



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

Public Notice

Applicant: Victron Energy, Inc.

Project No.: SWF-2013-00312

Date: September 6, 2013

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. Eric Dephouse, Project Manager

Phone Number: 817-886-1820

JOINT PUBLIC NOTICE

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

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a 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 (U.S.) associated with the construction of a convenience store and gas station for Victron Energy, Inc. in New Boston, Bowie County, Texas.

APPLICANT: Victron Energy, Inc.
P.O. Box 2599
Waxahachie, Texas 75168

APPLICATION NUMBER: SWF-2013-00312

DATE ISSUED: September 6, 2013

LOCATION: The project site is located southeast of the intersection of Interstate Highway 30 and Highway 82 in New Boston, Bowie County, Texas (Sheet 1 of 5). The U.S. Geological Survey (USGS) North American Datum of 1983 coordinates for the approximate center point of the proposed project are as follows: Latitude 33.4693° North, Longitude 94.4537° West. The site is mapped on the New Boston, TX 7.5-minute USGS quadrangle map (Sheet 2 of 5). The site is located in the Lower Sulphur River Basin Watershed - USGS Hydrologic Unit 11140302.

OTHER AGENCY AUTHORIZATIONS: Section 401 State Water Quality Certification

PROJECT DESCRIPTION: Victron Energy, Inc. proposes to discharge approximately 15,000 cubic yards of fill material into 3.3 acres of waters of the U.S. in conjunction with the construction of a proposed 13,000 square foot convenience store and fuel station. Total adverse impacts to waters of the U.S. would include 3.3 acres of forested wetlands. The proposed development covers an overall area of approximately 7.6 acres.

The nature of the activity is the construction of a new convenience store and fuel station. There would be fuel islands located in front and behind the store. As part of an effort to minimize and avoid impacts to adjacent wetlands, a retaining wall would be constructed along the southern side of the property. The wall would have a length of approximately 700 linear feet.

EXISTING CONDITIONS: A large portion of the property is comprised of wetlands. The wetlands are located along the fringe of a man-made pond impounded by an off-site railroad. The property slopes up moderately from the pond. Wetlands were found to extend upslope beyond the pond, and are influenced by shallow groundwater.

The wetlands impacted by the project drain to a series of ditches below the railroad and dam to the south. The roadside ditch beyond the dam crosses a nearby road and flows southward

through an unnamed tributary, which converges with another unnamed tributary to Rice Creek. Rice Creek flows southward for many miles before draining to Wright Patman Lake, Clean Water Act, Section 10 Navigable Waters.

The wetland system is characterized as palustrine wetland. Vegetation within the wetland was dominated by hydrophytes including: water oak (*Quercus nigra*), sweetgum (*Liquidambar styraciflua*), red maple (*Acer rubrum var. drummondii*), green ash (*Fraxinus pennsylvanica*), Chinese privet (*Ligustrum sinense*), greenbriar (*Smilax spp.*), and poison ivy (*Toxicodendron radicans*).

According to the United States Department of Agriculture (USDA) Soil Survey of Bowie County, Texas, the forested wetland is mapped in the Annona loam, 1-3 percent slopes soil series. Annona soils are located on stream terraces and are comprised of clayey alluvium. The soil is moderately well drained with a deep water table. Due to the palustrine setting of the forested wetlands, soils were found to be highly modified by the impoundment and lacked the characteristics of Annona soils. Soils were generally mucky along the fringe of the pond and exhibited a depleted matrix upslope.

Wetlands hydrology was observed throughout the wetland in the form of saturation, oxidized rhizospheres, a high water table, iron deposits, reduced iron, and other indications. Limited interaction with a shallow groundwater table appeared to exist upslope from the palustrine wetland, and soils were generally saturated upslope due to interaction with shallow groundwater.

ALTERNATIVE SITE LOCATIONS AND ALTERNATIVE LAYOUTS: The applicant has considered alternatives in an effort to minimize and avoid adverse impacts to Waters of the U.S. that may result from the construction of the proposed convenience store.

Alternative 1: No-Build Alternative. This alternative was eliminated as it would not meet the needs of the applicant to construct and operate a retail fueling facility.

Alternative 2: Alternative Sites. The applicant searched for other areas in the region, but no real estate was available at those locations. The desired market area is the New Boston area. The proposed business requires frontage along Interstate Highway 30, and Highway 82 is the primary gateway into the city. The optimum project location for the applicant is at this intersection since there are no other major intersections on the western side of the city. Logistical issues are the primary reasons for limiting the selection of alternative sites. The type of business proposed by the applicant is limited to an intersection; the IH 30 / HWY 82 intersection has very limited access from off ramps. The off ramps cannot be used for driveways for safety reasons and is prohibited by various regulations.

Alternative 3: Complete Build-Out. The applicant originally proposed development of the entire site, without avoidance and minimization of impacts to Waters of the U.S. This alternative would allow the applicant to maximize the potential economic benefits of the property but would result in the complete loss of aquatic features on the project site.

Alternative 4: Fueling Facility With Retaining Wall (Applicant's Preferred Alternative). The applicant was able to reduce the size of the project to minimize and avoid impacts to 0.5 acre of wetlands with a proposed 700 linear foot retaining wall along the south side of the project. Further reduction of the size of the project was not determined to be practicable. The project could not be designed in such a way to completely avoid impacts to wetlands. Site constraints consist of unavailable land, a drainage easement to the east, Highway 82 to the north, a pond to the south, and inaccessible land to the west limited by the Interstate 30 off ramp. There are technological limitations for the alternatives considered since physical grading requirements result in the need to fill wetlands on the site. To support a parking lot and convenience store, there are no technological options to bridge or build over the area without the discharge of dredged and fill material into Waters of the U.S.

Further minimization of impacts to aquatic resources would include a storm water pollution prevention plan (SW3P). A major goal of the SW3P would be to prescribe pollution prevention guidelines for project construction that would control sedimentation and other pollutants that originate on the site and to prevent them from entering into Waters of the U.S. by storm water runoff. Best Management Practices (BMPs) would include the installation of silt fence and other control devices and structures, in addition to scheduling and management activities that would minimize adverse impacts to downstream aquatic areas. The SW3P would be implemented in accordance with the requirements of the Texas Commission on Environmental Quality. Additional long-term stormwater controls planned to control turbidity include the installation of a subgrade stormwater detention system. A chamber detention system would be installed on the property. While not required by local ordinance, the system is being added to the project scope to detain and reduce discharge velocities and volumes. The system would be installed to minimize the discharge of total suspended solids (TSS) and other pollutants into adjacent aquatic areas.

COMPENSATORY MITIGATION: Victron Energy, Inc. proposes to compensate for the loss of aquatic functions associated with the waters of the U.S. through the purchase of mitigation banking credits. The project area is located within the service area of several mitigation banks including the Brooks Creek Mitigation Bank, Edmore Creek Mitigation Bank, and Patroon Bayou Mitigation Bank. As such, the applicant proposes to purchase the appropriate number of credits from one of the available banks, or a combination thereof, depending on which bank has the required number of credits available.

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 would be located in Bowie County where the least tern (*Sterna antillarum*) is known to occur or may occur as a migrant. The least tern is listed as the only endangered species in the 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 proposed project area has never been formally surveyed for the presence of historic or prehistoric cultural resources. Due to this, no sites eligible for, or listed in, the National Register of Historic Places are known from the permit area. Based on cultural resources work from other areas on the Sabine River drainage, the presence of unidentified historic and prehistoric sites is possible. The possibility exists for encountering deeply buried cultural resources during construction, as well.

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.

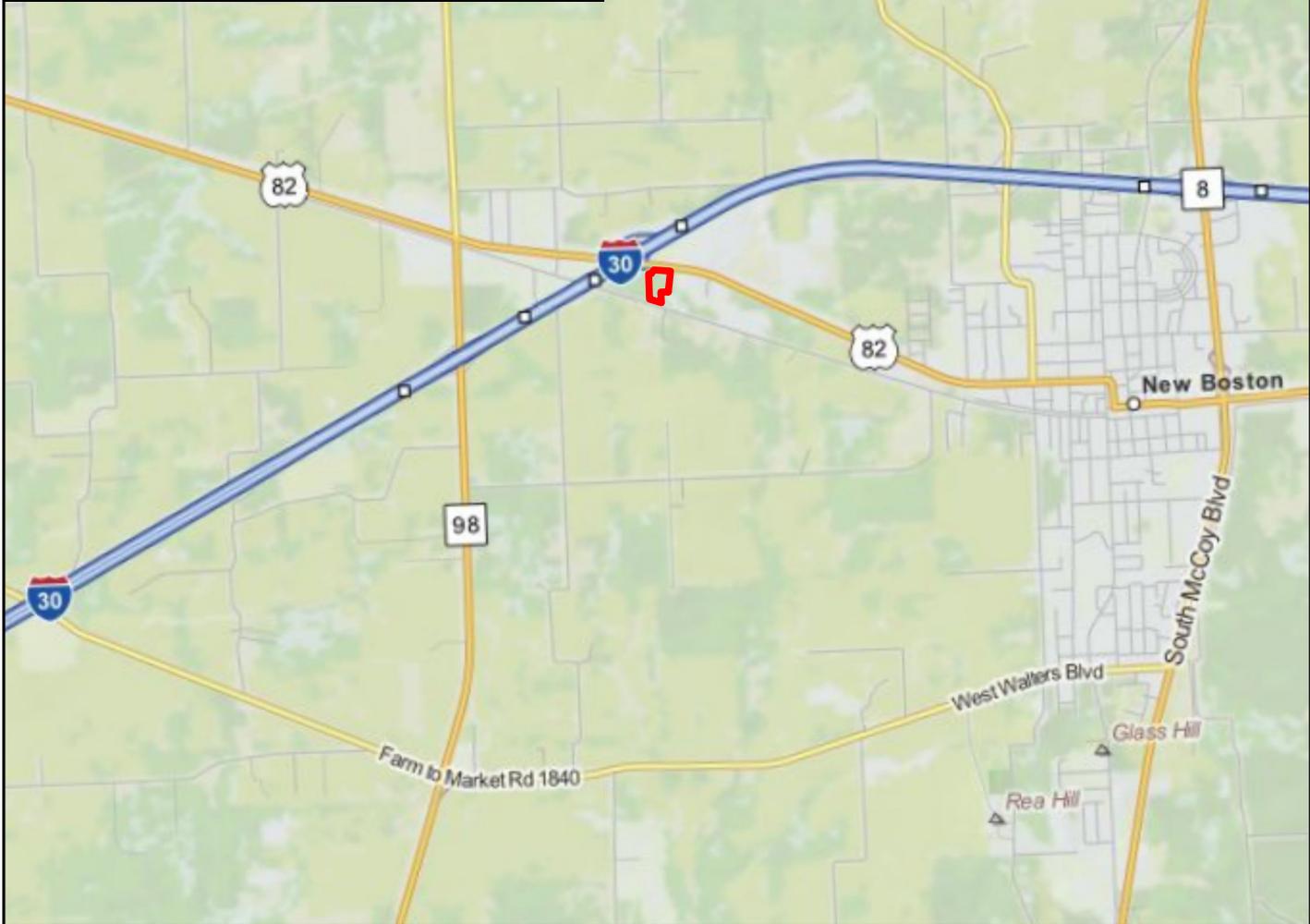
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before October 7, 2013, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Eric Dephouse; 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) 886-1820. 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



LEGEND

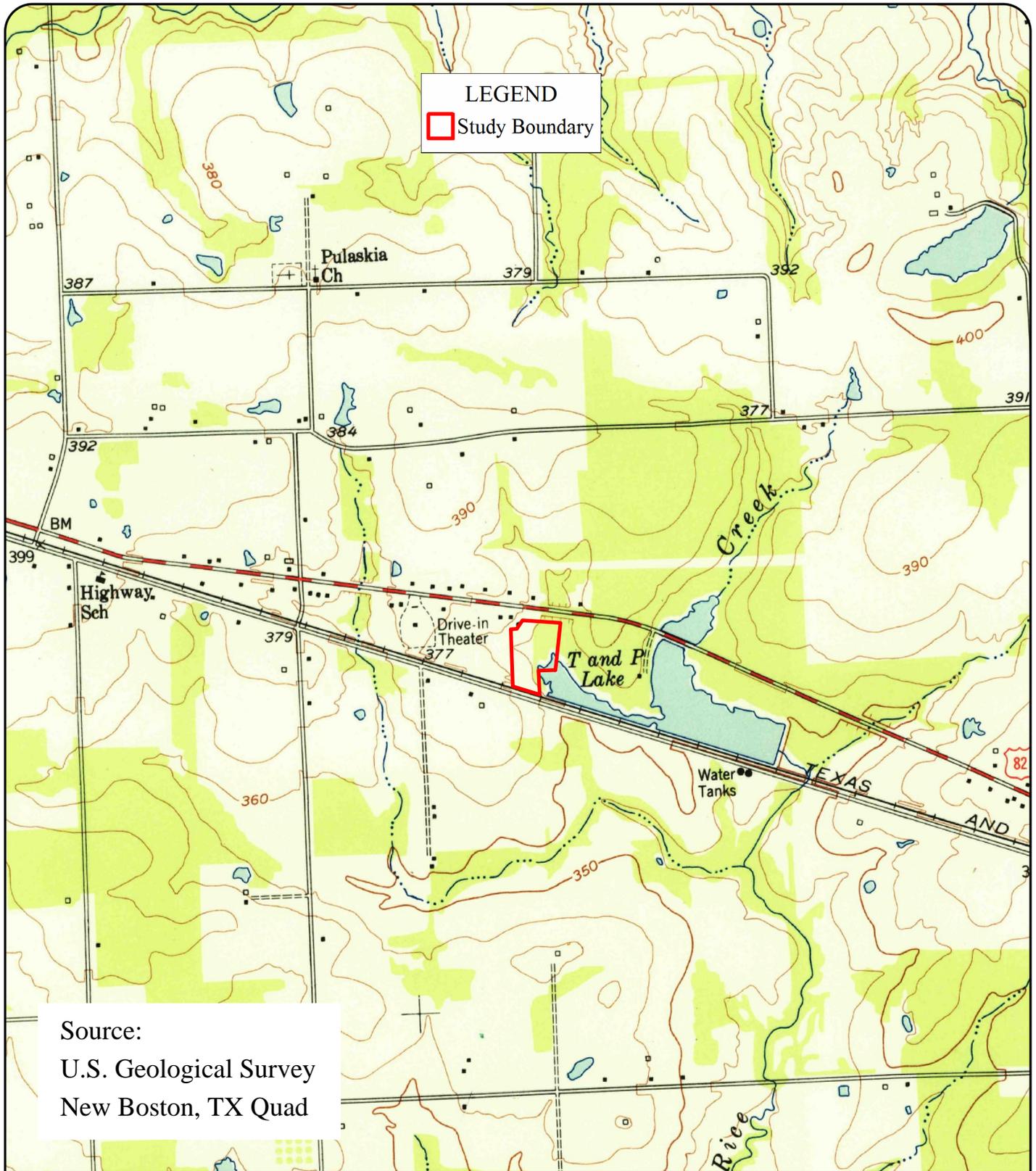
 Project Location



Sheet 1 of 5 - Vicinity Map
 SWF-2013-00312 - Victron Energy Store
 September 4, 2013



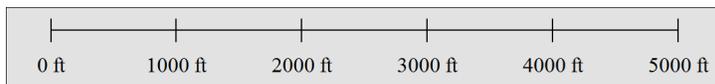
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 Environmental Services



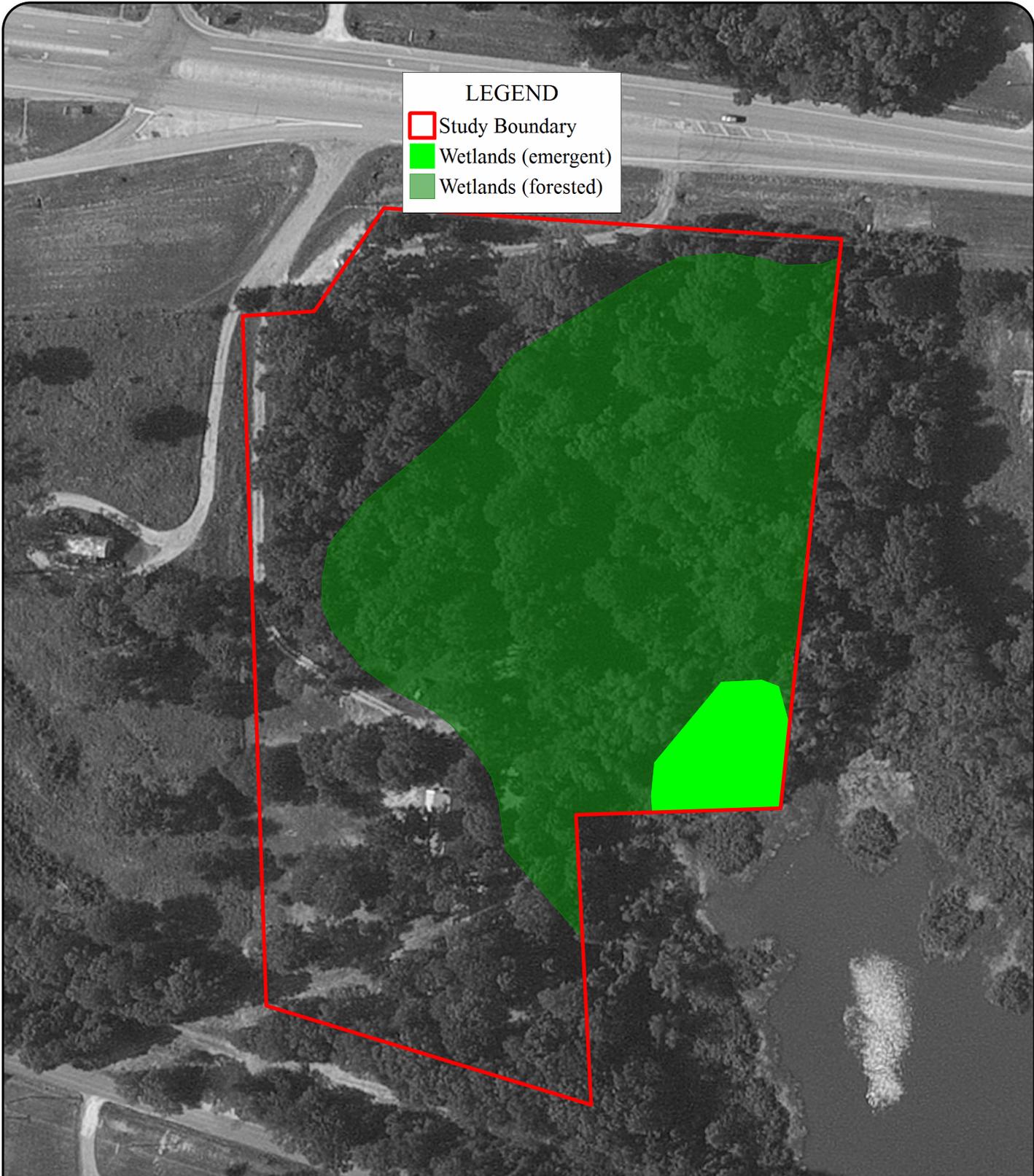
Source:
 U.S. Geological Survey
 New Boston, TX Quad



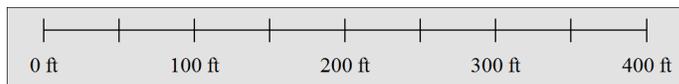
Sheet 2 of 5 - USGS Topo Map
 SWF-2013-00312 - Victron Energy Store
 September 4, 2013



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 Environmental Services



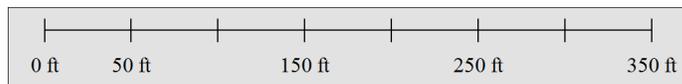
Sheet 3 of 5 - Map of Waters
SWF-2013-00312 - Victron Energy Store
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Sheet 5 of 5 - Impacts to Waters
 SWF-2013-00312 - Victron Energy Store
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