



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

# Public Notice

Applicant: Waste Management of Texas, Inc.

Project No.: SWF-2004-00539

Date: June 5, 2013

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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: Ms. Lisa Gomez

Phone Number: 817-886-1735

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JOINT PUBLIC NOTICE

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

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**SUBJECT:** Application for an After-the-Fact Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the Lateral Expansion of Mesquite Creek Landfill in New Braunfels, Comal and Guadalupe Counties, Texas.

**APPLICANT:** Waste Management of Texas, Inc.  
Mr. Tim Champagne, P.E.  
Engineering Manager  
9708 Giles Lane  
Austin, Texas 78754

**APPLICATION NUMBER:** SWF-2004-00539

**DATE ISSUED:** June 5, 2013

**LOCATION:** The proposed lateral expansion of the Mesquite Creek Landfill is located immediately south of Mesquite Creek in New Braunfels, Comal and Guadalupe Counties, Texas (see Sheets 1-2 of 6). The proposed project would be located approximately at UTM coordinates 594522.8 East and 3289727.5 North (Zone 14) on the Austin East 7.5-minute USGS quadrangle map in the USGS Hydrologic Units 121002030306 (Middle York Creek) and 121002020110 (Alligator Creek). The proposed project area is generally south of FM 1101, south and west of Kohlenberg Lane and west of Schwarzlose Road.

**OTHER AGENCY AUTHORIZATIONS:** State Water Quality Certification from the Texas Commission on Environmental Quality (TCEQ), Municipal Solid Waste Permit No. 66B (TCEQ), Stormwater Permit No. TXR05AK34 (TCEQ), Air Emissions Permit No. CS0113G (TCEQ), and Air Operating Permit No. CS0004M (TCEQ).

**PROJECT DESCRIPTION:** The applicant proposes to excavate and/or discharge fill material into approximately 3.778 acres of waters of the United States (WOUS) in conjunction with the lateral expansion of the Mesquite Creek Landfill. The majority of the impacted areas would be excavated to create landfill cells or stormwater detention ponds. The total proposed impacts to WOUS include 3.778 acres. The proposed project would permanently impact 3.737 acres of non-forested wetlands, 0.041 acre of an impoundment, and 2,368 linear feet of jurisdictional drainageways.

The purpose of the proposed project is the lateral expansion of the Mesquite Creek Landfill which is necessary to meet the growing municipal solid waste disposal demands of the surrounding counties. The expansion project was designed to minimally impact WOUS, specifically along and adjacent to Mesquite Creek, while meeting present and future waste disposal demands in the New Braunfels area. The proposed project would primarily excavate wetlands and drainageways on the expansion area. Native soils would be used to fill any on-site wetlands which are not excavated. The excavated areas would be used to create landfill cells and/or stormwater detention ponds. The landfill cells would be used to store municipal solid waste. Cell development would be an on-going project and is scheduled for the next several years. The proposed project would impact eight jurisdictional areas at the Mesquite Creek Landfill facility which are designated as Areas F, G, H, I, J, K, and one impoundment (see Sheets 3-4 of 6).

The site contains a portion of Mesquite Creek, a jurisdictional WOUS, which traverses roughly the center of the ±244 acre Mesquite Creek Landfill property. The active areas of the landfill, including the expansion areas, are located south of Mesquite Creek. Aside from a Nationwide Permit 14 for a road crossing of Mesquite Creek (USACE Permit No. 2006-00521 dated September 14, 2007), the creek and wetlands along and adjacent to the creek were avoided in the early design phase of the expansion project.

The majority of the wetlands on the expansion area consist of wetland fringe areas around manmade stock tanks/ponds. Wetlands on this site are typically low in quality with Cattails (*Typha sp.*) being the dominate wetland vegetation. Other wetland vegetation observed on the site includes Jointed Flatsedge (*Cyperus articulatus*), Spikerush (*Eleocharis sp.*), Curly Dock (*Rumex crispus*), Black Willow (*Salix nigra*), and Annual Marsh-Elder (*Iva annua*). The largest jurisdictional wetland in the lateral expansion area is 1.550 acres in size while the smallest area is 0.008 acre in size. Eight jurisdictional areas totaling 3.778 acres in size would be impacted by the lateral expansion of the landfill facility.

Soils in the lateral expansion area of the landfill property consist of Ferris-Heiden soils, Ferris clay, Heiden clay, and Houston black clay. None of these soils are listed as hydric soils by the National Technical Committee for Hydric Soils or the Natural Resources Conservation Service though Tinn clay, an inclusion in Houston black clay, is considered hydric. The lateral expansion area is not located within the 100-year or 500-year floodplain of Mesquite Creek.

Impacts to the aquatic environment from the proposed lateral expansion of Mesquite Creek Landfill include the loss of 3.778 acres of WOUS, including wetlands. The low quality wetlands would be primarily excavated for the development of landfill cells and detention areas. Drainageways flowing downhill from the man-made stock tanks/ponds on the site would also be excavated. Compensation in the form of mitigation is proposed within the same watershed on an adjacent downstream property.

In order to practice avoidance of the wetlands on the site, 0.063 acre of wetlands were impacted by the construction of a landfill road so that the remaining wetland areas on the site could be avoided and/or would not be disturbed. These areas include a portion of Area F (0.013 acre), Area H (0.008 acre) and Area J (0.042 acre). Additionally, a total of 0.933 acre of non-forested wetlands has been excavated. The excavated areas include Area F (0.806 acre), Area G (0.075 acre), Area H (0.011 acre), and one stock tank (0.041 acre).

Various design alternatives have been assessed to avoid and minimize impacts to WOUS on the Mesquite Creek Landfill site. The size of the proposed lateral expansion of the Mesquite Creek Landfill was reduced in the early design phases of the project to minimize impacts to WOUS. The proposed lateral expansion was designed to avoid 4.78 acres of WOUS, including wetlands, along and adjacent to Mesquite Creek.

Off-site landfill alternatives which would have no impacts to WOUS, are not feasible or practicable. Off-site alternatives would include locating, purchasing, and developing a parcel of land for TCEQ permit authorization of a new municipal solid waste landfill facility. Impacts to the natural environment could be more significant in developing a new large acreage landfill site than expanding the existing Mesquite Creek Landfill facility.

The No Action alternative would result in maintaining existing conditions at the Mesquite Creek Landfill which would not allow for the continued proposed lateral expansion of the landfill facility. While no additional impacts to WOUS would occur on the property, the landfill facility would be unable to meet the waste disposal needs of the surrounding areas. The landfill would eventually reach the maximum disposal capacity in the short-term which would cause the inevitable closure of the facility many years earlier than planned.

The proposed lateral expansion of Mesquite Creek Landfill would permanently impact 3.778 acres of WOUS, including wetlands. A mitigation plan has been developed to compensate for the impacted areas. The permittee owns 275 acres of land adjacent to the landfill facility which has been certified by the Wildlife Habitat Council for use as a habitat development site. The proposed mitigation site consists of a low and relatively flat property downstream from the landfill property and upstream of the point in which Mesquite Creek enters Freedom Lake. The mitigation plan would include the creation of a wetland area and associated riparian and upland buffers within an available 19-acre parcel of land located within the 275 acre site (see Sheets 5-6 of 6). The wetland area would be created on the lowest area of the landscape and would be bordered on two sides by a meander in Mesquite Creek. The proposed mitigation would provide a mix of habitats, creating 4.0 acres of emergent wetlands and open water, enhancing 1.0 acre of riparian buffer, and restoring 2.0 acres of upland buffer. All totaled, 7.0 acres of mitigation within the designated 19 acre site is offered for the 3.778 acres of WOUS impacted by the lateral expansion of the Mesquite Creek Landfill.

In the bend of Mesquite Creek on the 275 acre Freedom Lake property, a ponded emergent wetland is proposed. Mesquite Creek, when flooded, would provide the water source for this mitigation area.

Within an available 5.22 acre area a shallow basin 4.0 acres in size with an undulating bottom surface would provide the substrate for emergent wetland vegetation. A minimum of 2.0 acres would consist of vegetated wetlands while the remainder of the area would consist of open water which is similar to the stock tank/pond areas located on the expansion property. The created wetland area would be expected to mirror the water conditions of nearby Freedom Lake, which is sometimes flooded and sometimes dry. While Cattails (*Typha* sp.) are abundant in the wetland areas to be excavated on the landfill property, emergent vegetation in the proposed mitigation area would include a variety of Bulrush (*Schoenoplectus* sp.), Sedges (*Carex* sp.) and other wetland species such as Soft Rush (*Juncus effusus*), etc.

Within an available 4.94 acre area, an upland buffer approximately 2.0 acres in size, is proposed to surround the southern area of the emergent wetland. This area would include a variety of native grasses. Over-grazing on the property over the years has negatively impacted the herbaceous vegetation on the site. Since cattle no longer graze this area, an opportunity now exists to restore the area with native prairie grasses, legumes and forbs.

Finally, the area along Mesquite Creek within the proposed mitigation area currently lacks trees which are present along the creek on the landfill property. A total of 1.0 acre of trees and shrubs would be planted in an available 8.84 acre area to establish selected riparian/wooded areas along Mesquite Creek. To form habitat areas, trees and shrubs would be planted in clusters within the designated riparian area. Bald Cypress trees exist along the edges of the stock tanks which would be excavated on the landfill property. Bald Cypress trees as well as other native trees and shrubs would be planted along Mesquite Creek within the proposed mitigation area.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this

proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**STATE WATER QUALITY CERTIFICATION:** This project would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711- 3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

**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 is located in Comal and Guadalupe Counties where the following federal endangered species are listed and are known to occur or may occur as migrants: whooping crane (*Grus americana*; both Counties), interior least tern (*Sterna antillarum athalassos*; Guadalupe County), black-capped vireo (*Vireo atricapilla*; Comal County), and golden-cheeked warbler (*Dendroica chrysoparia*; Comal County). No habitat exists within the project area for the endangered Peck's cave amphipod (*Stygobromus pecki*; Comal County), the endangered Fountain darter (*Etheostoma fonticola*; Comal County), the endangered Comal Springs dryopid beetle (*Stygoparnus comalensis*; Comal County), the endangered Comal Springs riffle beetle (*Heterelmis comalensis*; Comal County), the endangered jaguarundi (*Herpailurus yaguarondi*; Comal County) or the threatened black bear (*Ursus americanus*; Comal County). 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 USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

**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.

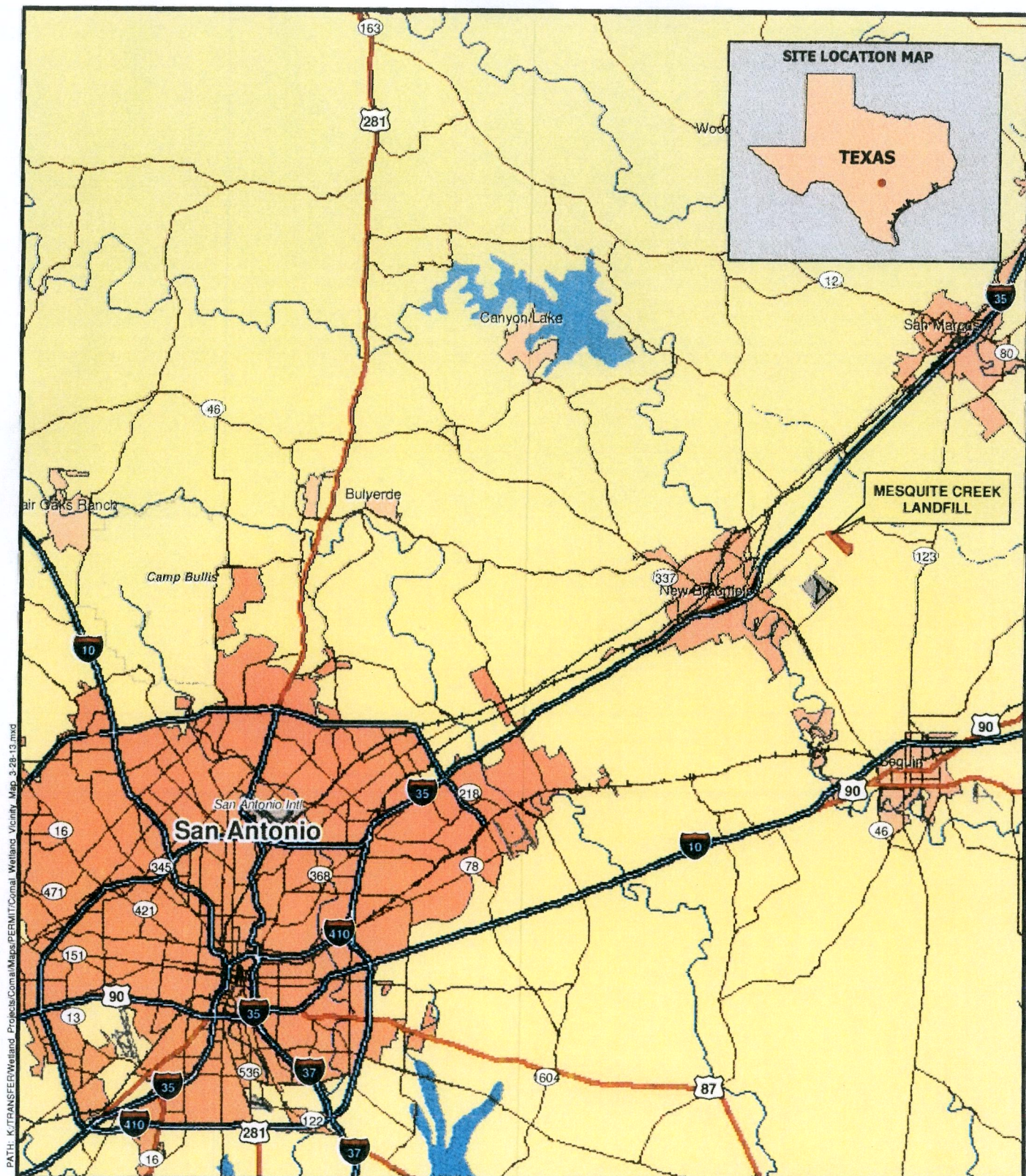
**SOLICITATION OF COMMENTS:** The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should 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 July 5, 2013, 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 ; 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





PATH: K:\TRANSFER\Welland Projects\Comal\Maps\PERMIT\Comal Welland Vicinity Map 3-28-13.mxd

SOURCE: ESRI STREETMAP USA

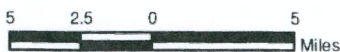


EXHIBIT 1 - SHEET 1 of 6

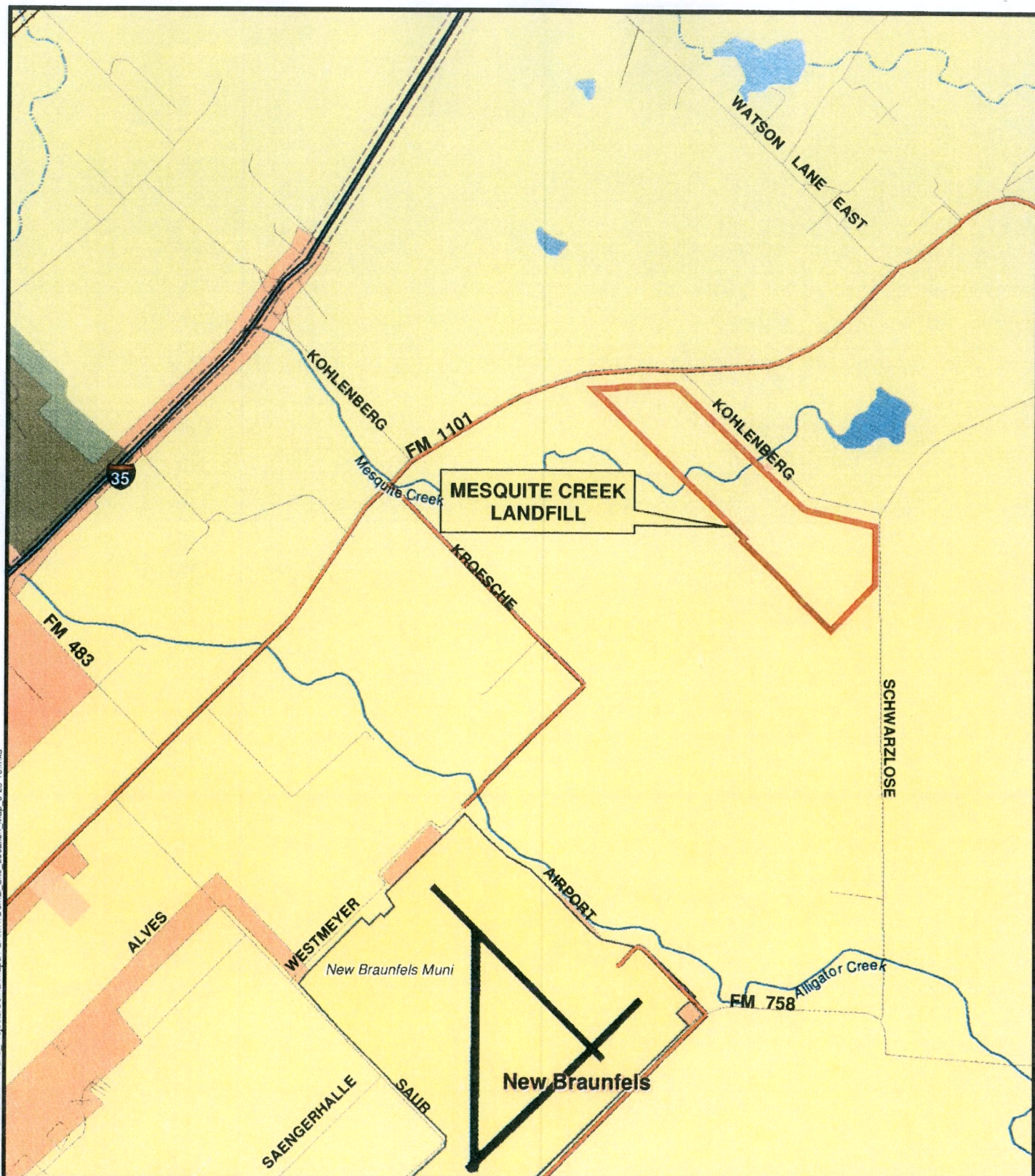
## VICINITY MAP



MESQUITE CREEK LANDFILL  
USACE PROJECT NO. SWF-2004-00539  
NEW BRAUNFELS, COMAL & GUADALUPE COUNTIES, TEXAS



PATH: K:\TRANSFER\Welland Projects\Comal\Maps\PERMIT\Comal Site Location Map 3-28-13.mxd



SOURCE: ESRI STREETMAP USA

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Feet

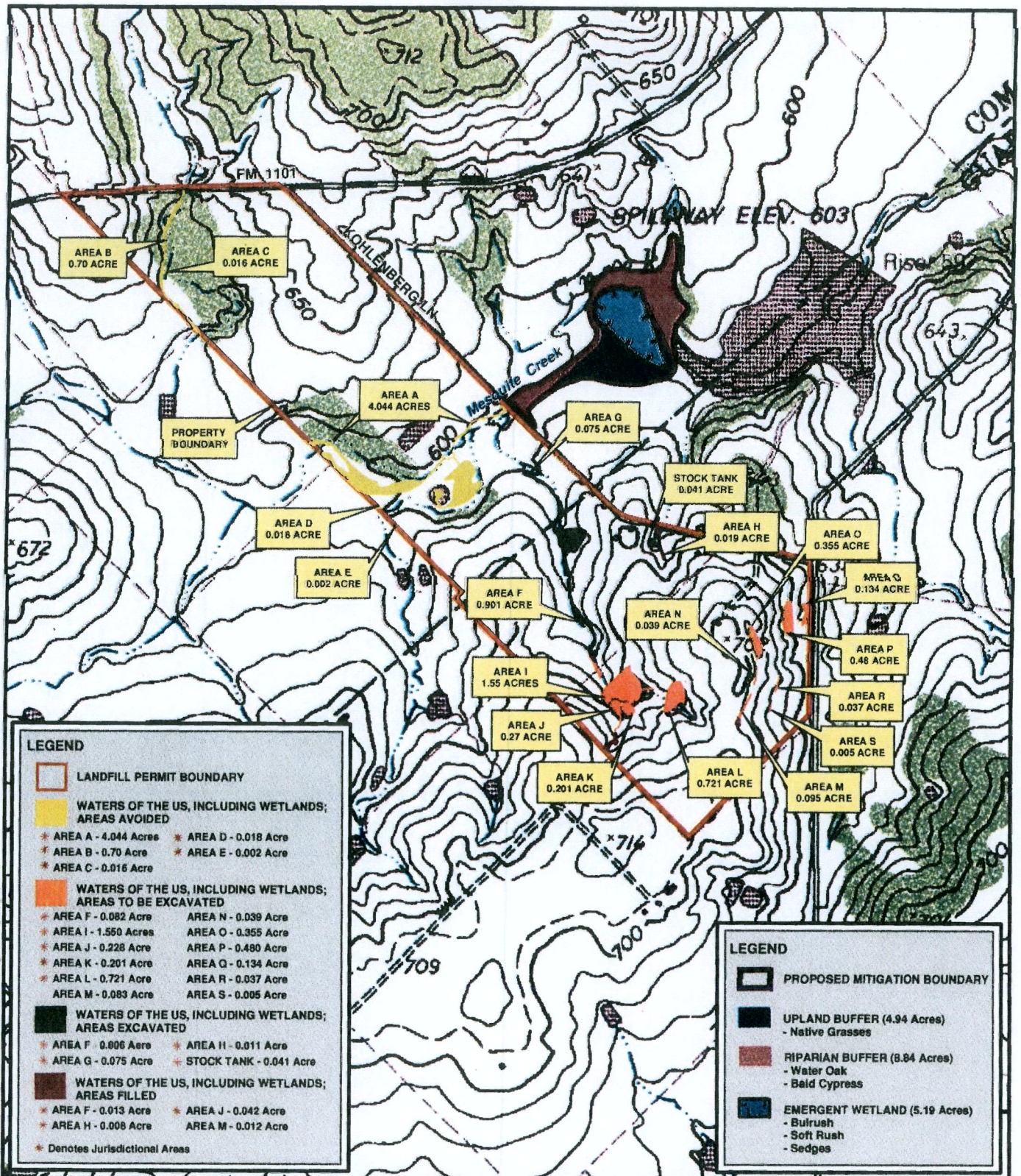


**EXHIBIT 2 - SHEET 2 of 6**  
**SITE LOCATION MAP**



MESQUITE CREEK LANDFILL  
USACE PROJECT NO. SWF-2004-00539  
NEW BRAUNFELS, COMAL & GUADALUPE COUNTIES, TEXAS





SOURCE: USGS, New Braunfels East, 1995

1,000 500 0 1,000  
Feet



EXHIBIT 3 - SHEET 3 of 6

## WATERS OF THE US, INCLUDING WETLANDS, AND PROPOSED MITIGATION AREA

**S&B**  
INFRASTRUCTURE, LTD.  
Sedimentation & Water Quality

MESQUITE CREEK LANDFILL  
USACE PROJECT NO. SWF-2004-00539  
NEW BRAUNFELS, COMAL & GUADALUPE COUNTIES, TEXAS



# EXHIBIT 4 - SHEET 4 of 6

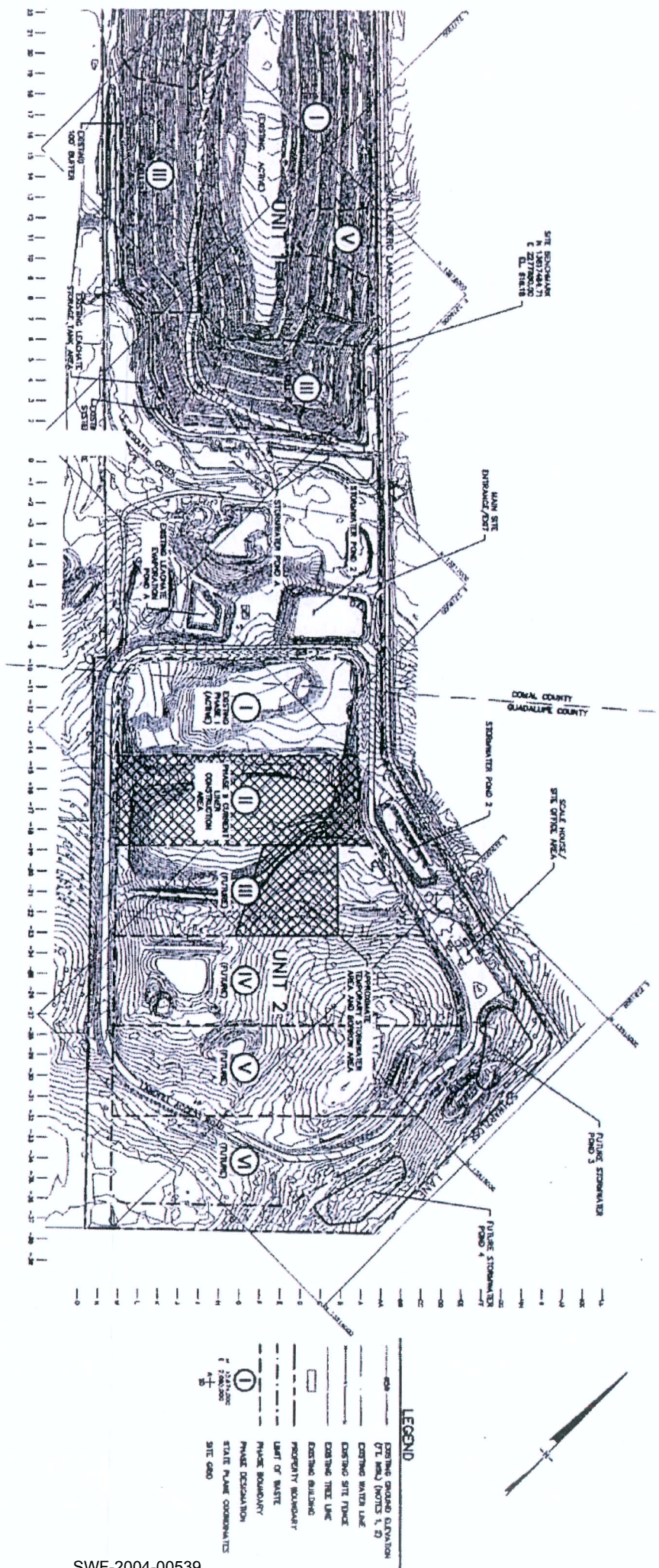
## GENERAL SITE PLAN

- NOTES:
1. THE EXISTING CONTOUR MAP SHOWN ON THIS DRAWING WAS COMPILED USING PHOTOGRAMMETRIC METHODS BASED ON AERIAL PHOTOGRAPHY PROVIDED ON 15 FEBRUARY 2004 AND GROUND SURVEYS PROVIDED IN SUPPORT OF THE SURVEY AND DESIGN, INC. OF ALBUQUERQUE, NEW MEXICO.
  2. ELEVATION MAP IN TEXT ABOVE MEAN SEA LEVEL (FT. MSL) AS DETERMINED BY THE TEXAS NATIONAL GEODESIC SURVEY (NAD 83) OF THE STATE PLANT COMMISSION AND CORRELATION TO TEXAS STATE PLANT COMMISSION SYSTEM. TOTAL STATION CONTROL POINT (TSC) NORTH ARROWHEAD DATUM 27 (NAD 83) 1983.
  3. PLANT SPECIFICATIONS LISTED FROM EXISTING ADJACENT APPLICATION NO. 0048, DRAWING 1-1, DATED 14 JULY 2004, PROVIDED BY GEOTECHNICAL CONSULTANTS.

### CONSTRUCTION NOTES:

1. CONSTRUCTION IS RESPONSIBLE FOR VERIFICATION OF EXISTING CONDITIONS SHOWN ON THIS DRAWING AND FOR LOCATING UNDERGROUND UTILITIES PRIOR TO BEGINNING CONSTRUCTION.
2. CONSTRUCTION SHALL NOT DISTURB, ALTER, OR REMOVE ANY EXISTING FEATURES (E.G., WATER PLACEMENT, DRAINAGE, ETC.) UNLESS SPECIFICALLY AUTHORIZED BY THE OWNER. ANY CHANGES TO EXISTING CONDITIONS SHALL BE APPROVED BY THE OWNER. CONSTRUCTION SHALL BE RESTRICTED TO ROADS APPROVED BY THE OWNER. CONSTRUCTION SHALL BE RESTRICTED TO ROADS APPROVED BY THE OWNER. CONSTRUCTION SHALL BE RESTRICTED TO ROADS APPROVED BY THE OWNER.
3. ANY EXISTING FACILITY (E.G., GAS PIPING, WATERWAYS, ETC.) DURING CONSTRUCTION SHALL BE PROTECTED, MAINTAINED, AND RESTORED TO ORIGINAL CONDITION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE COST OF RESTORATION AND/OR REPLACEMENT.
4. CONSTRUCTION OF FACILITIES, MATERIALS, STORAGE AREAS, AND REMEDIATION AREAS SHALL BE LOCATED ONLY IN AREAS APPROVED BY THE OWNER. CONSTRUCTION IS RESPONSIBLE FOR MAINTAINING ALL SUCH AREAS DURING CONSTRUCTION AND FOR CLEANUP/RESTORATION OF ALL SUCH AREAS TO THE ORIGINAL CONDITION.
5. STORAGE-AREA MANAGEMENT AND DESIGN AND SECURITY CONTROL FEATURES SHALL BE ESTABLISHED PRIOR TO CONSTRUCTION. CONSTRUCTION SHALL BE RESTRICTED TO AREAS APPROVED BY THE OWNER. CONSTRUCTION SHALL BE RESTRICTED TO AREAS APPROVED BY THE OWNER. CONSTRUCTION SHALL BE RESTRICTED TO AREAS APPROVED BY THE OWNER.
6. CONSTRUCTION SHALL MAINTAIN AND UPHOLD EXISTING ROADS, UTILITIES, ETC., AS NEEDED TO PROTECT WORK AREAS.

### CONSTRUCTION DRAWING







SOURCE: USGS, New Braunfels East, 1995

300 150 0 300  
Feet



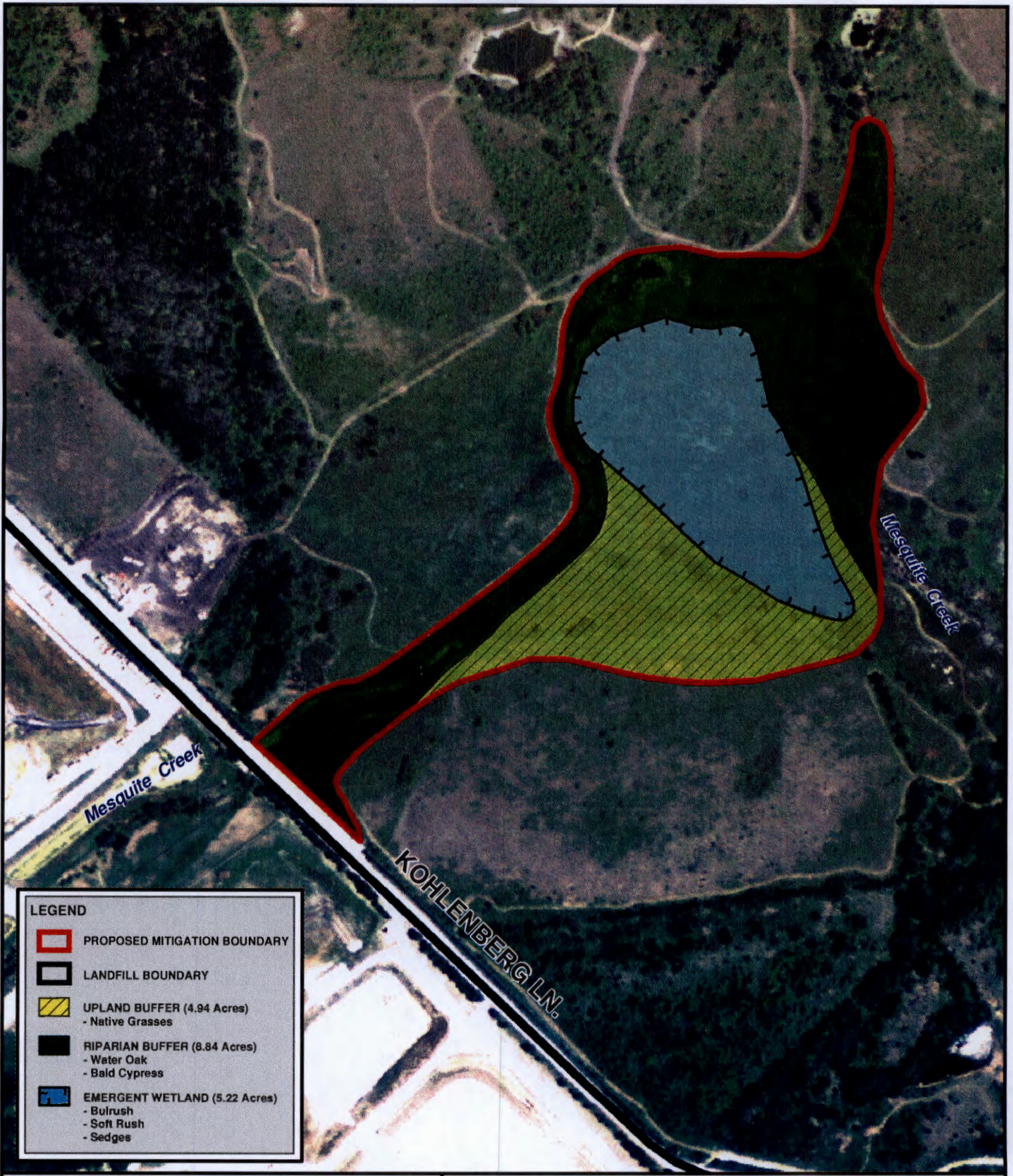
EXHIBIT 5 - SHEET 5 of 6

## PROPOSED MITIGATION PLAN FREEDOM LAKE PROPERTY



MESQUITE CREEK LANDFILL  
USACE PROJECT NO. SWF-2004-00539  
NEW BRAUNFELS, COMAL & GUADALUPE COUNTIES, TEXAS





**LEGEND**

- PROPOSED MITIGATION BOUNDARY
- LANDFILL BOUNDARY
- UPLAND BUFFER (4.94 Acres)  
- Native Grasses
- RIPARIAN BUFFER (8.84 Acres)  
- Water Oak  
- Bald Cypress
- EMERGENT WETLAND (5.22 Acres)  
- Bulrush  
- Soft Rush  
- Sedges

SOURCE: NAIP, 2010



EXHIBIT 6 - SHEET 6 of 6

## PROPOSED MITIGATION PLAN FREEDOM LAKE PROPERTY



MESQUITE CREEK LANDFILL  
USACE PROJECT NO. SWF-2004-00539  
NEW BRAUNFELS, COMAL & GUADALUPE COUNTIES, TEXAS