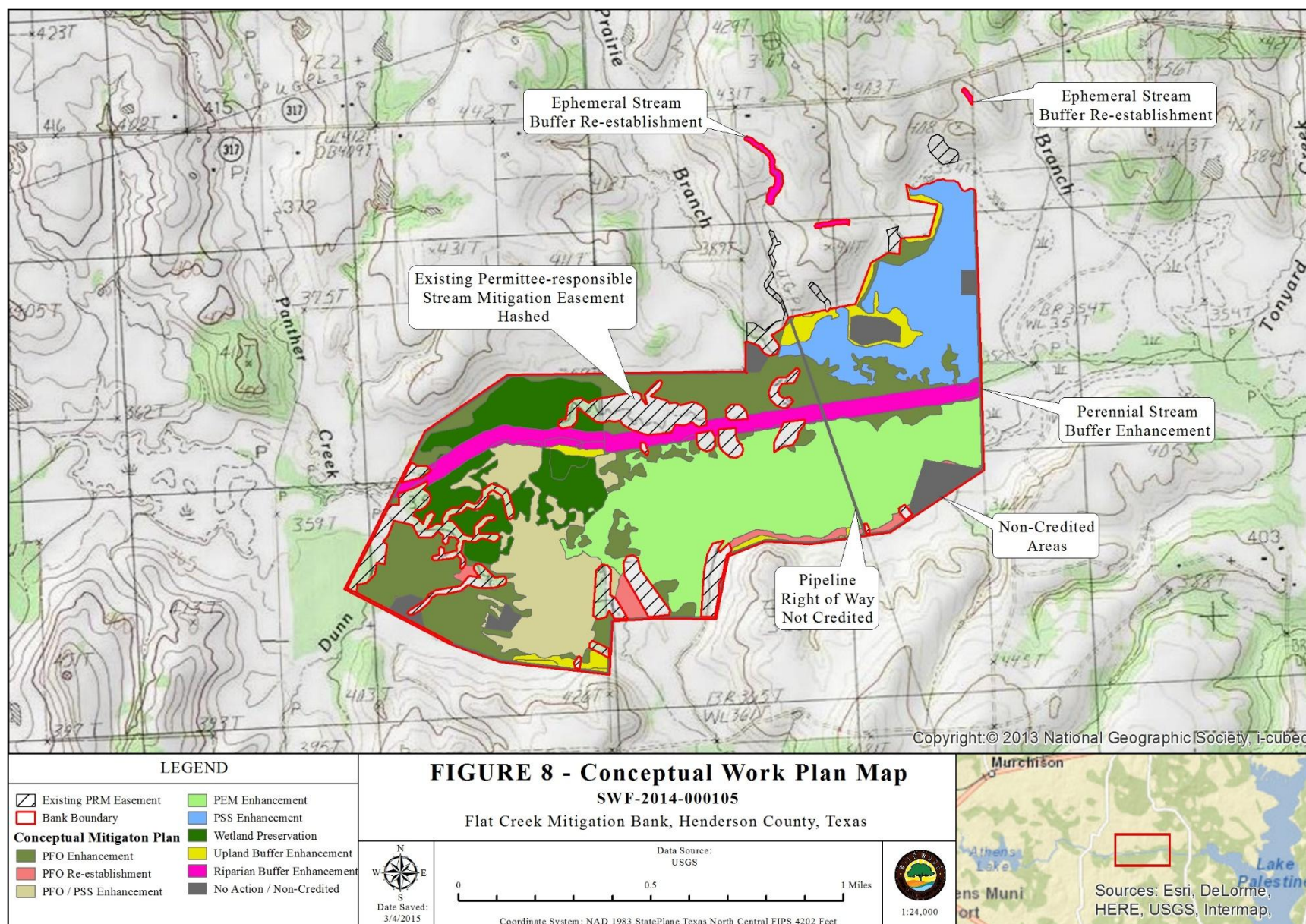


FIGURE 9 - LEVEL III ECOREGION & 6-/8- DIGIT HUC MAP

SWF-2014-00105

Flat Creek Mitigation Bank, Henderson County, Texas

