



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

Public Notice

Applicant: Hearts Bluff, Inc.

Permit Application No.: 200400276

Date: September 30, 2004

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. Ken Laterza

Phone Number: (817) 886-1735

JOINT PUBLIC NOTICE

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

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: This public notice is being issued to provide interested parties an opportunity to comment on a proposal to create an approximately 1,387-acre mitigation bank to be known as the Hearts Bluff Mitigation Bank (HBMB) in Titus County, Texas.

APPLICANT: Hearts Bluff
Messrs. Billy and Bobby Lide
Route 2, Box 159F
Mexia, Texas 76667

APPLICATION NUMBER: 200400276

DATE ISSUED: September 30, 2004

LOCATION: The proposed mitigation bank would be located in the floodplain of the Sulphur River approximately 8.5 miles east northeast of Talco in Titus County, Texas. The proposed mitigation bank would be located approximately at UTM coordinates 318256.38 East and 3695349.93 North (Zone 15) on the Boxelder, Texas 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 111040302.

PROJECT DESCRIPTION: The applicant proposes to enhance and protect approximately 1,387 acres of the Sulphur River floodplain by halting destructive land use practices, restoring the previously degraded aquatic ecosystem, enhancing the existing aquatic ecosystem, and preserving and protecting these and adjacent upland areas on the tract (Figures 1-7 of 7). The entire 1,386.63-acre tract is currently owned by the applicant and is comprised almost entirely of wetlands adjacent to the Sulphur River (all waters of the United States) and a small upland (non-wetland) area that is surrounded by wetlands, both within and outside of the proposed HBMB tract. The entire bank would be managed as a natural area in perpetuity with additional protection provided through deed restriction.

The HBMB is located in the USGS Accounting Big Cypress-Sulphur Unit 111403 (USGS, 1994) and the South Central Plains Ecoregion (Omernik, 2002). The South Central Plains Ecoregion, widely known as the "Pineywoods" region, is an area of mostly irregular plains once blanketed by oak-hickory-pine forests and is now predominantly planted in loblolly pine (*Pinus taeda*) and shortleaf pine (*Pinus echinata*). Only about one-sixth of the region is cropland; whereas about two-thirds of the region is forested. Lumber and pulpwood production are major economic activities. The majority of the proposed bank, approximately 892 acres (64%), is immature

forested wetlands (wooded swamp) with less desirable tree species composition. Wooded swamp areas are characterized as forested wetland dominated by woody plants mostly nine to 30 feet tall with closed crowns, or nearly so (71 to 100 percent canopy cover) within inundated or almost constantly inundated sites. Dominant vegetation in these areas consists of green ash (*Fraxinus pennsylvanica*), black willow (*Salix nigra*), sugarberry (*Celtis laevigata*), boxelder (*Acer negundo*), and Osage orange (*Maclura pomifera*).

Approximately 323 acres (23%) of the tract is characterized as mature forested wetlands (forested swamp). Forested swamp areas are characterized as forested wetlands dominated by deciduous or evergreen trees greater than 30 feet tall with closed crowns or nearly so (71 to 100 percent canopy cover) within inundated or almost constantly inundated sites. Dominant vegetation in these areas consists green ash, cherrybark oak (*Quercus pagodifolia*), boxelder, sugarberry, bitternut hickory (*Carya cordiformis*), mockernut hickory (*Carya tomentosa*), deciduous holly (*Ilex decidua*), buttonbush (*Cephalanthus occidentalis*), and cedar elm (*Ulmus crassifolia*), while Cherokee sedge (*Carex cherokeensis*) and a variety of other sedges, Virginia wildrye (*Elymus virginicus*), wood oats (*Chasmanthium latifolium*), greenbriers (*Smilax* spp.), and Alabama supplejack (*Berchemia scandens*) dominate the understory.

Emergent wetlands comprise approximately 109 acres (8%) of the tract. Dominant vegetation in these areas includes giant ragweed (*Ambrosia trifida*), annual sumpweed (*Iva annua*), balloon vine (*Cardiospermum halicacabum*), rough cocklebur (*Xanthium strumarium*), Virginia wildrye, Cherokee sedge, blackberries (*Rubus* spp.), and other sedges (*Carex* spp.).

Approximately 14 acres (1%) of the mitigation bank is open water. This area consists of one impoundment (Oliver Lake) and is bounded by forested wetlands along its perimeter.

Approximately 48 acres (3%) of the tract is characterized as uplands. This area, in the eastern portion of the tract, is an isolated upland area surrounded by wetlands. This area is characterized by low, mounded alluvial deposits and soils with higher sand content. These deposits, also called "Prairie Bumps", are likely Pleistocene age materials typically associated with terraces of the same age. Common vegetation includes cherrybark oak, mockernut hickory, post oak (*Quercus stellata*), parsley hawthorn (*Crataegus marshallii*), and wood oats.

Approximately 9.24 acres (1%) of the HBMB is classified as "urban" area. These areas have been subjected to some type of development (i.e., roads, natural gas well pads).

The HBMB would be managed in order to achieve a native, self-sustaining closed-to-partially open canopy layer of Oak-Hickory-Ash forest type dominated by indigenous tree species supplemented by a small open marsh system indigenous to the Sulphur River Basin. The applicant proposes to enhance approximately 217 acres of waters of the United States within the proposed mitigation bank by diversifying and improving tree species composition through the planting of seedlings of native hard- and soft-mast producing trees. Tree species that would be planted would include, but would not be limited to, bitternut hickory, overcup oak (*Quercus*

lyrata), water oak (*Quercus nigra*), willow oak (*Quercus phellos*), and black walnut (*Juglans nigra*). Shrub species may include buttonbush (*Cephalanthus occidentalis*), mayhaw (*Crataegus aestivalis*), Sabine hawthorn (*Crataegus sabineana*), pyracantha haw (*Crataegus pyracanthoides*), possumhaw viburnum (*Viburnum nudum*), sweet pepperbush (*Clethra alnifolia*), rabbit-eye blueberry (*Vaccinium ashei*), Arkansas blueberry (*Vaccinium arkansanum*), and strawberry bush (*Euonymus americanus*).

A mitigation banking instrument (MBI) would be developed in accordance with the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (Federal Register, November 28, 1995, Vol. 60, No. 228, pp. 58605-58614). 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 Parks and Wildlife Department, Texas Commission on Environmental Quality, and Railroad Commission of Texas, who comprise the Mitigation Banking Review Team (MBRT), would be involved in developing the MBI and may be signatories to the final document. The applicants propose a primary service area that would include those areas that are within the Big Cypress-Sulphur River basin within the South Central Plains ecoregion that includes all of Camp, Marion, Morris, and Cass Counties and portions of Titus, Red River, Bowie, Upshur, Harrison, Franklin, Gregg, and Wood Counties. The applicant also proposes a secondary service area that includes all of Panola County and portions of Bowie, Franklin, Upshur, Red River, Hopkins, Delta, Lamar, Wood, Harrison, Smith, Gregg, Rusk, Shelby, San Augustine, and Sabine Counties. Projects within the secondary service area with adverse impacts to waters of the United States mitigated for at the HBMB would be required to mitigate at higher ratios than those within the primary service area.

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 stream and wetland restoration activities.

NOTE This mitigation bank is located in an area that is within the impoundment area for the proposed Marvin Nichols Reservoir. The Marvin Nichols site was recommended by the Texas Water Development Board as one of 33 sites to be designated as "unique reservoir sites" by the Texas Legislature; however the Texas Legislature has not designated the Marvin Nichols site a "unique reservoir site." Once a site is designated, State agencies and political subdivisions are prohibited from obtaining a fee title or easement that would significantly prevent the construction of a reservoir at that site. To date, the USACE is unaware of any acquisition of land to facilitate the development of a reservoir in the subject area and has not received a permit application for the proposed Marvin Nichols reservoir.

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 bald eagle (*Haliaeetus leucocephalus*) is known to occur or may occur as a migrant. The bald eagle is a threatened species. 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 proposed mitigation bank has never been formally surveyed for the presence of historic or prehistoric cultural resources. Therefore, no sites eligible for, or listed in, the National Register of Historic Places are known to exist on the proposed tract. Based on cultural resources investigations in other areas along the Big Cypress and Sulphur Rivers, the presence of multiple historic and prehistoric occupations is possible. The possibility exists for the presence of deeply buried sites.

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.

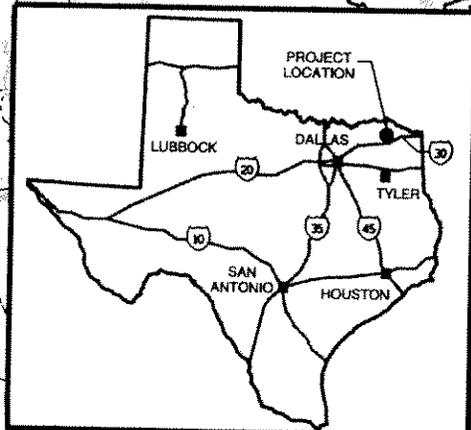
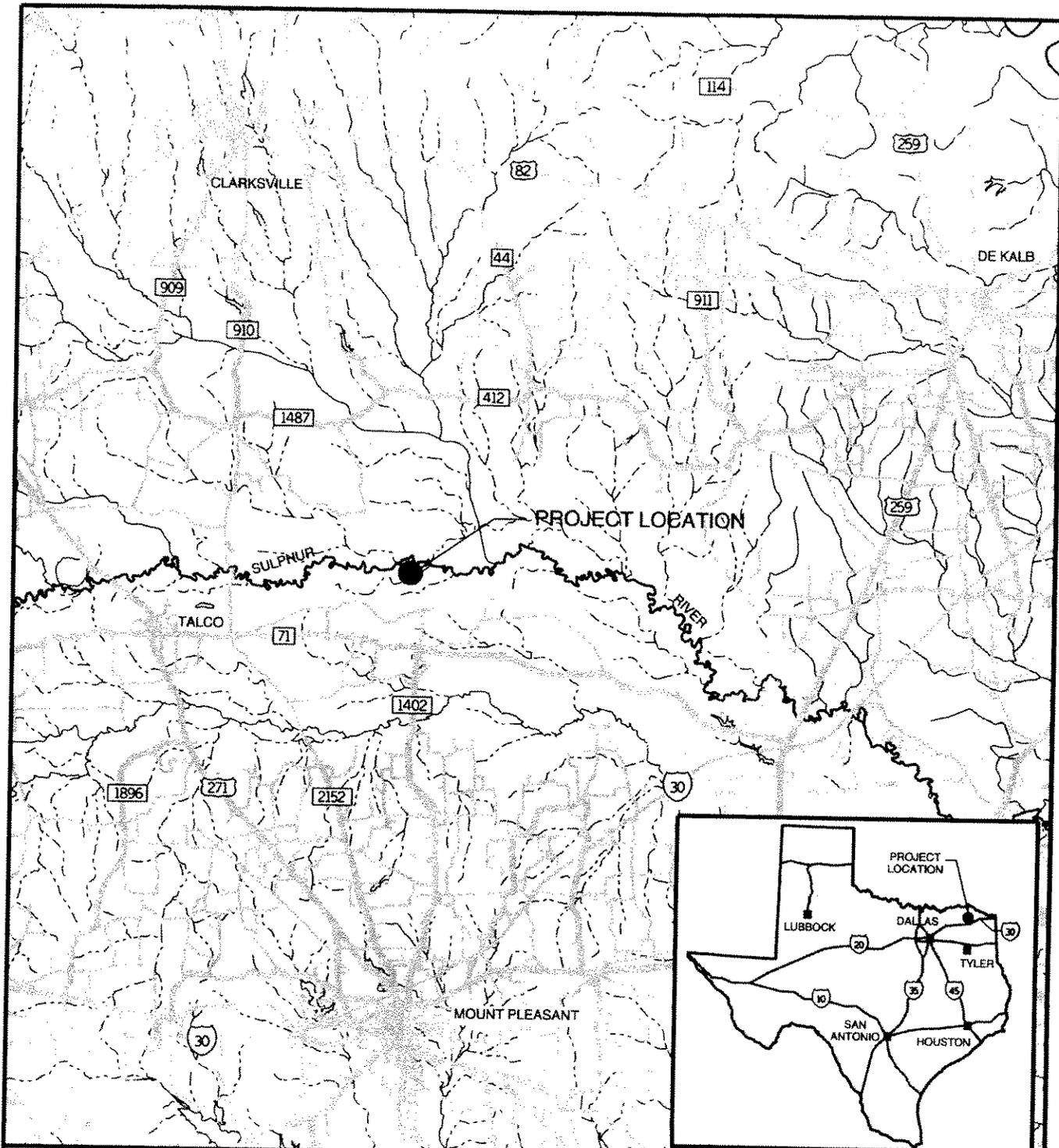
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to allow the public an opportunity to comment on this bank proposal and to assist the USACE and other members of the MBRT in developing the final MBI. For accuracy and completeness of the record, 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 October 30, 2004, 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. Ken Laterza; 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) 886-1731. 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



BASE MAP: TEXAS DEPARTMENT OF TRANSPORTATION TITUS COUNTY, RED RIVER COUNTY, FRANKLIN COUNTY, MORRIS COUNTY, BOWIE COUNTY, & CASS COUNTY, TEXAS



- Engineering
- Environmental Consulting
- Survey

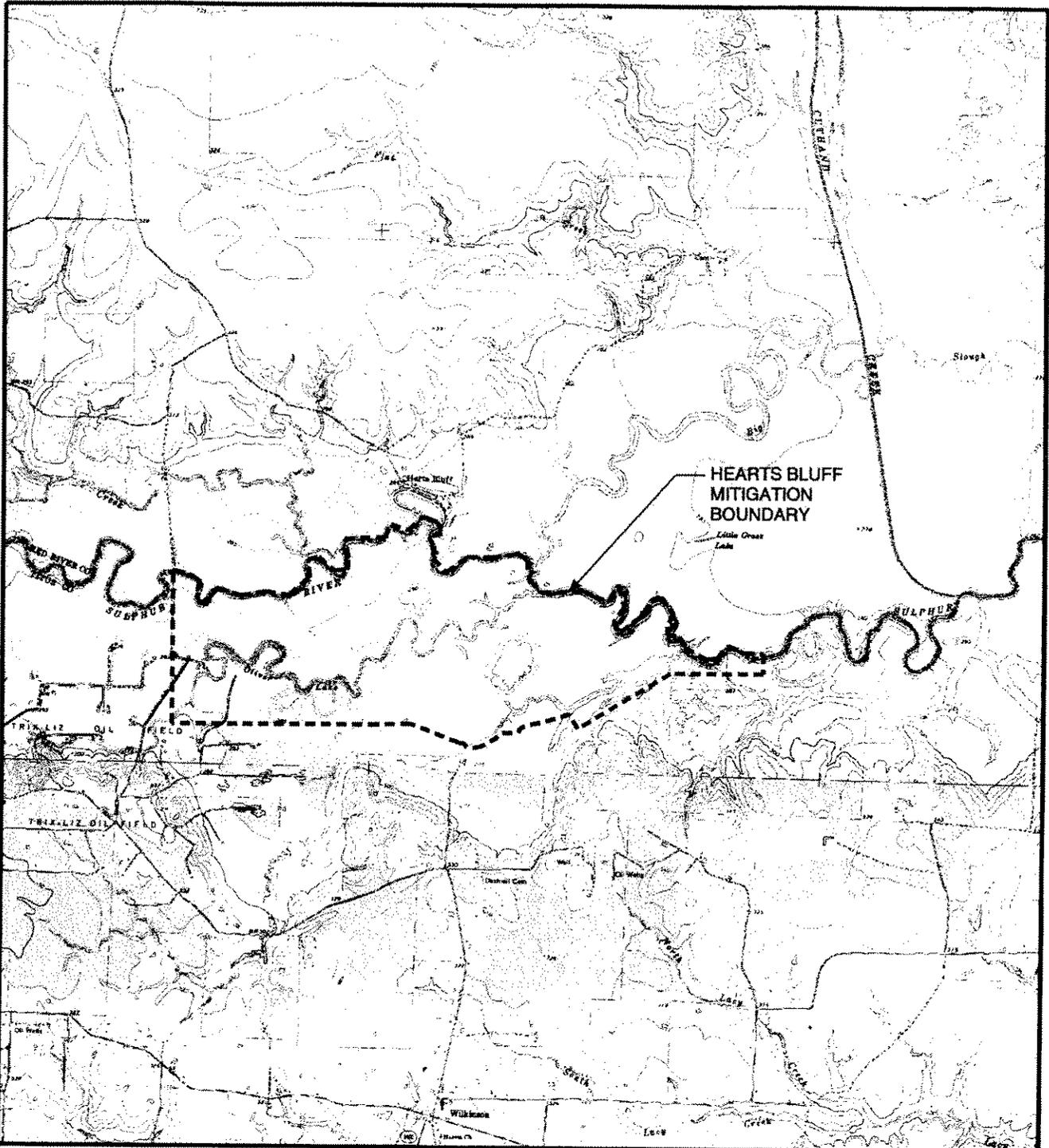
USACE #200400276

PROJECT VICINITY MAP
 HEARTS BLUFF MITIGATION BANK
 HEARTS BLUFF
 TITUS COUNTY, TX

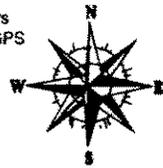
Figure 1 of 7

PROJ. NO. 480213.00

DATE: 9/21/04



Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



--- HEARTS BLUFF MITIGATION BOUNDARY



- Engineering
- Environmental Consulting
- Survey

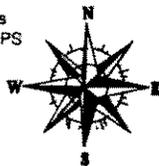
USACE #200400276
 PROJECT LOCATION MAP
 HEARTS BLUFF MITIGATION BANK
 HEARTS BLUFF
 TITUS COUNTY, TX

Figure 2 of 7



HEARTS BLUFF
MITIGATION
BOUNDARY

Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



-  MITIGATION BOUNDARY
-  WOODED SWAMP



- Engineering
- Environmental Consulting
- Survey

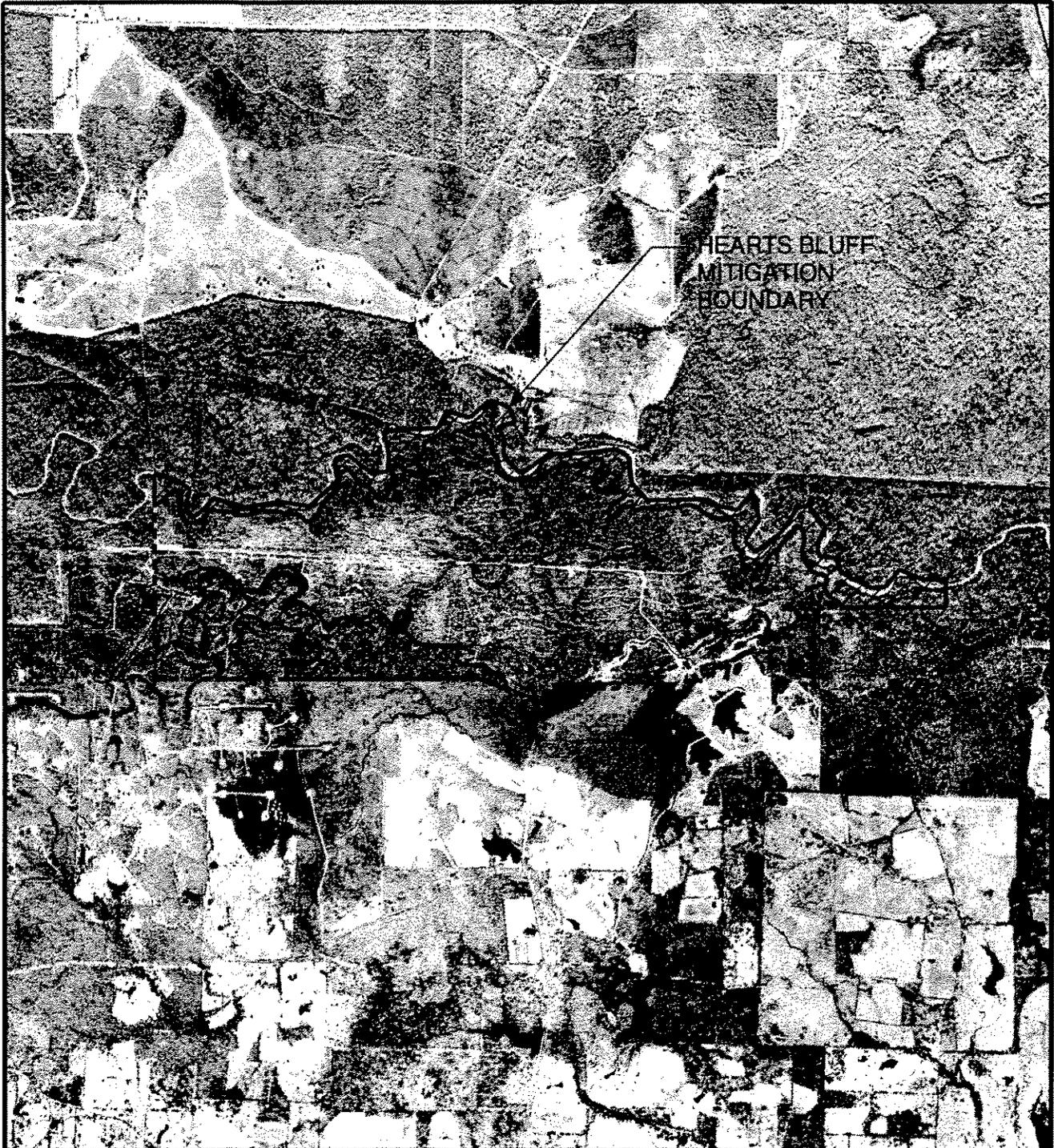
USACE #200400276
WATERS OF THE U.S.
WOODED SWAMP
HEARTS BLUFF MITIGATION BANK
HEARTS BLUFF
TITUS COUNTY, TX

Figure 3 of 7

BASE MAP: USGS 7.5' QUADRANGLE, BOXELDER SE, BOXELDER SW, WILKINSON SE, & WILKINSON NW TEXAS

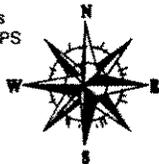
PROJ. NO. 480213.00

DATE: 8/21/04



HEARTS BLUFF
MITIGATION
BOUNDARY

Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



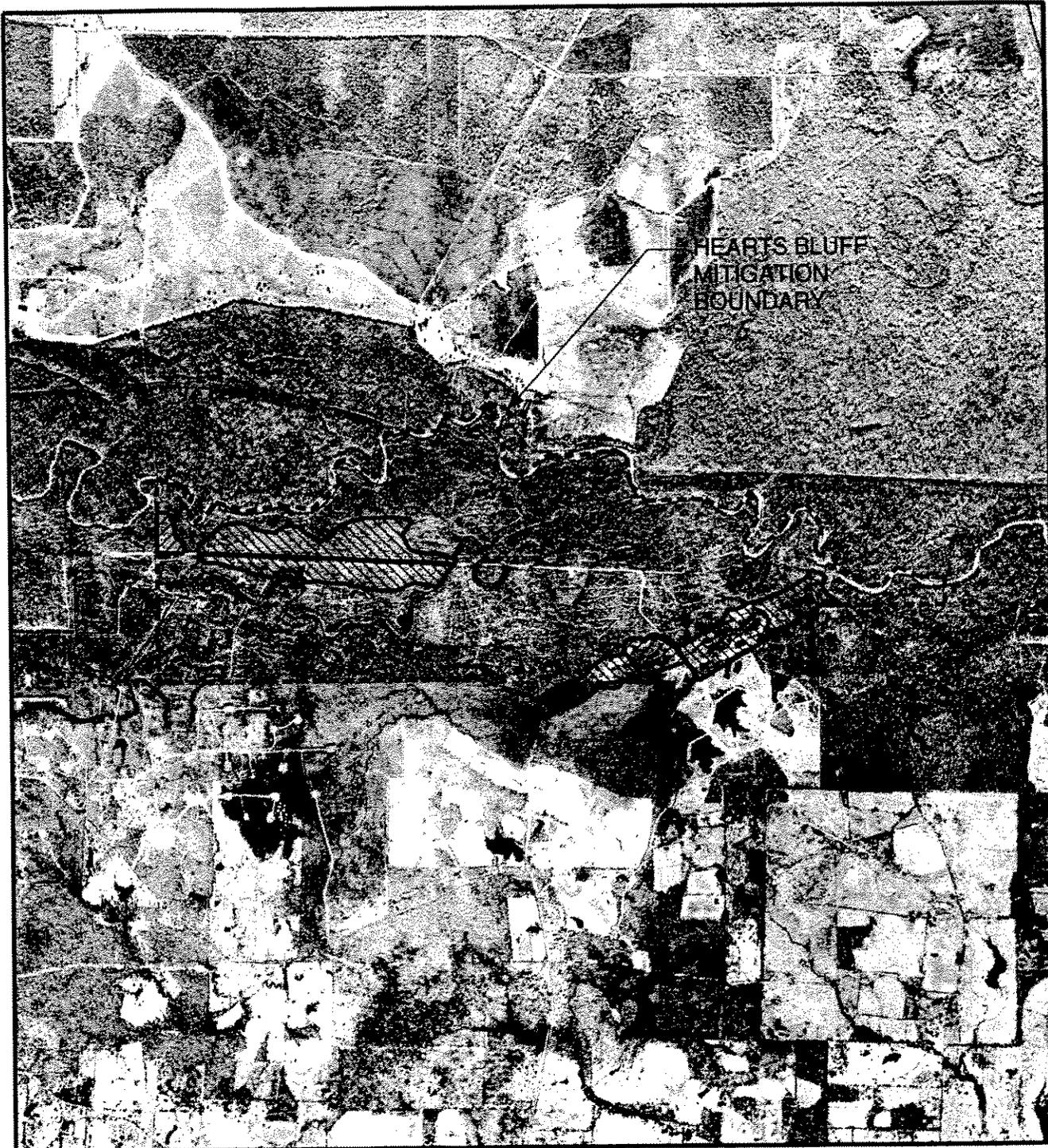
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FEET

-  MITIGATION BOUNDARY
-  FORESTED SWAMP

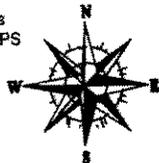
PBSJ

- Engineering
- Environmental Consulting
- Survey

USACE #200400276
WATERS OF THE U.S.
FORESTED SWAMP
HEARTS BLUFF MITIGATION BANK
HEARTS BLUFF
TITUS COUNTY, TX
Figure 4 of 7



Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



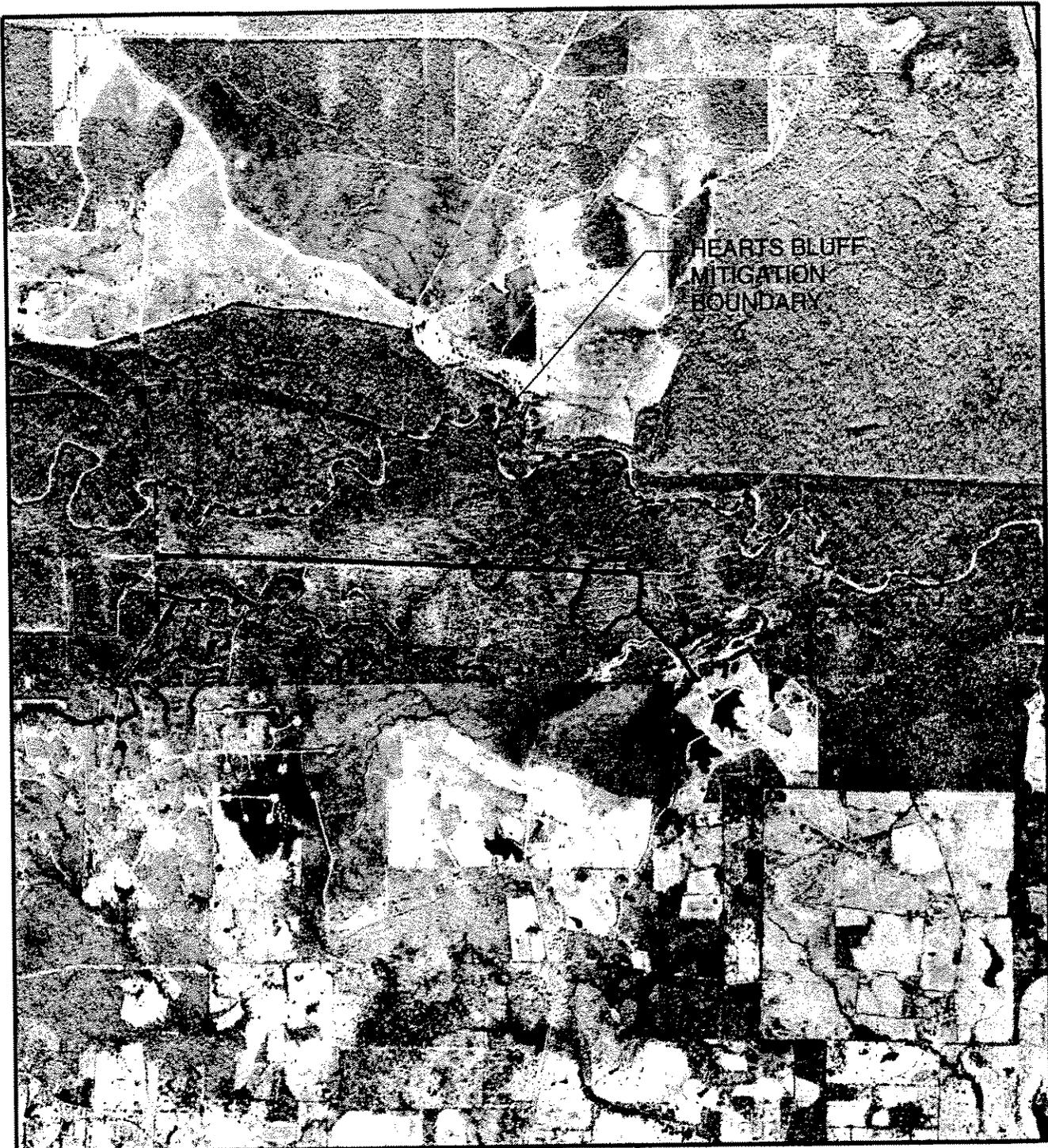
-  MITIGATION BOUNDARY
-  EMERGENT WETLAND



- Engineering
- Environmental Consulting
- Survey

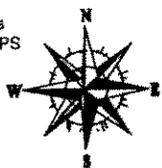
USACE #200400276
 WATERS OF THE U.S.
 EMERGENT WETLAND
 HEARTS BLUFF MITIGATION BANK
 HEARTS BLUFF
 TITUS COUNTY, TX

Figure 5 of 7



HEARTS BLUFF
MITIGATION
BOUNDARY

Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



-  MITIGATION BOUNDARY
-  URBAN/UPLAND



- Engineering
- Environmental Consulting
- Survey

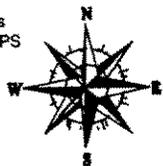
USACE #200400276
WATERS OF THE U.S.
UPLANDS/URBAN
HEARTS BLUFF MITIGATION BANK
HEARTS BLUFF
TITUS COUNTY, TX

Figure 6 of 7



HEARTS BLUFF
MITIGATION
BOUNDARY

Note: Wetland and water body perimeters were mapped using a hand held GPS unit with approximate accuracy of between 6 & 15ft.



-  MITIGATION BOUNDARY
-  OPEN WATER



- Engineering
- Environmental Consulting
- Survey

USACE #200400276
WATERS OF THE U.S.
OPEN WATER
HEARTS BLUFF MITIGATION BANK
HEARTS BLUFF
TITUS COUNTY, TX

Figure 7 of 7