Lori Rowe

From: PUBCOMMENT-OCC
Sent: Tuesday, May 17, 2022 2:25 PM
To: PUBCOMMENT-OCC2; PUBCOMMENT-OPIC; PUBCOMMENT-ELD; PUBCOMMENT-WQ
Subject: FW: Public comment on Permit Number WQ0005337000
Attachments: CBC MTX Protest for CBC on Raven Ltr w Maps 051722.pdf

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From: jeff@jmundy.com <jeff@jmundy.com>
Sent: Tuesday, May 17, 2022 1:42 PM
To: PUBCOMMENT-OCC <PUBCOMMENT-OCC@tceq.texas.gov>
Subject: Public comment on Permit Number WQ0005337000

REGULATED ENTY NAME MTX 1

RN NUMBER: RN109468389

PERMIT NUMBER: WQ0005337000

DOCKET NUMBER:

COUNTY: MONTGOMERY

PRINCIPAL NAME: MTX MATERIALS LP

CN NUMBER: CN605256544

FROM

NAME: MR Jeff Mundy

EMAIL: jeff@jmundy.com

COMPANY: The Mundy Firm PLLC

ADDRESS: 4131 SPICEWOOD SPRINGS RD Ste. O-3
AUSTIN TX 78759-8661

PHONE: 5127505913

FAX:

COMMENTS: Please find attached comments submitted on behalf of Cook's Branch Conservancy in opposition to this application for a permit. We request a contested case hearing on this matter. Jeff Mundy Attorney for Cook's Branch

Conservancy Texas Bar Number: 14665575 The Mundy Firm PLLC 4131 Spicewood Springs Rd. Ste. O-3 Austin, Texas 78759 512-334-4300 office 512-750-5913

RAVEN
Environmental Services, Inc.
CONSULTING AND MANAGEMENT

May 17, 2022

Office of the Chief Clerk, MC 105
TCEQ via Pending Permit Comments Website Page
PO Box 13087
Austin, TX 78711-3087

Joe Hamrick
Senior Project Manager
Raven Environmental Services, Inc.
P.O. Box 6482
Huntsville, TX 77342

RE: Comments on Pending TCEQ Permit Number WQ0005337000; MTX Materials, LP (MTX1); RN109468389; Montgomery County, Texas

MTX Materials, LP Proximity to Cook's Branch Conservancy (CBC) (Protester)
The MTX Materials, LP (MTX) sand mining facility is a 130-acre property located in Montgomery County, Texas in the San Jacinto River Basin, Lake Creek subwatershed, and is located immediately adjacent to the northeast property boundary of Cook's Branch Conservancy (CBC). The discharge route described in the MTX, April 18, 2022, TCEQ application (Permit No. WQ-0005337000) is still incorrect. The piped wastewater discharge and all surface runoff from the ~130-acre MTX property and sand pit has no place to drain but into Cook's Branch, a perennial stream of scientifically-proven high ecological value and the namesake of Cook's Branch Conservancy. Cook's Branch is a major and ecologically important tributary of Lake Creek which is a state designated Ecologically Important Stream. The MTX sand pit is located entirely within the headwater drainage area of Cook's Branch. The correct discharge route description should include Cook's Branch and 160 Lake and be similar to the following: "*The effluent will be discharged via outfall 001 to a tributary of Cook's Branch, thence to an unnamed impoundment, thence to 160 Lake, thence to Cook's Branch, thence to Lake Creek in segment number 1015 of the San Jacinto River Basin.*" Please see the two attached maps. One map shows the topography that includes and surrounds the MTX property using 5-ft. LiDAR contours, which demonstrates that all MTX drainage will enter Cook's Branch. The second map with color imagery background shows the entire CBC ownership boundary, the MTX property boundary, and the locations and courses of both Cook's Branch and Lake Creek that run through and/or bound CBC.

Cook's Branch Conservancy Background
CBC is an ecologically restored and protected 7,184-acre conservation area, comprised of a 103-year-old pine-hardwood forest, native grass prairies, six ecologically important perennial streams,

sixteen lakes and ponds, and numerous forested and emergent wetlands. Located in west-central Montgomery County, CBC is collectively owned by the Mitchell family under the following three entities: Cook's Branch Management (323-acres), Cook's Branch Conservancy (5,337-acres), and the Cynthia and George Mitchell Foundation (1,524-acres). CBC is believed to have the largest population of federally endangered Red-cockaded Woodpeckers (RCW) on private lands in the U.S. The CBC RCW population is protected under a Texas Parks and Wildlife Department (TPWD) Safe Harbor Agreement and has grown from the original thirteen RCW family groups to more than thirty, through the continuous application of habitat improvements that include annual prescribed burns, forest midstory reduction, and invasive species eradication. In 2012, TPWD presented CBC its highest conservation award for a private landowner in the state, the Leopold Conservation Award. CBC also received TPWD's Lone Star Land Steward Award for the Pineywoods Ecoregion in 2002.

CBC Herpetofauna Census and Listed Species

Since 2015, Raven Environmental Services, Inc. (Raven, Huntsville, TX) has been conducting herpetological surveys using drift-fence pitfall traps. Captured species are fitted with identifying PIT-Tags (Passive Integrated Transponders) and/or are marked in other harmless ways, so that each individual can be readily identified if recaptured. Physical measurements and health condition are noted in field data forms and that data is later entered into a comprehensive CBC Wildlife Database.

Although not captured in pitfall traps, the following US Fish and Wildlife Service (FWS) proposed threatened species and TPWD listed threatened species for Montgomery County has been incidentally observed by qualified TPWD personnel on CBC property in August, 2021.

Alligator Snapping Turtle (*Macrochelys temminckii*) a semi-aquatic reptile: None captured but incidentally observed. Federally proposed threatened species as of November 9, 2021. State listed threatened. Alligator Snapping Turtles prefer slowly flowing waters, though they can survive in impoundments. They inhabit large rivers to surprisingly small streams. Ongoing threats include habitat alteration and fragmentation, water pollution, deliberate harvest for human consumption, incidental catch by recreational fishers, and drought. Overharvesting and habitat alteration are the major threats (Reed et al. 2002, Riedle et al. 2005) (NatureServe. 2022). Siltation affects water quality and may reduce the health and availability of prey species…Additionally, reduced water levels may impact prey abundance and distribution through restricting habitat connectivity, reducing dissolved oxygen levels, and increasing water temperatures…Water quality may also be a factor for alligator snapping turtles as contaminants enter the aquatic systems through runoff…Water quality is also affected by runoff from development and urban areas…The increase of impervious surfaces, such as building roofs, roads, parking lots, and sidewalks, results in pulses of contaminants washed into the river systems as stormwater runoff. Some of the pollutants that may flush into the aquatic system include petroleum products, pesticides, heavy metals, organic waste from pets and other animals, along with microorganisms, including viruses and bacteria (FWS. 2021).

The following two TPWD Species of Greatest Conservation Need (SGCN) listed for Montgomery County were not collected but could occur due to the presence of highly suitable habitat in both streams that are located within the species known range.

Spotted Dusky Salamander (*Desmognathus conanti*) a semi-aquatic amphibian: None captured but possibly present. Texas State Critically Imperiled (S1).
Gulf Coast Waterdog (*Necturus beyeri*) a strictly aquatic amphibian: None captured but possibly present. Texas State Vulnerable (S3). Heavily silted or polluted streams may constitute a barrier or at least unsuitable habitat, depending on the severity of the conditions (NatureServe. 2022).

CBC Aquatic Species Census and Listed Species
In 2009, Total Lake Management (now Solitude Lake Management, Bryan, TX) conducted research and species surveys within the main channel and banks of Cook's Branch where it runs through property owned by CBC and provided the owners with a report titled "*Cook's Branch Creek Ecosystem Assessment*" (March 5, 2009). In 2015, Total Lake Management conducted research and species surveys within the main channel and banks of both Cook's Branch and Lake Creek where they run through property owned by CBC and provided the owners with a report titled "*Cook's Branch and Lake Creek Ecosystem Assessment*" (Summer 2015).

The following TPWD SGCN's are listed for Montgomery County and were captured during these three stream ecological assessments.
Blackspot Shiner (*Notropis atrocaudalis*) a fish: One capture in Cook's Branch, 2009. Texas State Imperiled (S2) (Birdsong. TPWD. October 2020). Localized threats may exist, but on a range-wide scale no major threats are known (NatureServe. 2022).
Sabine Shiner (*Notropis sabinae*) a fish: Eleven captures in Lake Creek, 2015. Texas State Imperiled (S2) (Birdsong et al. TPWD. October 2020).

The following TPWD threatened (T) species listed for Montgomery County were not collected but could occur due to the presence of highly suitable habitat in both streams that are within the species known range.
Sandbank Pocketbook (*Lampsilis satura*) a fresh water mollusk: None captured but possibly present. Texas State Critically Imperiled (S1). Within Texas, mussel populations in the eastern pineywoods were often more environmentally secure than others elsewhere in the state; however, current timber cutting, gravel and sand removal, and general human modification of the area is now having dramatic negative impacts on unionids within the region. Loss of habitat as a result of siltation, and impoundments coupled with the addition of pollutants to streams and rivers may also contribute to the decline of this species. Habitat degradation is the greatest threat in the San Jacinto, Trinity and lower Neches Rivers and it has reduced or eliminated this species from many areas (Howells et al. 2000). (NatureServe. 2022).
Louisiana Pigtoe (*Pleurobema riddellii*) a fresh water mollusk: None captured but possibly present. Texas State Critically Imperiled (S1). Threats identical to Sandbank Pocketbook (NatureServe. 2022).

CBC State and Federal Listed Species Present or Likely Present
The Alligator Snapping Turtle is known to occur on CBC and is proposed threatened under the U.S. Endangered Species Act (1973) and also state listed as threatened by TPWD. Of the remaining six TPWD listed species, two are known to inhabit Cook's Branch and/or Lake Creek: Blackspot

Shiner (SGCN) and Sabine Shiner (SGCN). The remaining four state listed species have not been collected at CBC, but due to the presence of highly suitable habitat that is within the species known range, these species could likely be present: Sandbank Pocketbook (T), Louisiana Pigtoe (T), Spotted Dusky Salamander (SGCN) and Gulf Coast Waterdog (SGCN). All seven of these species are fully aquatic or strictly aquatic species.

Summary of Potential Impacts by MTX Discharge to Seven Listed Species

Wastewater discharge and runoff released by the MTX sand pit into Cook's Branch and Lake Creek could cause the following negative stream impacts: higher suspended sediment load and turbidity; deeper bottom sediment (that could degrade or destroy suitable mollusk habitat); shallower channels that increase flooding and alter stream course; changes in the flow, current and water chemistry including oxygen levels and acidity/alkalinity (pH) of both streams. Any of these impacts could potentially cause direct and indirect negative effects to the life cycles of any of these seven species and could ultimately cause a decline in their numbers. Additional direct and indirect negative impacts to these seven species might occur if harmful chemicals are released by MTX either through the outfall pipe or as natural surface runoff after rainfall events from any part of the ~130-acre site. Those chemicals could include, but are not limited to: diesel fuel, gasoline fuel, hydraulic fluid, engine oil, lubricating oil, chemical solvents, heavy metals, and certain acidic chemicals used in industrial sand mining manufacturing. Again, all drainage from the MTX facility flows into Cook's Branch or its western tributary and thence to 160 Lake, thence to Lake Creek (as shown in the attached map) and thence to the West Fork of the San Jacinto River.

Lake Creek is a TPWD "Ecologically Significant Stream" and "Ecoregion Reference Stream"

Of the 259 streams identified in the fifteen county Region-H State Water Planning Area, only twenty-seven (10%) met the criteria to be designated as an ecologically significant stream. Among those twenty-seven streams, only four scored higher overall than Lake Creek, placing Lake Creek in the top 2% of all streams within all fifteen counties in the Region-H Planning Area, The ecologically significant segment of Lake Creek is the entire stream length, from its confluence with the West Fork of the San Jacinto River, upstream to the Montgomery and Grimes County line. This is an unusual occurrence because most state ecologically significant streams include only a small portion, or a segment, of their entire length and very rarely includes the full length, like Lake Creek. Four biological and ecological attributes of Lake Creek are described by TPWD as follows:

1). Lake Creek Biological Function: Displays significant overall habitat considering the high degree of fish and macroinvertebrate diversity.

2). Lake Creek Hydrologic Function: Bottomland hardwood forests and associated wetlands perform valuable hydrologic functions relating to flood attenuation and water quality.

3). Lake Creek High Water Quality, Exceptional Aquatic Life, High Aesthetic Value: Designated as an Ecoregion Reference Stream by the TPWD River Studies Program for high dissolved oxygen and diversity of benthic macroinvertebrates and also displays high aesthetic value.

4). Lake Creek Threatened or Endangered Species and Unique Communities: Unique, mature bottomland hardwood forest community containing significant riparian habitat (Goodson Pocket).

Cook's Branch is an Aquatic Nursery that is Ecologically Important to Lake Creek

In the Total Lake Management 2019 ecological assessment of both streams, it states that Cook's Branch "*...had a standing population of approximately 7,786 (SE ± 116 fish) fish per stream mile at the time of sampling. This high volume of fish relative to stream width indicates the stream is an important nursery area for juveniles and/or a refuge for small fish species...*" and estimated the total fish population for the entire length of Cook's Branch to be "*...36,650 fish of 13 species...*" The study further states "*...As a fishery, Cook's Branch provides habitat for a large variety of fish species and serves an important role as a fish nursery for Lake Creek...*"

Summary of Potential Impacts by MTX Discharge to Cook's Branch and Lake Creek

The introduction of increased sediment loads and/or harmful chemicals into Cook's Branch and Lake Creek, that originate and flow from the MTX sand mining facility either as wastewater discharge or natural runoff, could have both immediate and long-term negative biological, chemical and ecological effects on both streams and all their living organisms; and also could directly and indirectly negatively effect, and perhaps kill, any of at least one federally proposed and six state listed species that are known to inhabit, or are likely to inhabit, Cook's Branch and the TPWD designated ecologically significant Lake Creek.

Newly Adopted TCEQ Rule Effective January 6, 2022

CBC commends TCEQ for the new Subchapter J, 30 TAC, Chapter 311 Rules, titled "*Best Management Practices for Sand Mining Facility Operations within the San Jacinto River Basin*" which became effective on January 6, 2022, and that requires facilities that mine sand as described by Standard Industrial Classification (SIC) Code(s) 1442 and 1446, to comply with the following Texas Administrative Code Rules:

1). Create a written Mine Plan certified by a licensed Texas Professional Engineer or Professional Geoscientist to be kept onsite.

2). Implement RG-555 Best Management Practices (BMPs) for Sand Mining Operations in the San Jacinto Watershed with each BMP certified by a licensed Texas Professional Engineer or Professional Geoscientist.

3). Submit a Final Stabilization Report, certified by a licensed Texas Professional Engineer or Professional Geoscientist, to TCEQ for review and approval prior to terminating operations at the site or portions of the site.

MTX Material, LP has until Tuesday, July 5, 2022 (180-days from rule adoption) to fully comply with these new rules. CBC is doubtful the rules are adequate to fully protect Cook's Branch and Lake Creek water quality or the seven species described herein from harm and intends to follow-up with both TCEQs Office of Compliance and Enforcement and will request a copy of the MTX certified Mine Plan, BMP Implementation and Stabilization Report.

References

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Texas Parks and Wildlife Department, Wildlife Division, Diversity and Habitat Assessment Programs. TPWD County Lists of Protected Species and Species of Greatest Conservation Need. Montgomery County, Last Update March 17, 2022. (Accessed May 16, 2022). Available: https://tpwd.texas.gov/gis/rtest/

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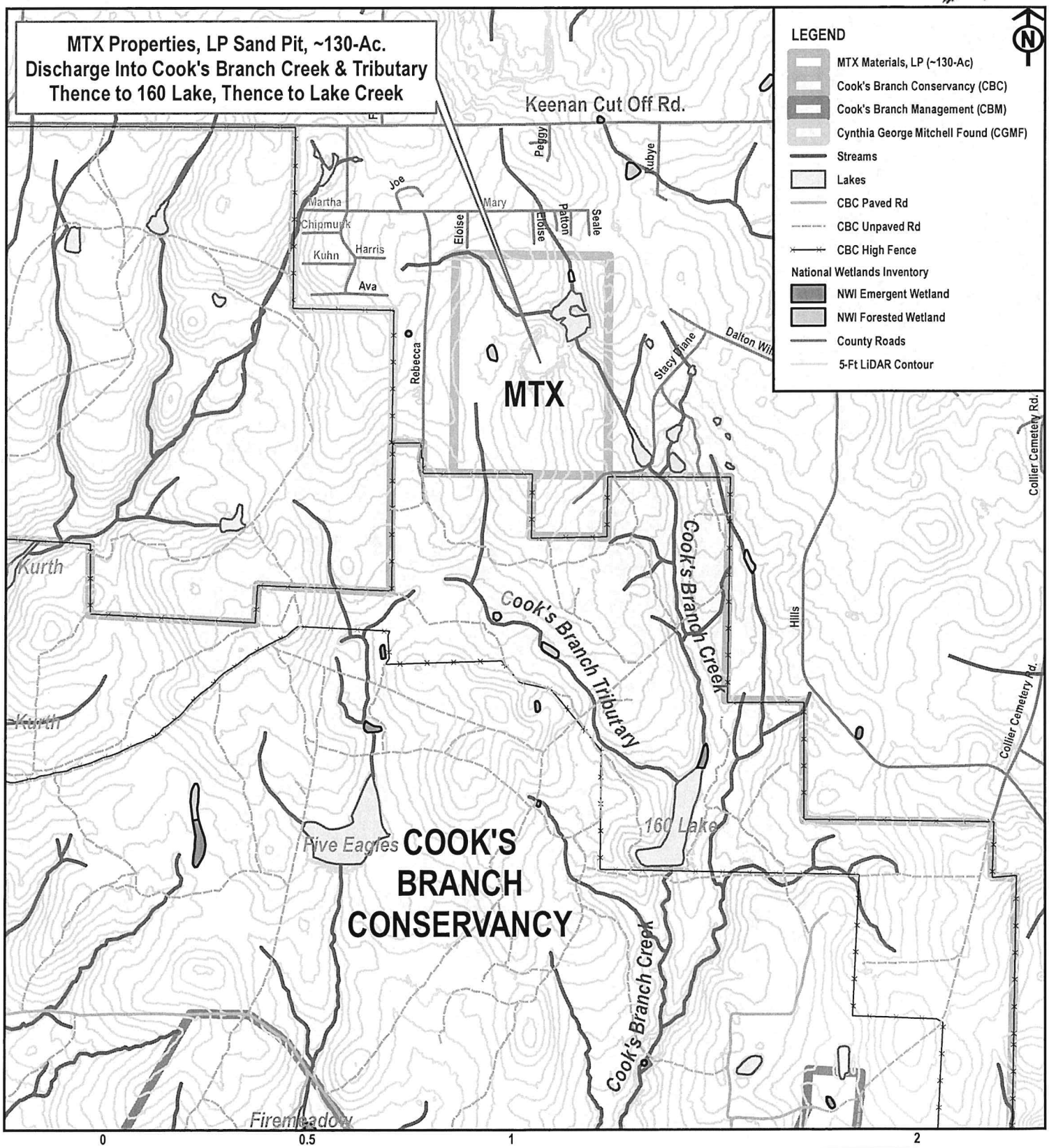
Sincerely,
/S/ Joe Hamrick
Senior Project Manager
Raven Environmental Services, Inc.
Cell: 936-581-1791
Email: hamrick@ravenenvironmental.com

Attachments:
MAP 1: MTX MATERIALS, LP SAND PIT ADJACENT TO COOK'S BRANCH CONSERVANCY (5-FT LIDAR). DISCHARGE INTO COOK'S BRANCH CREEK, THENCE 160 LAKE, THENCE LAKE CREEK
MAP 2: MTX MATERIALS, LP SAND PIT ADJACENT TO COOK'S BRANCH CONSERVANCY. DISCHARGE INTO COOK'S BRANCH CREEK, THENCE 160 LAKE, THENCE LAKE CREEK

COOK'S BRANCH CONSERVANCY: 5,337-AC.
CGMF: 1,524-AC. AND CBM: 323-AC.
7,184-AC. TOTAL IN MONTGOMERY COUNTY, TX

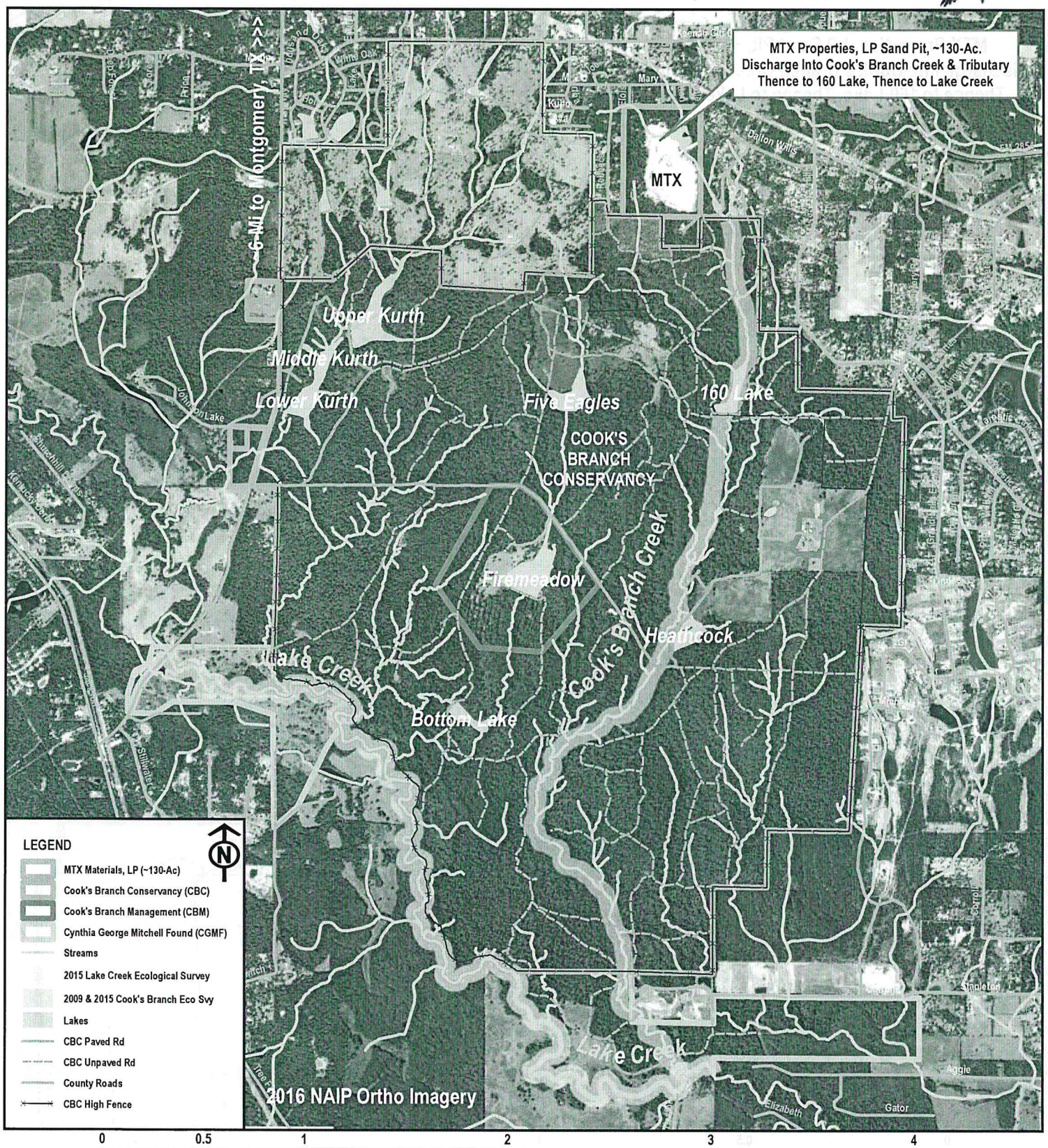


MTX MATERIALS, LP SAND PIT ADJACENT TO COOK'S BRANCH CONSERVANCY (5-FT LIDAR).
DISCHARGE INTO COOK'S BRANCH CREEK, THENCE 160 LAKE, THENCE LAKE CREEK

Raven Environmental Services, Inc.

Joe Hamrick, May 12, 2022 (20,000)

COOK'S BRANCH CONSERVANCY: 5,337-AC.
CGMF: 1,524-AC. AND CBM: 323-AC.
7,184-AC. TOTAL IN MONTGOMERY COUNTY, TX



MTX MATERIALS, LP SAND PIT ADJACENT TO COOK'S BRANCH CONSERVANCY.
DISCHARGE INTO COOK'S BRANCH CREEK, THENCE 160 LAKE, THENCE LAKE CREEK

Joe Hamrick, May 12, 2022 (40,000)

Raven Environmental Services, Inc.