



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

Public Notice

Applicant: Meritage Homes

Permit Application No.: SWF-2013-00033

Date: January 31, 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: Elisha Bradshaw, Project Manager

Phone Number: (817) 886-1738

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 (WOUS) associated with the construction of the proposed Kingswood Residential Development in the city of Frisco, Denton County, Texas.

APPLICANT: Meritage Homes
Clint Richardson, PE
909 Hidden Ridge Parkway, Ste. 190
Irving, Texas 75039

APPLICATION NUMBER: SWF-2013-00033

DATE ISSUED: January 31, 2013

LOCATION: The proposed Kingswood Residential Development would be located on a parcel of land that drains into an unnamed tributary of Stewart Creek that flows into Lake Lewisville, an impoundment of the Elm Fork of the Trinity River, in the city of Frisco, Denton County, Texas. The proposed project would be located approximately at Latitude 33.116 and Longitude -96.863 on the Hebron, 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12030103 (Sheets 1-4 of 8).

OTHER AGENCY AUTHORIZATIONS: Section 401 State Water Quality Certification

PROJECT DESCRIPTION: The applicant proposed to discharge approximately 1,403.6 cubic yards of fill material into approximately 0.87 acres of waters of the United States in conjunction with the construction of the proposed residential development. Total proposed impacts to waters of the U.S. include direct permanent impacts of 0.73 acres of non-forested wetlands and 0.14 acres (1,134 linear feet) of ephemeral stream. This development is being constructed in three phases. Phase I is a stand-alone development with no impacts to WOUS. Phase II and Phase II are being permitted together due to the connectedness of the water features and overall sequencing that tie these phases together (Figure 6-8 of 8).

EXISTING CONDITIONS: The project area is characterized into three plant communities: upland grassland, upland shrub, and riparian corridor. The WOUS located with the riparian corridor consist of an ephemeral stream (Tributary 1) and two adjacent wetlands (Wetland 1 and Wetland 2). Tributary 1 enters the project site from the east-southeast and provides drainage

through the middle of the project site and ultimately discharges into Stewart Creek, which is located offsite to the west. Tributary 1 averages a 3-10 foot ordinary high water mark for approximately 1,194 linear feet throughout the project site. Wetland 1 and Wetland 2 are adjacent and abutting Tributary 1. The two wetlands represent the former limits of a previous on-channel pond. The pond's dam appears to be breached or degraded, allowing Tributary 1 to continue along original stream course (Figure 5 of 8). Wetland 1 is approximately 0.72 acres and Wetland 2 is approximately 0.01 acres. The riparian corridor is dominated with giant ragweed, balloonvine (*Cardiospermum halicacabum*), sumpweed (*Iva annua*) in areas upstream of the wetland. The dominant vegetation within the riparian corridor along the previous limits of the pond and the tributary downstream of the pond included sugarberry (*Celtis laevigata*), honey mesquite (*Prosopis glandulosa*), cedar elm (*Ulmus crassifolia*), Osage-orange (*Maclura pomifera*), black willow (*Salix nigra*), and eastern cottonwood (*Populus deltoids*).

ALTERNATIVES: The applicant considered four alternatives in an effort to avoid and minimize adverse impacts to WOUS. Alternative 1 is the no build option. The no build option would not impact WOUS but would not fulfill the high residential housing demands within the surrounding community. Alternative 2, constructing without impacts to WOUS, would also not impact WOUS, but this would also severely limit the residential lots and roadways along the center of the project area lowering the income generated by the development making it overall economically unfeasible to provide moderately priced housing within the area. Alternative 3, the applicant's preferred alternative, would result in the loss of approximately 0.87 acres of WOUS. This option places most of the water features within an underground culvert system throughout the phased development. This alternative would allow for the construction of the maximum number of lots. Mitigation bank credits would be purchased to compensate for the impacts to WOUS. Alternative 4, the open channel design, consists of construction of an open drainage feature rather than an underground culvert. Due to the topography of the site that slopes toward the water features, extensive retaining walls would need to be constructed to maintain an open channel configuration. High retaining walls are costly in both construction and maintenance costs and typically are not compatible with residential land uses. Additionally, this alternative would severely limit the number of residential lots. It is estimated this alternative would result in a reduction of 18 lots from the 148 total lots (12 percent). This alternative would also require ongoing maintenance of the drainage way, which would increase the long-term operating costs for the homeowners' association.

MITIGATION: The applicant's preferred alternative includes the purchase of the appropriate number of mitigation bank credits from a currently serviceable mitigation bank to fully compensate for the proposed loss of WOUS.

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 incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those that result in a direct impact of three acres or less of waters of the State or 1,500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices (BMPs) and other provisions designed to safeguard water quality. The USACE has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

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 Denton County where the least tern (*Sterna antillarum*), the piping plover (*Charadrius melodus*), and the whooping crane (*Grus americana*) are known to occur or may occur as migrants. The whooping crane and least tern are endangered species and the piping Plover are 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 area of the proposed development has never been formally surveyed for the presence of historic or prehistoric cultural resources. However, surveys in 1991 and 2002 along nearby areas of Stewart Creek only identified one historic structure. It was not considered eligible for inclusion in the National Register of Historic Places. The project occurs in an upland prairie environment with low potential for prehistoric or historic sites. A low possibility also exists for the presence of buried sites. 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 March 2, 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

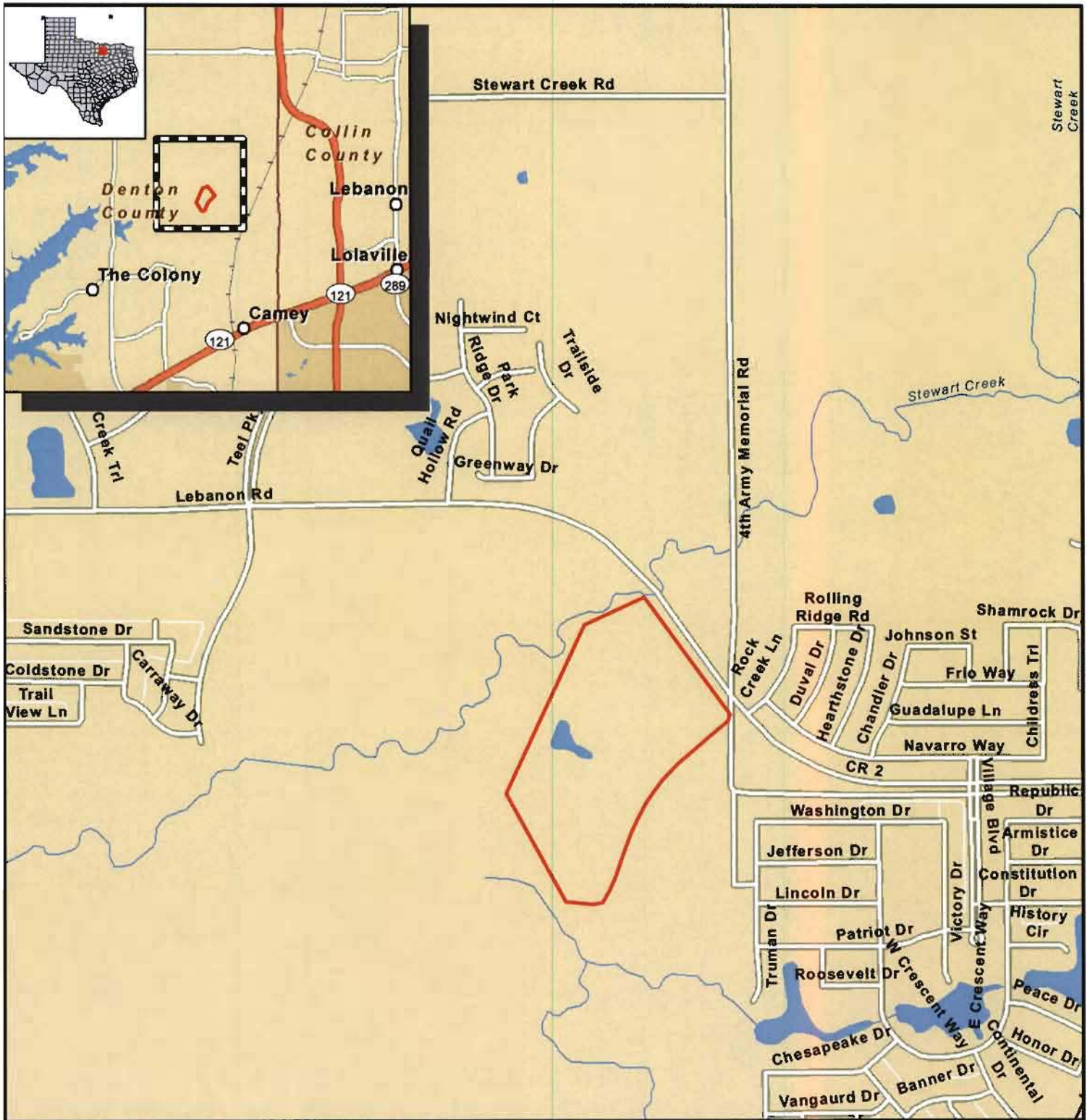


Figure 1
General Location Map

 Survey Area



1 inch = 1,000 feet



County: Denton
 State: Texas
 Date map created: 10/15/2012
 Source: ESRI Streetmap
 North America

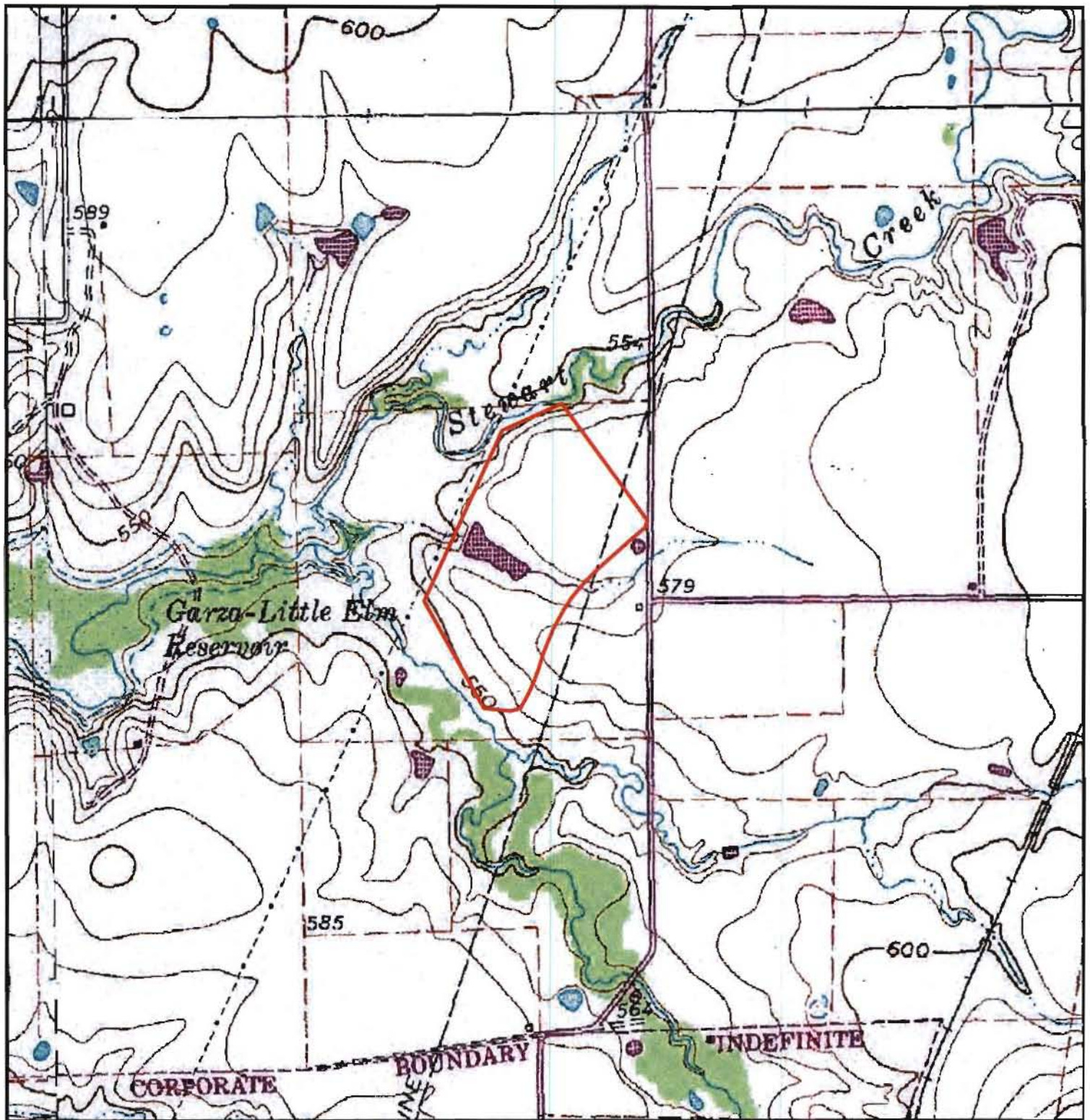



Figure 2
Topography of
the Survey Area

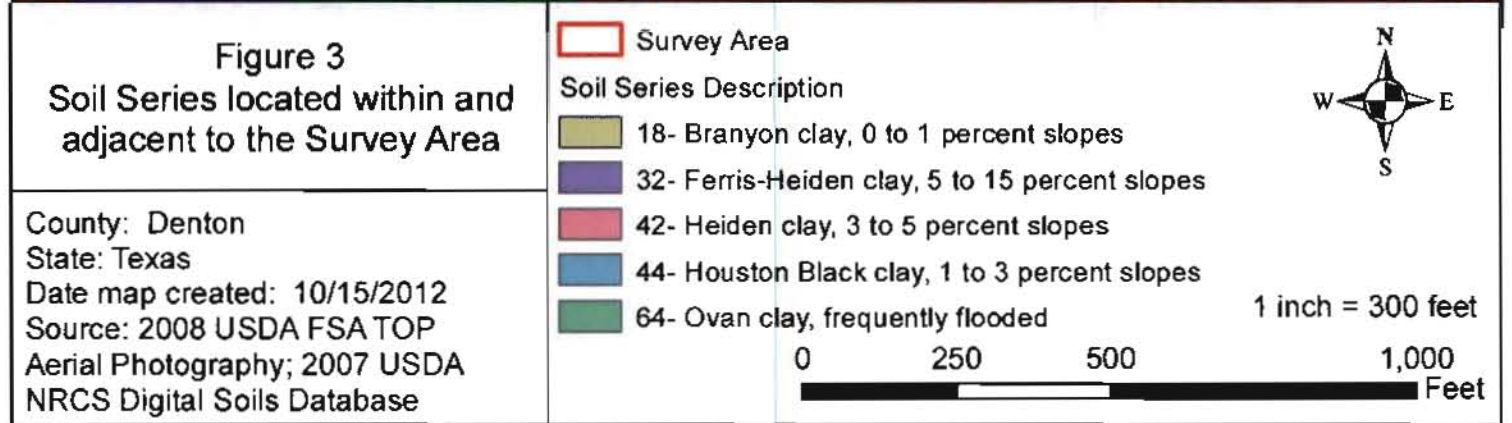
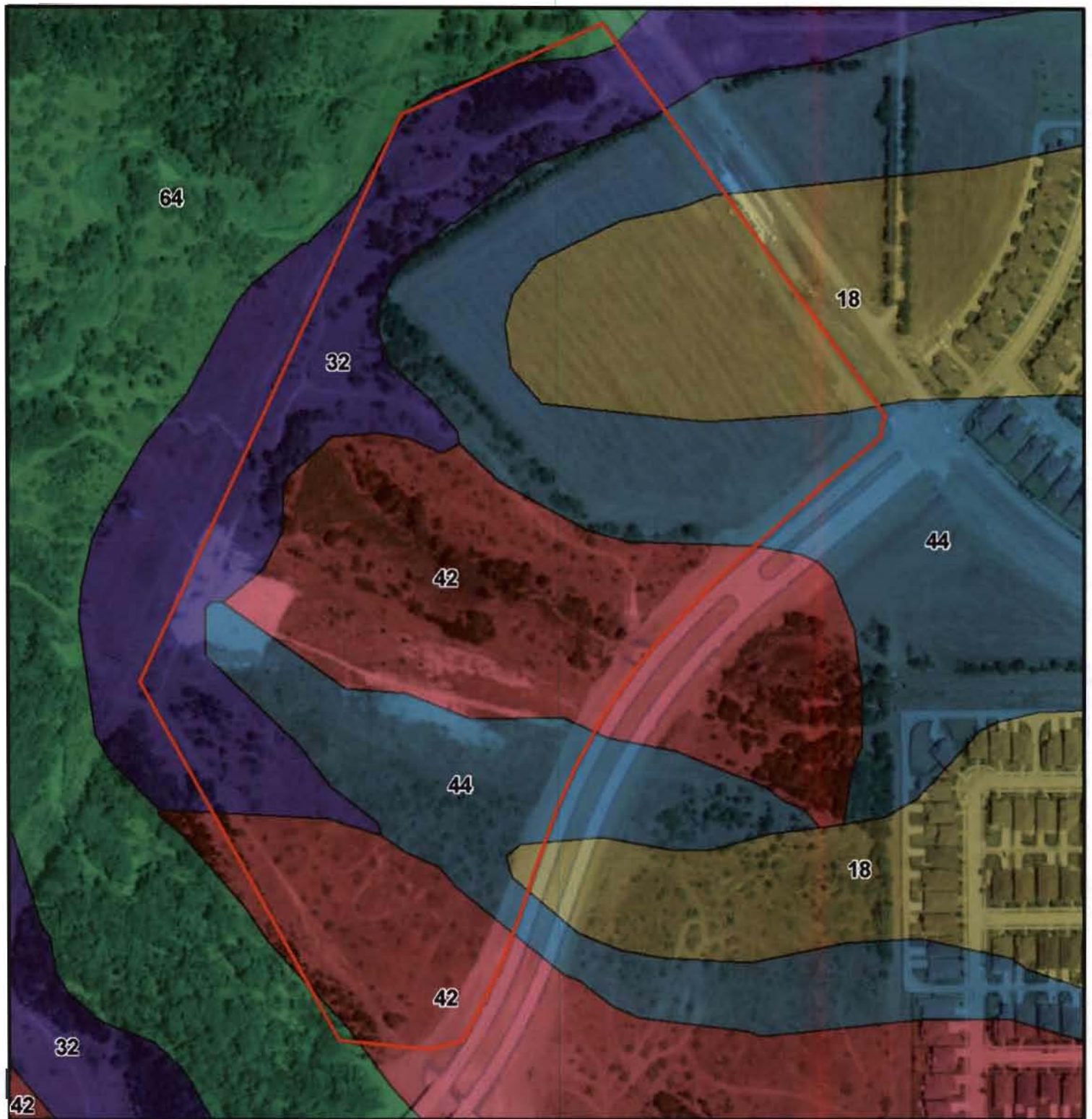
 Survey Area

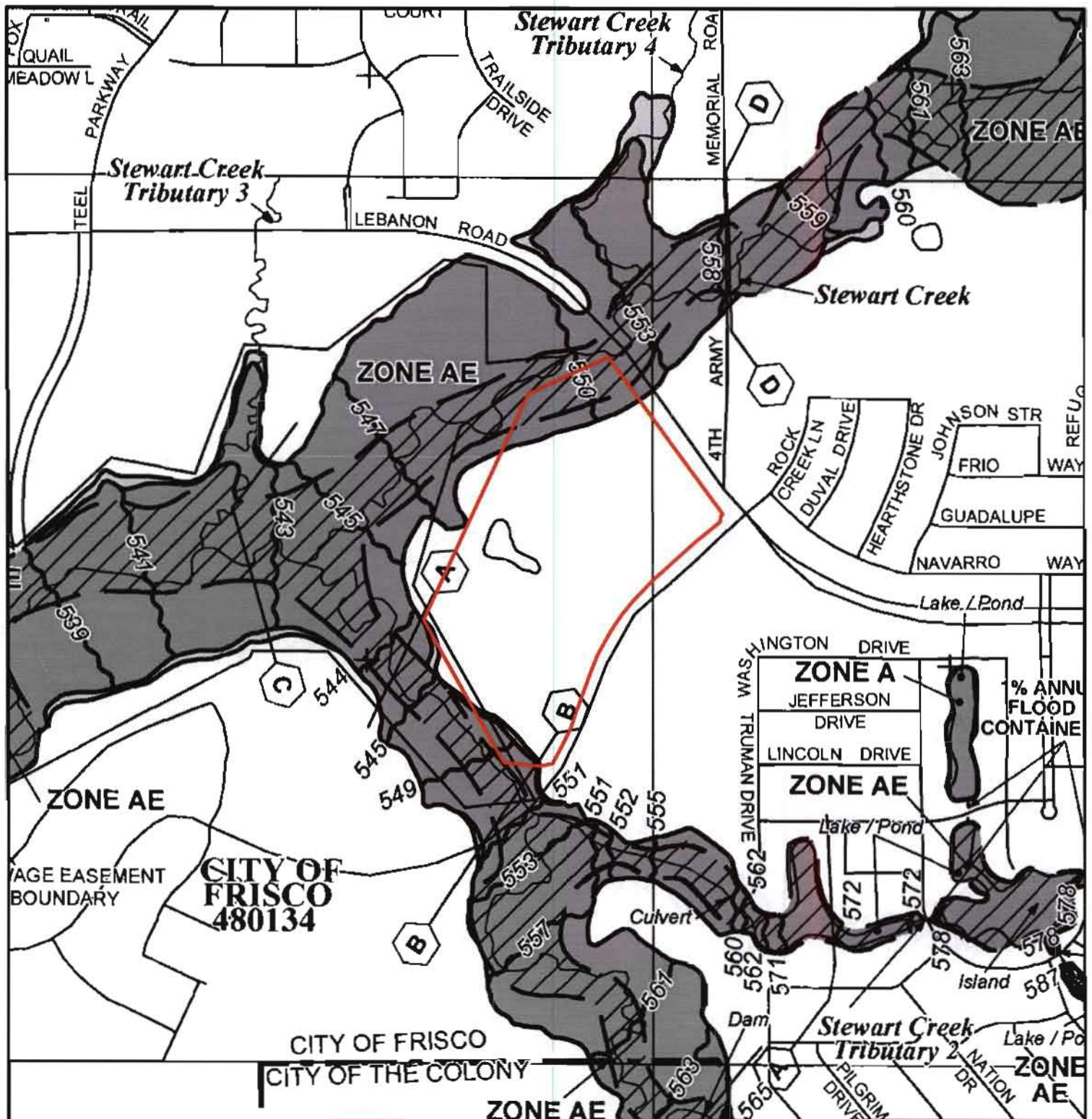


County: Denton
State: Texas
Date map created: 10/15/2012
Source: USGS Topographic Map
Hebron 7.5' Quadrangle, 1982

1 inch = 1,000 feet







**Figure 4
FEMA FIRM with
the Survey Area**

County: Denton
 State: Texas
 Date map created: 10/15/2012
 Source: Federal Emergency
 Management Agency Flood
 Insurance Rate Map Panel
 FM48121C0580G
 Effective 4/18/2011

Survey Area

FEMA FIRM Zone Descriptions

- Zone X - Areas determined to be outside the 0.2% annual chance floodplain
- Zone X - Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood
- Zone A - Special Flood Hazard Areas subject to inundation by the 1% annual chance flood; No base flood elevations determined
- Zone AE - Special Flood Hazard Areas subject to inundation by the 1% annual chance flood; Base flood elevations determined
- Zone AE - Floodway areas in Zone AE

1 inch = 750 feet

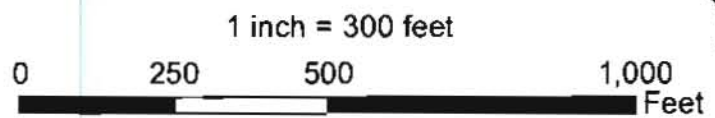
0 500 1,000 2,000
Feet



Figure 5
Water Features identified
within the Survey Area

County: Denton
 State: Texas
 Date map created: 10/15/2012
 Source: 2008 USDA FSA TOP
 Aerial Photography

- Survey Area
- ▲ Dataform Location
- Features that meet a definition of a Water of the United States**
- Tributary
- Herbaceous Wetland



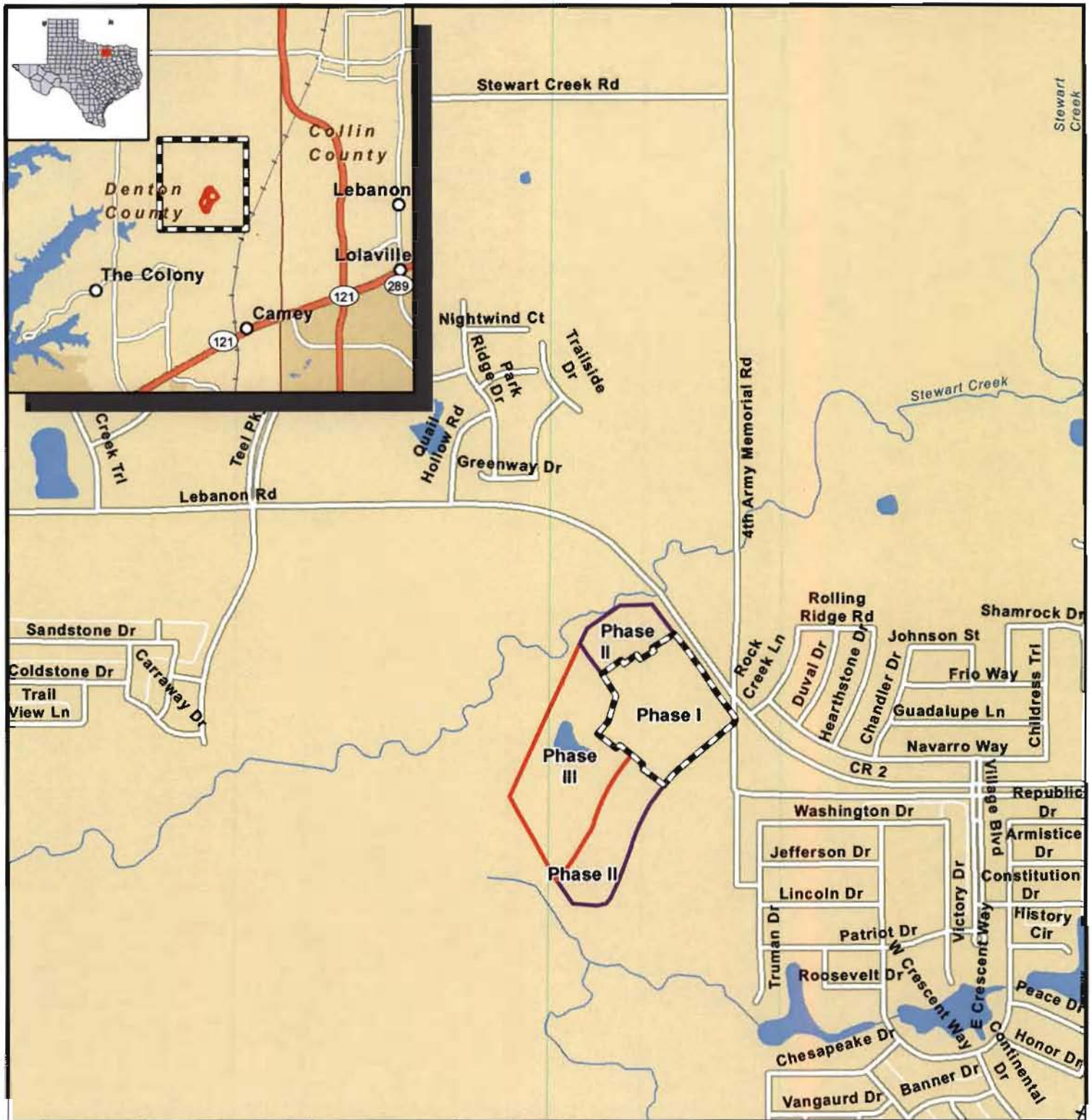


Figure 1
General Location Map

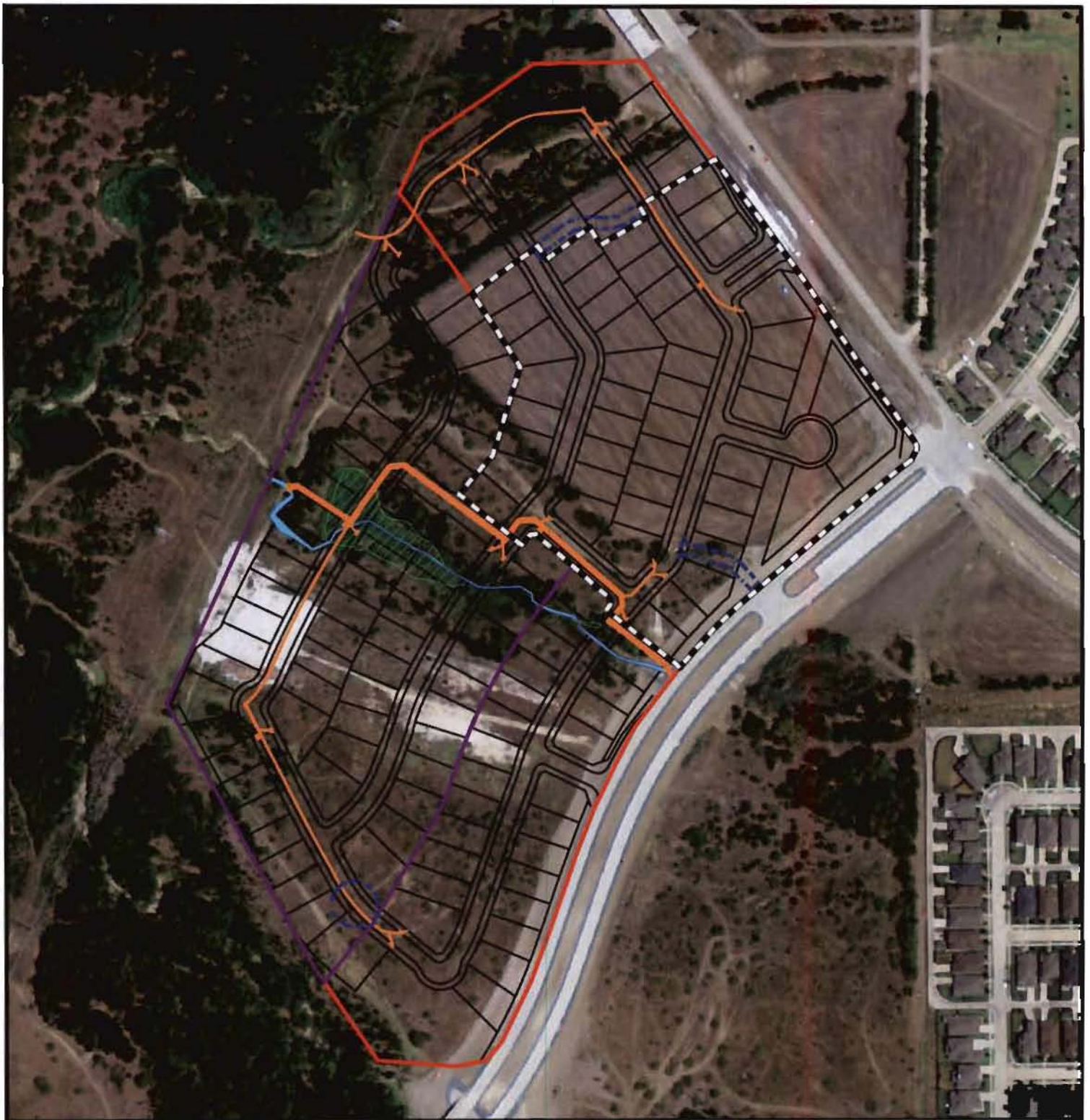
County: Denton
 State: Texas
 Date map created: 1/8/2013
 Source: ESRI Streetmap
 North America

-  Phase I
-  Proposed Phase II
-  Proposed Phase III



1 inch = 1,000 feet





**Figure 2
Proposed Site Plan**

County: Denton
 State: Texas
 Date map created: 1/7/2013
 Source: 2008 USDA FSA TOP
 Aerial Photography

	Proposed Site Plan		Temporary Roads	
	Proposed Culverts		Phase I	
	Proposed Phase III		Proposed Phase II	

Individual Permit Project Area

1 inch = 300 feet

0 240 480 960
 Feet



Figure 3
Impacts to Waters
of the United States

County: Denton
 State: Texas
 Date map created: 1/8/2012
 Source: 2008 USDA FSA TOP
 Aerial Photography

