

Evaluating and Processing Utility Easement Proposals on Corps Lands and Flowage Easements

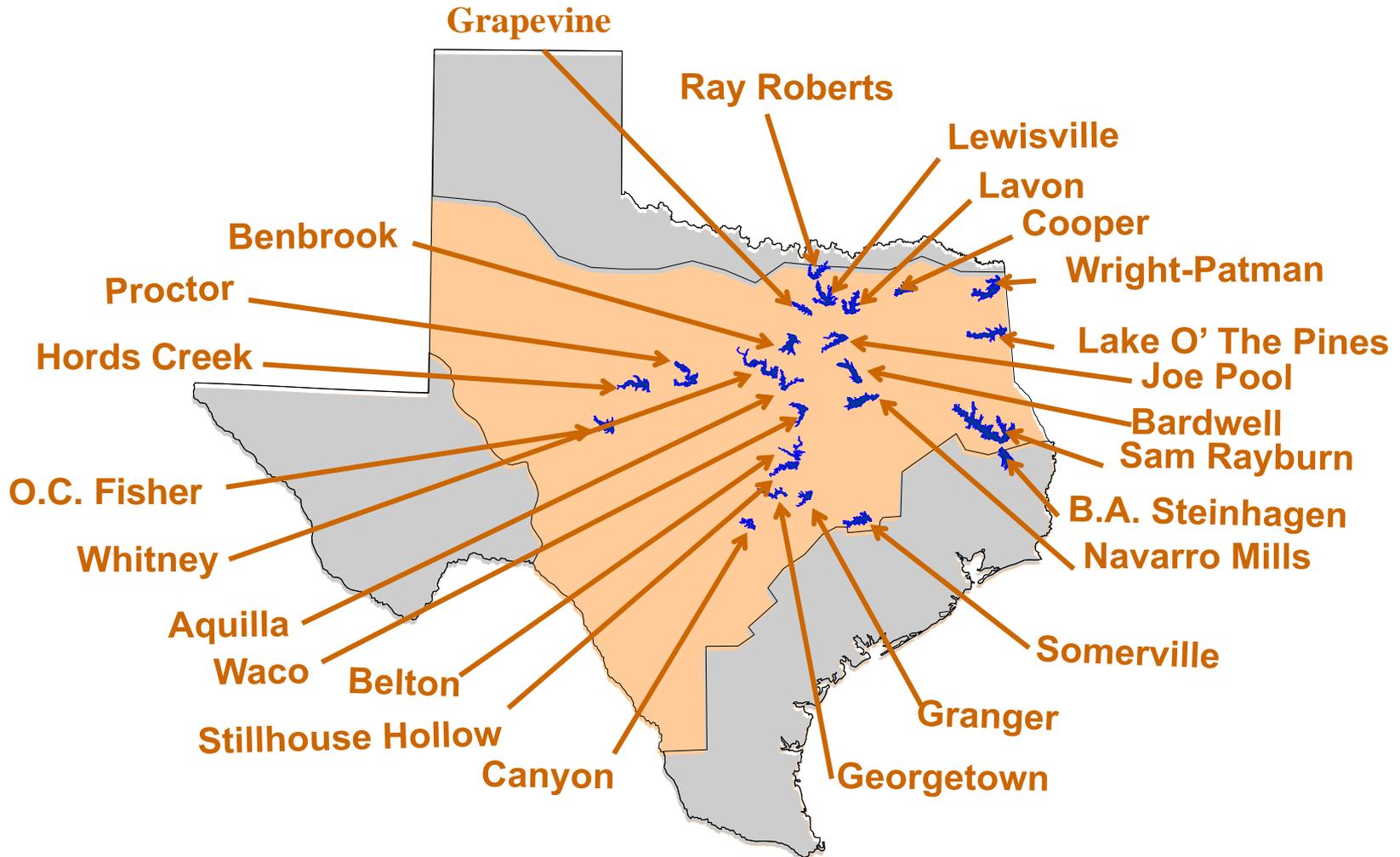
Don Wiese and Eric Pedersen

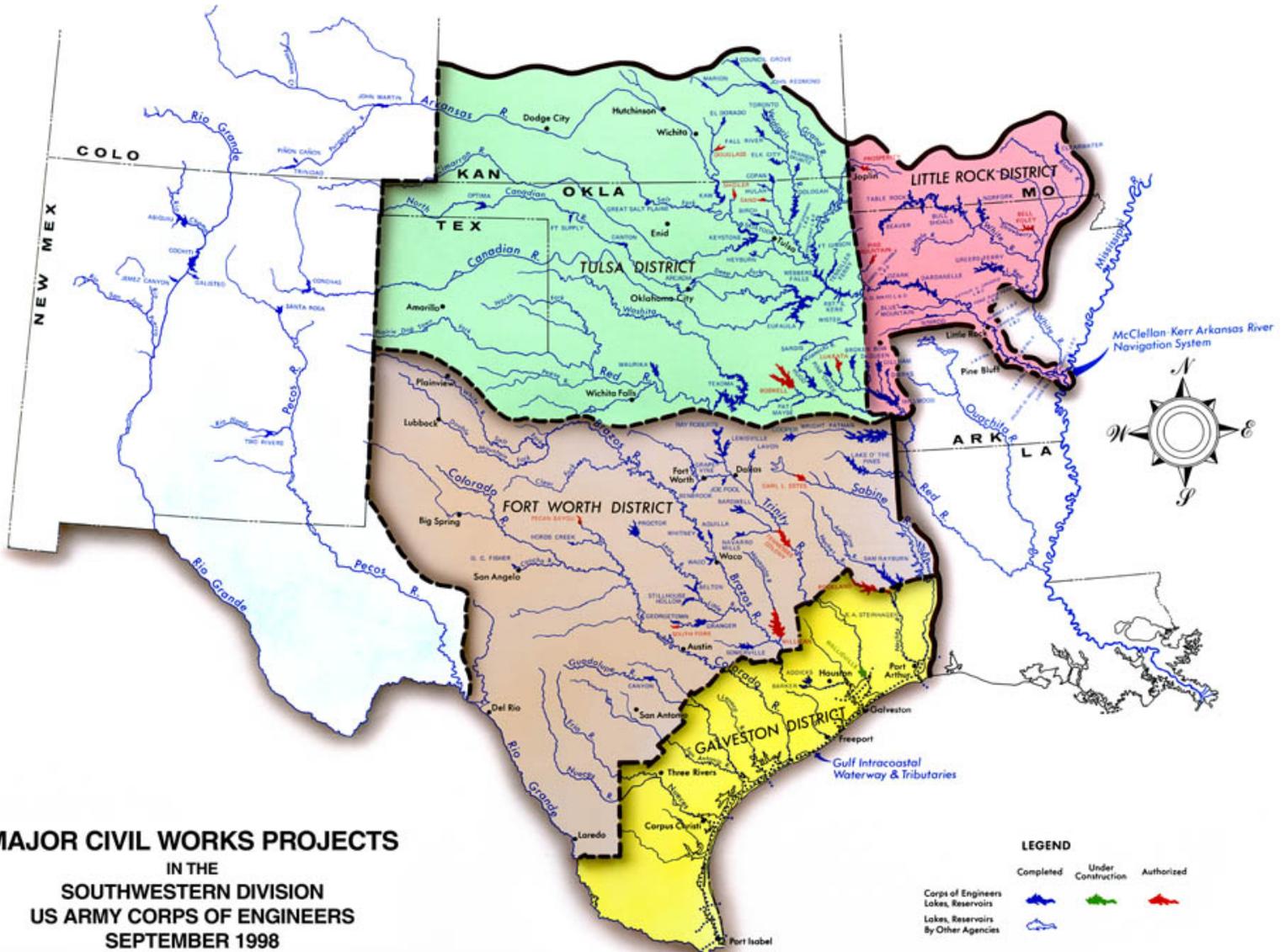
Fort Worth District

November 6, 2013

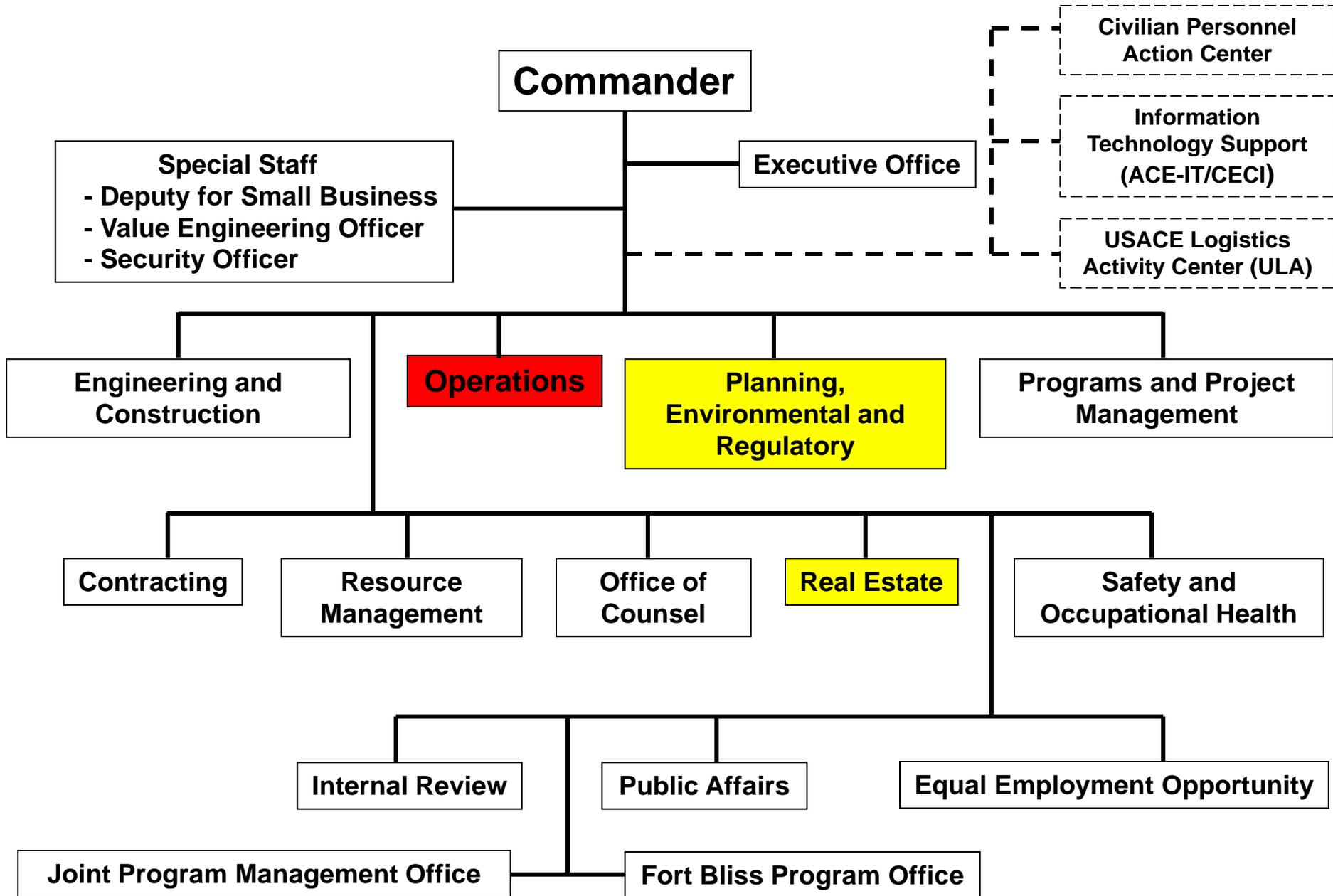


Fort Worth District Lakes





US Army Corps of Engineers - Fort Worth District





**Operations
Project Manager**

Program Analyst

**Assistant Operations
Project Manager**

**Administrative
Officer**

**Flood Risk
Management
Business Line
Manager**

**Recreation
Business Line
Manager**

**Environmental
Stewardship
Business Line
Manager**

**Power Plant
Supt.
(where applicable)**

**Lake
Manager**

**Lake
Manager**

**Lake
Manager**

**Lake
Manager**

**Lake
Manager**



Authorized Project Purposes

- Flood Risk Management
- Environmental Stewardship
- Recreation
- Hydropower
- Water Supply
- Navigation (Galveston, and Tulsa Districts)



Scope of Land Holdings – Fort Worth District

- 405,792 acres of land above conservation pool (in 37 counties)
- 280,147 acres of water
- 203,594 acres of flowage easement
- 66,398 acres of parks (23,219 developed)
- 64,825 acres leased to State for wildlife
- 274,569 acres managed by Corps for wildlife, open space, passive recreation aesthetics and project operations



Scope of Recreation Facilities Fort Worth District

- 313 Parks (177 operated by Corps)
- 8366 Campsites - 3913 Picnic Sites
- 500 restrooms - 326 boat ramps
- 50 marinas with 10,000 wet/dry slips
- 600 miles of paved road
- 3050 miles of boundary line
- Numerous Trails (some national)



Natural Resources Management Mission Statement

- Manage and Conserve Natural Resources Consistent with Ecosystem Management Principles
- Provide Quality Outdoor Recreation Experiences
- To Serve the Needs of Present and Future Generations



Other Corps Activities Important to Utility Companies

- Section 404 permits pursuant to the Clean Water Act – affects many utility lines
- Utility crossings of local flood protection projects constructed by the Corps but the Corps does not own land and must approve the crossing
- Possible but infrequent involvement in some utility crossings on army installations - most handled by staff at installation



Law, Regulations and Policy Governing Corps Easement Evaluation Process

Primary law is Title 10 U.S. Code, Subtitle A, Chapter 159, Section 2668 (grants authority)

- Easements must not be contrary to the public interest (must weigh affect on agency purpose and mission)
- No easement may be granted for more land than is necessary
- Agency may require in-kind consideration in lieu of cash payment for fair market rental value



LAW, Regulations and Policy Governing Corps Easement Evaluation Process

Other important laws to consider:

- National Environmental Policy Act (NEPA)
- Cultural Resource Laws including NAGPRA
ARPA, and NHPA
- Endangered Species Act
- Fish and Wildlife Coordination Act
- Clean Water Act (Section 404 is
administered by the Corps)



Law, REGULATIONS and Policy Governing Corps Easement Evaluation Process

Corps Regulations Governing the Process

- ER 405 -1- 12, Real Estate Handbook, Chapter 8, Section XIV
 - Implements provisions of law
 - Discourages easements on Corps land where private lands are available
 - Provides more detailed guidance on specific types of easements



Law, REGULATIONS and Policy Governing Corps Easement Evaluation Process

- ER 1130-2-540, Environmental Stewardship Operations and Maintenance Guidance and procedures....emphasizes the importance of proper stewardship of natural resources
- ER 1130-2-550, Recreation Operations and Maintenance Policies...emphasizes the Corps role in providing public outdoor recreation opportunities. Also provides guidance for preparing and updating project Master Plans
- ER 200-2-2, Procedures for Implementing NEPA



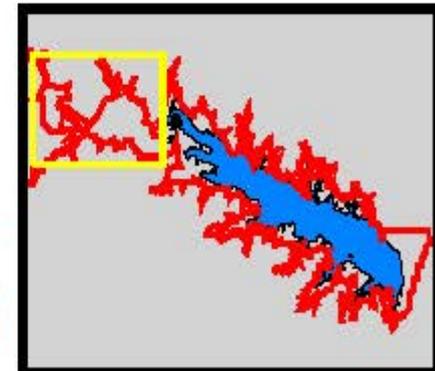
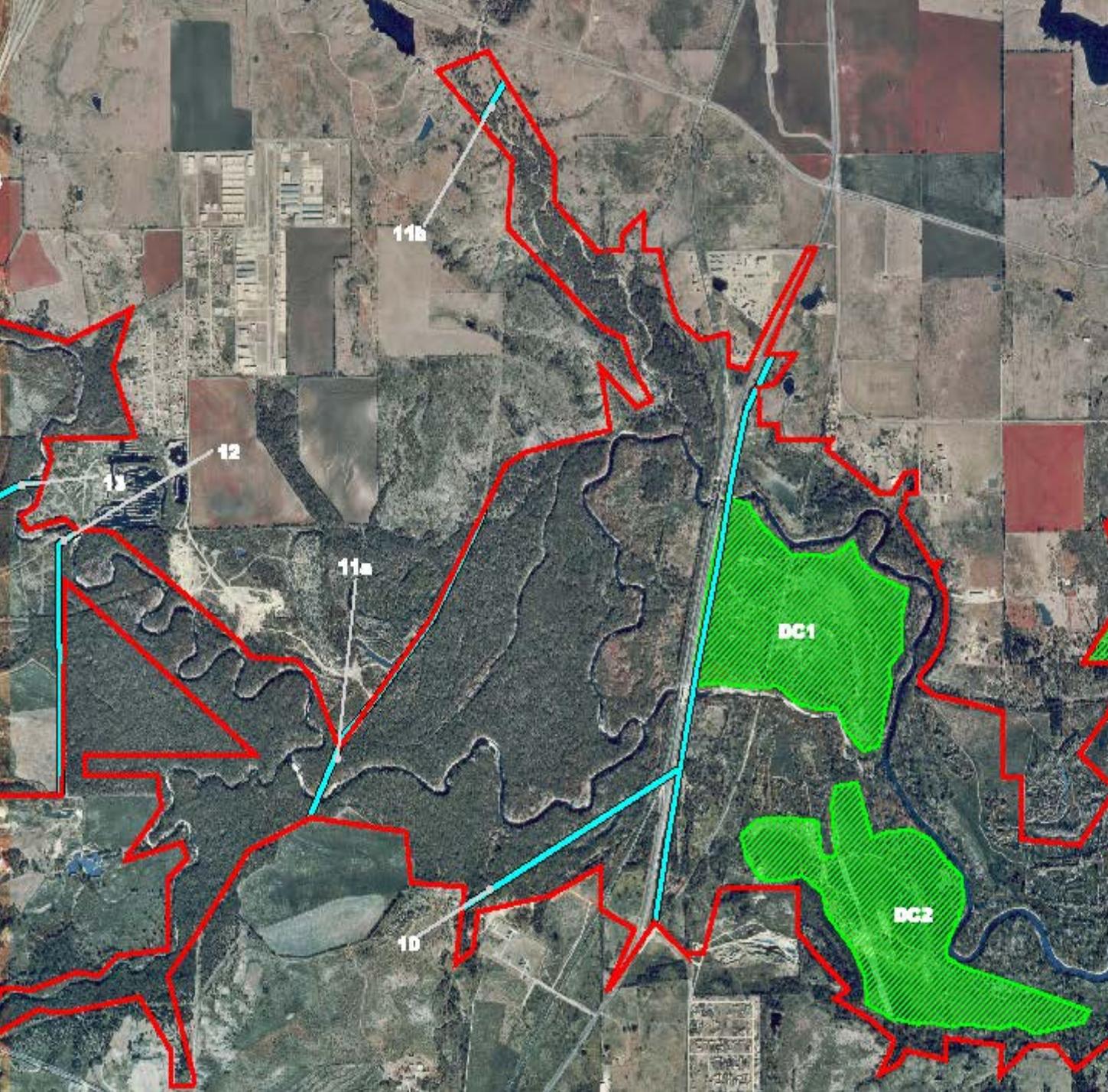
Law, Regulations and POLICY Governing Corps Easement Evaluation Process

National Corps policy on “Non-Recreational Outgrants” issued in final form March 30, 2009. This policy will be incorporated into ER 1130-2-540.

- Needed to establish consistent evaluation and decision process throughout the Corps
- Pulled together fragments of policy and guidance
- Emphasized the requirement to mitigate for lost facilities and natural resources
- Encourages establishment of utility corridors



Denton Creek Wildlife Management Area

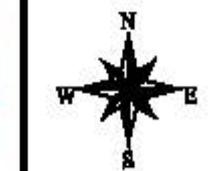


Legend

- Federal Property Line
- Utility Corridors
- Environmentally Sensitive Areas

Note: Each Utility Corridor and Environmentally Sensitive Area is identified by a number or an alpha-numeric designation. Refer to Chapters 3 and 5 for full descriptions.

**Grapevine Lake
Master Plan**
Utility Corridors and
Environmentally Sensitive Area



Project Master Plans

The Master Plan is the basic document guiding Corps of Engineers responsibilities pursuant to Federal laws to preserve, conserve, restore, maintain, manage, and develop the project lands, waters, and associated resources.

- Establishes resource use goals and objectives
- Incorporates expressed public needs and preferences
- Establishes a land classification system



The Easement Process – Four Basic Steps

STEP 1:

Proponent meets with lake personnel to describe proposal in concept. If fatal flaws exist, process stops or proponent is asked to reconsider options. Fatal flaws may include:

- Adverse effects on endangered species or cultural resources
- Adverse effects on prime facilities (dam, spillway, etc.)
- Adverse effects on highly valuable natural resources
- Major conflict with Project Master Plan
- Conflicts with other existing easements
- Request is not reasonable....viable alternatives readily available



A Potential Fatal Flaw – An Active Black-Capped Vireo Nest

Where adult perched in previous slides

Lake

Nest



To Cedar Hollow Camp Sign





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BUILDING STRONG®

**90 Acre Wetland Cell - Cost Shared Environmental
Restoration Project, City of Denton, Lewisville Lake**



The Easement Process – Four Basic Steps

STEP 2:

If no fatal flaw exists, proponent is furnished a copy of The Fort Worth District's Requirements for Submitting Easement Requests (see handout).

- Proponent is asked to provide preliminary information to determine if further processing is feasible and whether or not an Environmental Assessment will be needed.
- If further processing is not feasible, process stops.
- If further processing is feasible and no EA required, proponent provides final and detailed proposal



The Easement Process – Four Basic Steps

STEP 3:

If Preliminary information in step two indicates that proposal is feasible and an EA is required then:

- Corps and proponent enter into an Memorandum of Understanding setting forth respective parties responsibilities for completion of an EA and continued processing of the easement request (proponent is advised to complete EA before investing in design)
- If action is federally-funded (by USDA, FHWA, FAA, etc.) Corps may elect to become a “Cooperator” in preparation of the EA or EIS, but MOU still needed



The Easement Process – Four Basic Steps

STEP 4:

- If EA results in a Finding of No Significant Impact (FONSI), then proponent may proceed with detailed design plans. Major departures from “Preferred Alternative” identified in the EA are not acceptable. At point, Corps Real Estate personnel will initiate fair Market appraisal procedures and will draft an easement instrument
- If no FONSI is possible, the proposed action may not be feasible, may be further assessed in an Environmental Impact Statement (EIS), or may be changed to the extent that a FONSI is possible.

Crossing Flowage Easements

Crossing flowage easements is less complex than crossing Federal land. The Corps interest in flowage easements is primarily:

- Prevent human habitation
- Preserve flood storage capability and capacity
- In the case of overhead utility lines, Corps may invoke special “low sag” requirements (see handout)

Normally Corps does not require an EA or MOU to cross flowage easements. For more info refer to handout on flowage easement requirements



When Corps Lands or Flowage Easements are also “Jurisdictional Areas”

If an easement route across Corps lands or flowage easements crosses jurisdictional areas pursuant to Section 404 of the Clean Water Act expect the following:

- The 404 permit action and the easement action are on separate tracks but Corps strives to make the effort as seamless as possible
- Mitigation is always required for crossing Corps lands but not always required for a permit action



Mitigation

Mitigation is required for all easements and is either statutory or non-statutory. Statutory is that required by specific laws such as The Clean Water Act or as specified in a NEPA document or court decision. Non-statutory is required in the spirit of NEPA with the intent to make the Corps project whole. Minor impacts are easily mitigated by restoring the affected site. More extensive impacts usually require some form of compensatory mitigation. In extreme cases, mitigation may be achieved only by acquisition of land.





**Installing Red-cockaded
woodpecker nest boxes as
mitigation for a fishing tournament
facility at Sam Rayburn Reservoir**



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Wetlands and tree plantings completed by TxDOT and City of Grapevine as mitigation for impacts associated with road construction projects near Grapevine Lake



BUILDING STRONG®

Costs

Costs the proponent may encounter when proposing to cross Corps lands:

- Administrative costs associated with processing an easement and completing NEPA documentation
- Fair market rental value of Corps land (may require a cash payment or in lieu consideration)
- Mitigation costs to plant vegetation, replace recreation facilities, construct wetlands, construct fence or whatever is needed to make the Corps project whole (cannot accept cash for mitigation)



Points of Contact

District Office:

Natural Resources and Recreation Management
Section: 817-886-1577, ask for Section Chief

Lake Offices:

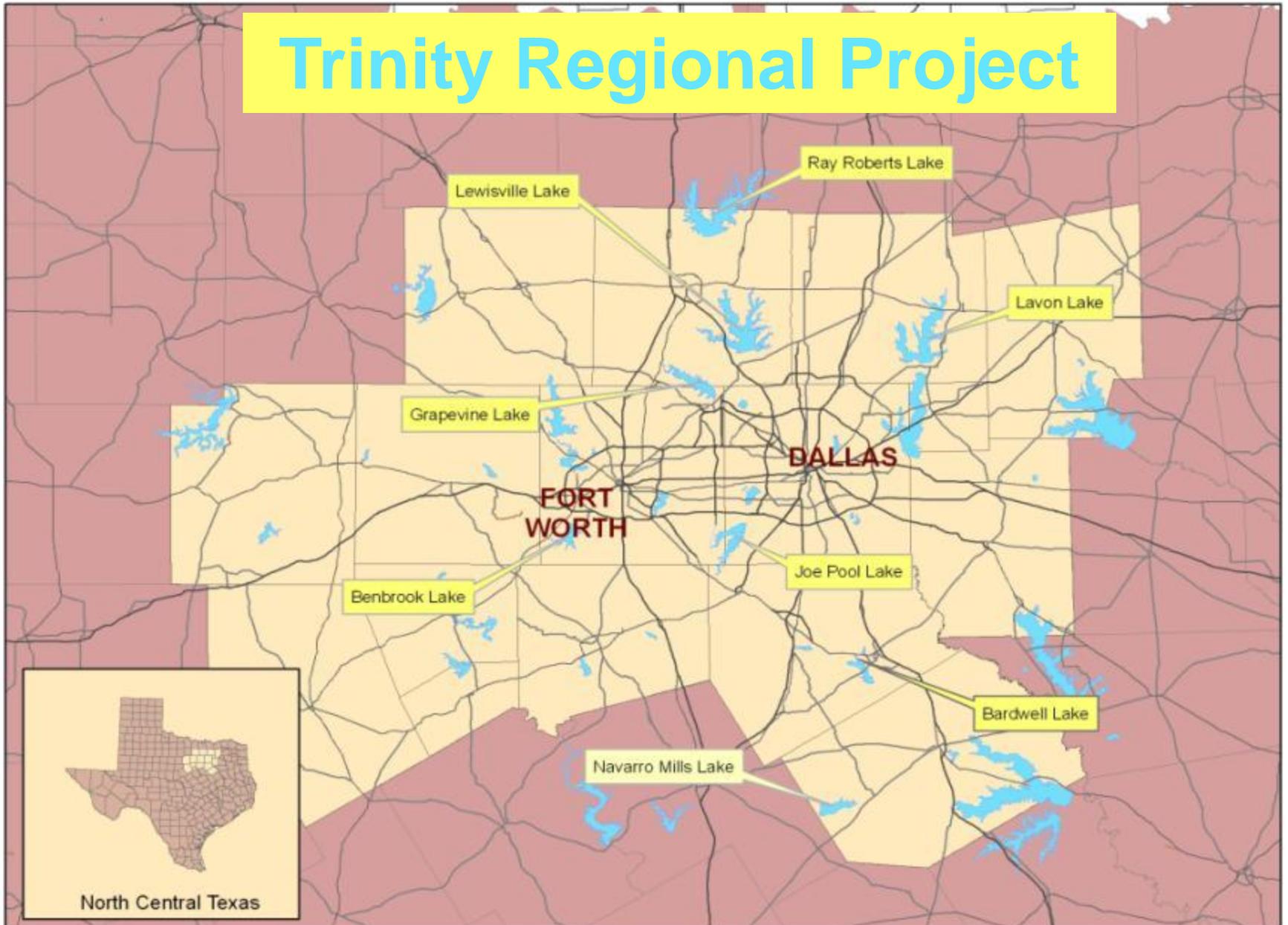
Go to www.swf.usace.army.mil, follow links to individual lake offices, ask for Lake Manager (see handout)

Regulatory Office: at website above, use link to Regulatory Program

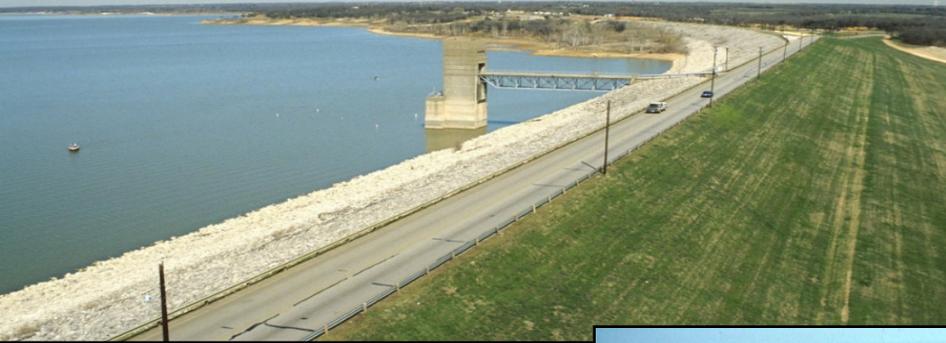
For info on Corp Floodways: Contact Operations Division, Technical Services Branch, Maintenance Section, 817-886-1606, ask for Section Chief



Trinity Regional Project



Grapevine



Lewisville



Ray Roberts



Joe Pool



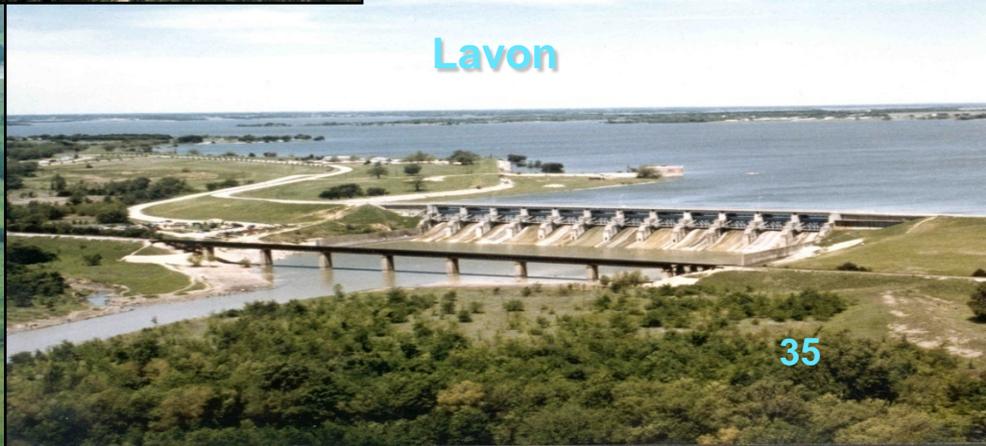
Benbrook



Bardwell



Lavon



Vacant
OPM

Eric Pedersen
Dep OPM

Rob Jordan
LE/RR Lake Manager
1 Admin
1 CET
5 Park Rangers

Jason Owen
BB/JP Lake Manager
2 Admin
1 CET
4 Park Rangers

Lauren Fagerholm
FRM BLM
1 Admin
7 CET

Debbie Barzano
Program Analyst

Michael Kinard
LA Lake Manager
1 Admin
1 CET
3 Park Rangers

Brian Johnson
BR Lake Manager
1 Admin
2 CET
3 Park Rangers

James Murphy
REC BLM

Angela Vaughan
Admin Officer

Vacant
GR Lake Manager
1 Admin
1 CET
3 Park Rangers

Martin Underwood
ES BLM

Chad Eller
CRC

Paul Thomas
GDS Manager



Programmatic Environmental Assessment-Lewisville Lake

- FONSI signed 20 Sep 1999
 - ▶ Examined the environmental impacts of over 300 development actions across Lewisville Lake
 - Bridges/Roads
 - Rec Facilities
 - Utilities/Utility Corridors
 - ▶ Requests incorporated into 2004 Master Plan Supplement



Environmental Assessment- Grapevine Lake

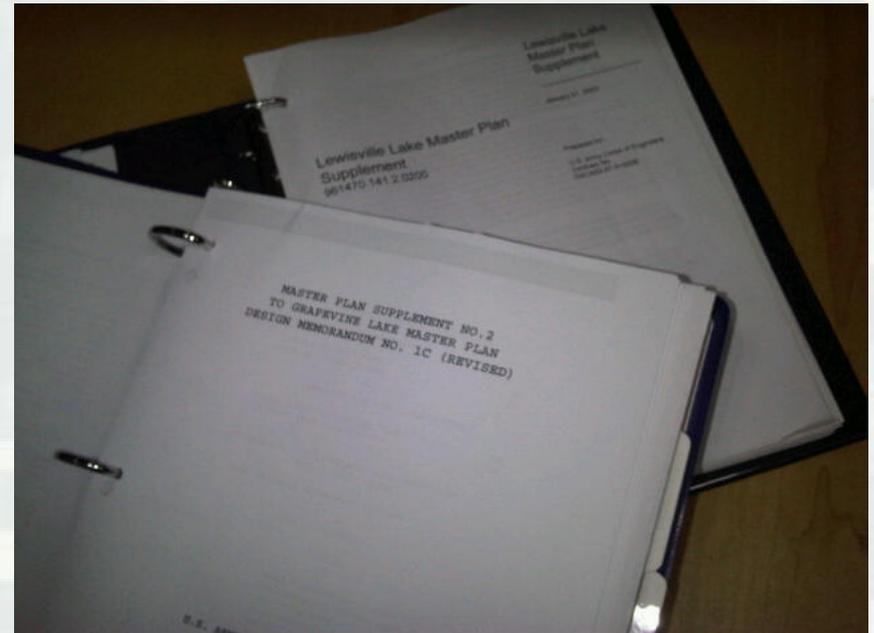
- FONSI signed 16 August 2001
 - ▶ Designated Utility Corridors and Environmentally Sensitive Areas (ESAs)
 - ▶ Incorporated into the 2001 Grapevine Master Plan Supplement

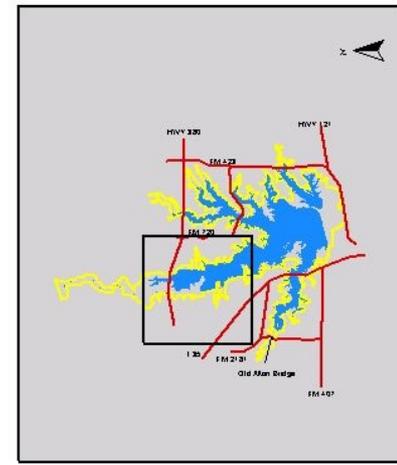
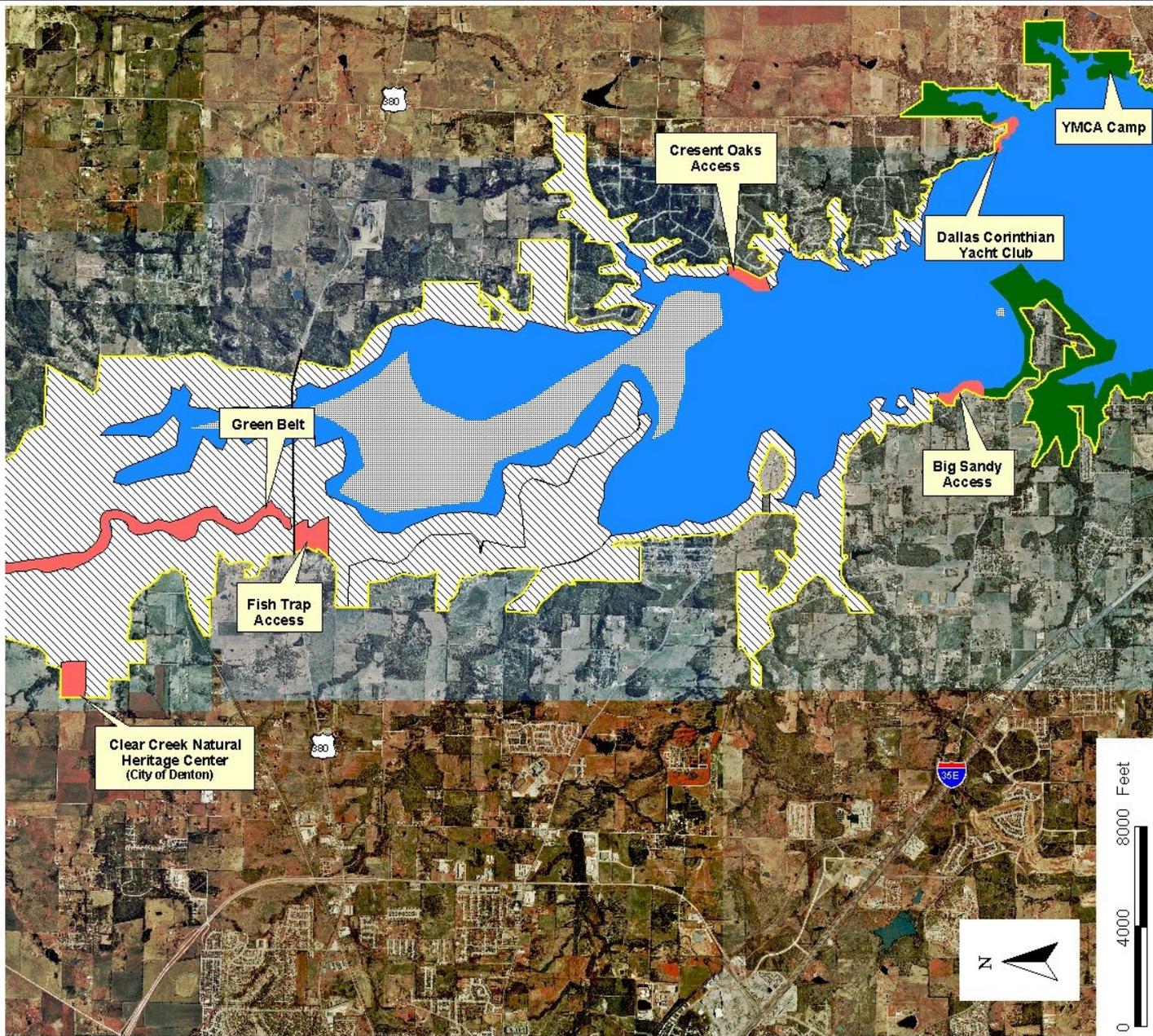


Master Plan Documents

Lewisville and Grapevine Lakes

- Updated Master Plans
 - ▶ Lewisville Lake: 2004
 - ▶ Grapevine Lake: 2001
- Designates land use classifications, Environmentally Sensitive Areas, Utility Corridors, and Authorized Recreational Activities/Facilities





LEGEND

- Property Boundary
- Elm Fork Trinity River

Allocations

- Project Operation
- Recreation
- Fish and Wildlife
- Environmentally Sensitive Area
- Conservation Easement

**Lewisville Lake
Master Plan Supplement**

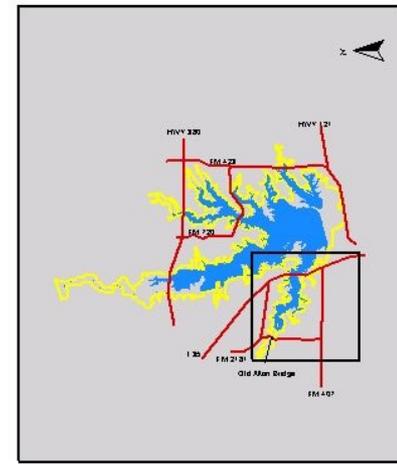
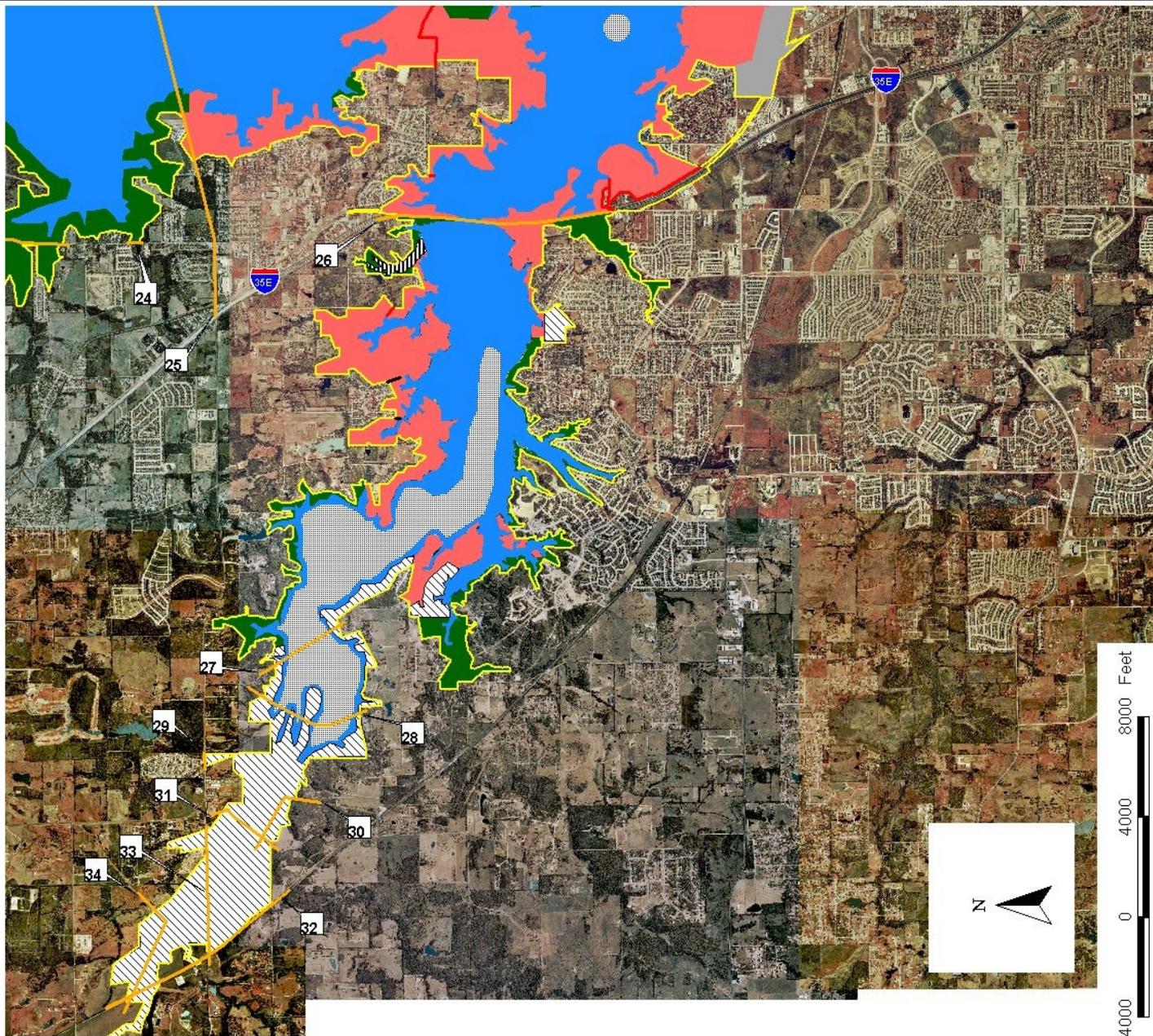
Land Use Allocations

Carter-Burgess



U.S. Army Corps
of Engineers
Fort Worth District

Scale 1:48,000	Plate 6-1	Sheet 3 of 5
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LEGEND

- Property Boundary
- Elm Fork Trinity River
- Common Utility Corridors

Allocations

- Project Operation
- Recreation
- Fish and Wildlife
- Environmentally Sensitive Area
- Conservation Easement
- Restricted Area

**Lewisville Lake
Master Plan Supplement**

Common Utility Corridors

Carter=Burgess



U.S. Army Corps
of Engineers
Fort Worth District

Scale 1:48,000	Plate 6-3	Sheet 1 of 5
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Proponent meets with Lake Manager and appropriate staff (ES BLM, REC BLM, Real Estate) to describe proposal in concept. If fatal flaws exist, process stops or proponent is asked to reconsider options. Fatal flaws may include:

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Points of Contact

Lewisville/Ray Roberts Lakes:

Robert Jordan, Lake Manager: 469-645-9107

Robert.S.Jordan@usace.army.mil

Grapevine Lake:

Eric Pedersen, Deputy OPM: 469-645-9108

Eric.C.Pedersen@usace.army.mil

Trinity Regional Project:

Eric Pedersen, Deputy OPM: 469-645-9108

Eric.C.Pedersen@usace.army.mil

Martin Underwood, ES BLM: 469-645-9078

Martin.K.Underwood@usace.army.mil

James Murphy, REC BLM: 469-645-9106

James.A.Murphy@usace.army.mil

Craig Kislingbury, Real Estate: 469-645-9111

Craig.A.Kislingbury@usace.army.mil

