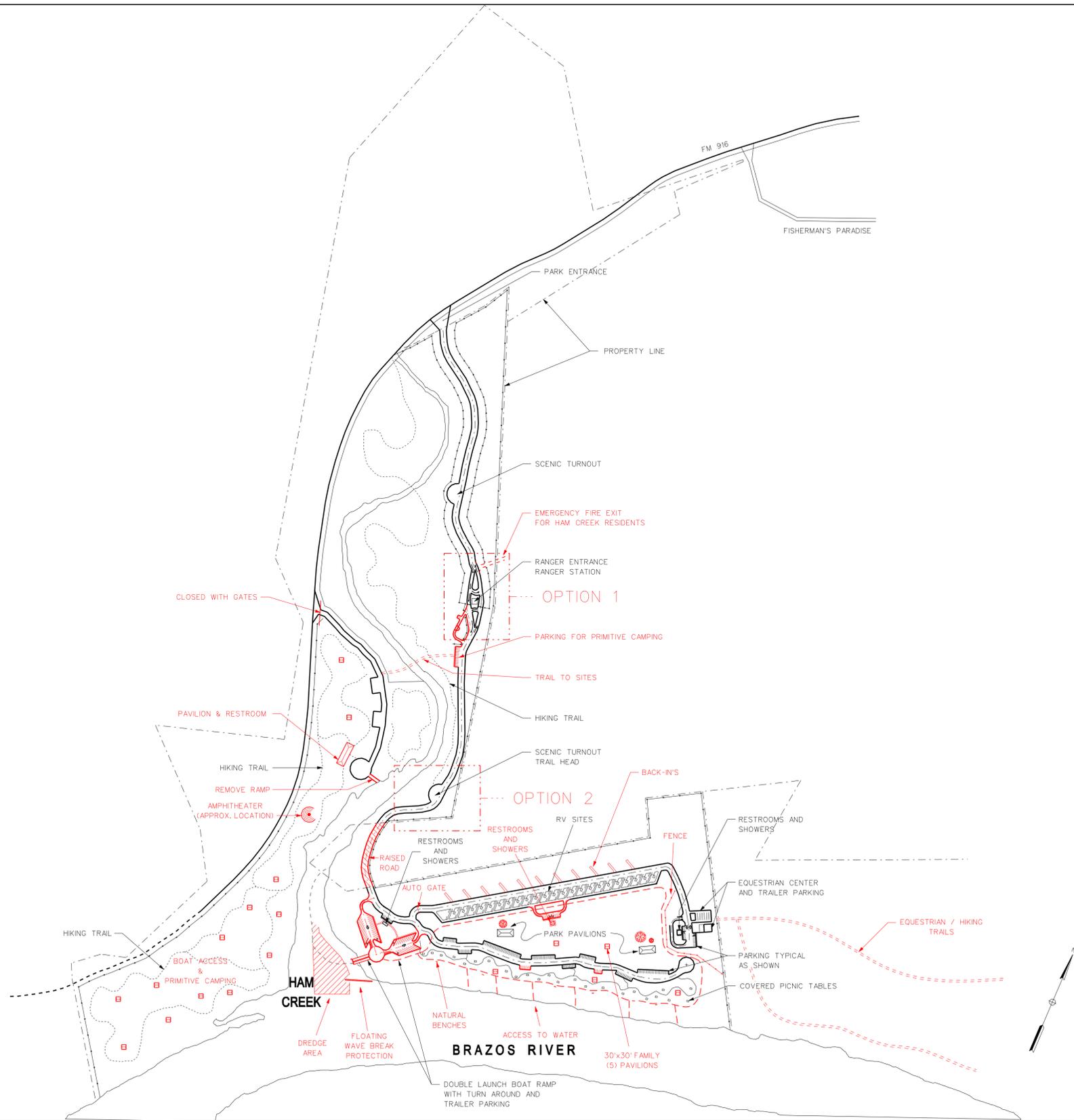


APPENDIX A
FIGURES

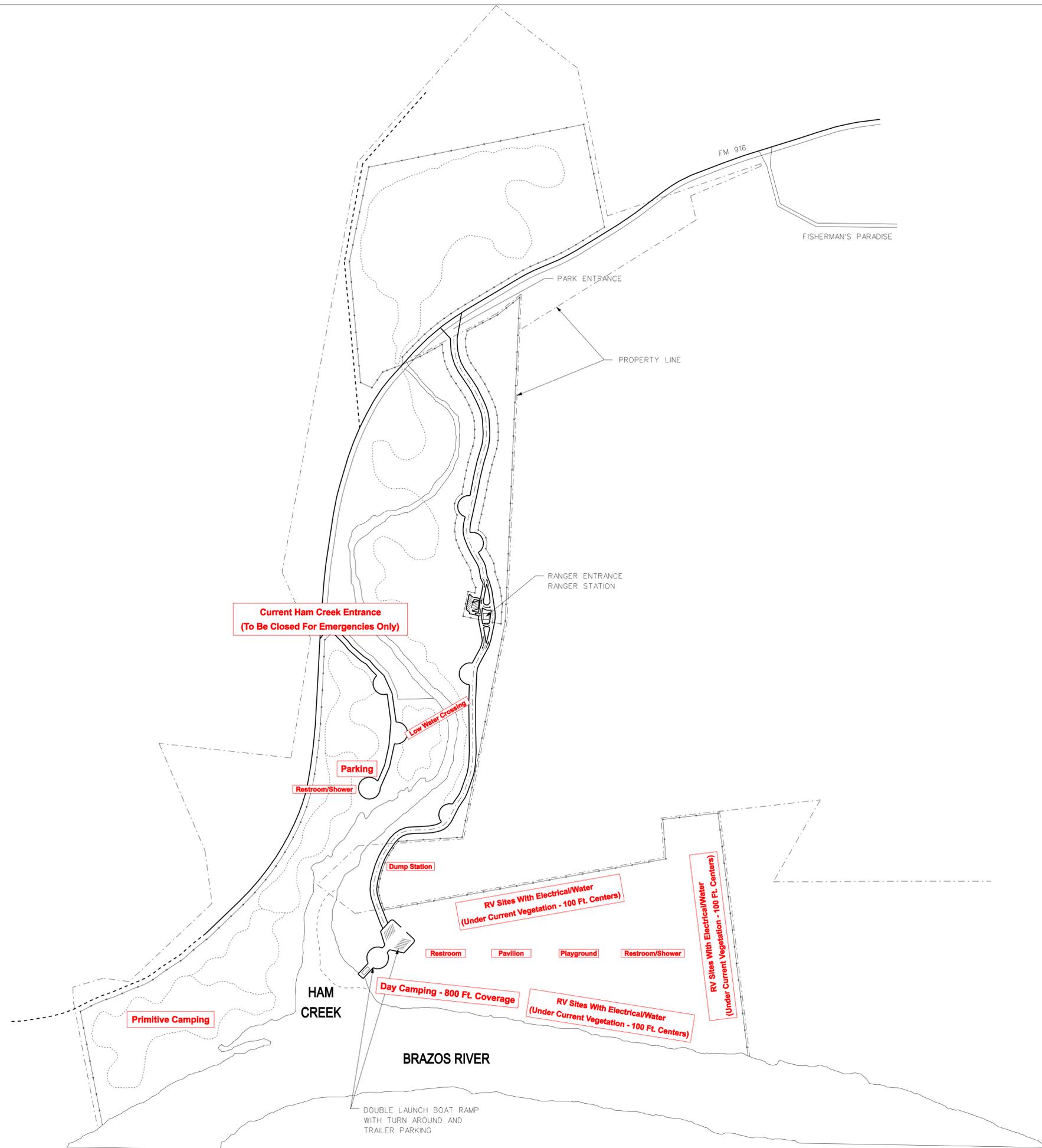


U.S. ARMY CORPS OF ENGINEERS
 MD-BRAZOS PROJECT
 HAM CREEK PARK
 (FINAL PROPOSAL)
 WHITNEY LAKE, TEXAS

DATE: DEC 2005
 REVISED: 12-21-05

BOOK NO.: 1-1
 HAM CREEK - PROPOSAL.DGN

SCALE: 400' / 200' / 400'

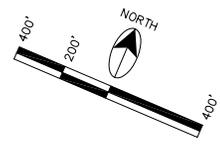


GROUP "A"
 DATE: 12-16-5

DAY USE ACCESS ROAD
FOLLOWS POWER LINE RIGHT OF WAY
LOW WATER CREEK CROSSING

ENTRANCE STATION

AMPI THEATER



RV SITES ABOVE 550' ELEVATION

EMERGENCY EXIT THROUGH
EXISTING GATE

TENT SITES BELOW 550'

DREDGE INLET FOR BOAT PARK
AND USE DIRT TO FILL THE
REST OF THE LOW AREA

HAM
CREEK

RESTROOMS
SHOWERS

BRAZOS RIVER

DOUBLE BOAT RAMP
WITH COURTESY DOCK
AND PARKING FOR 30

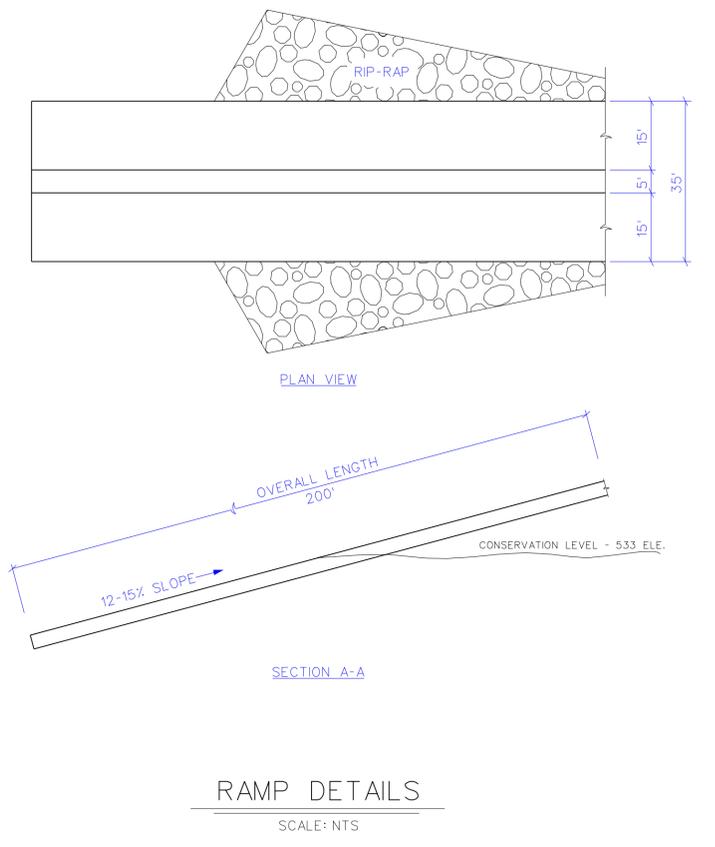
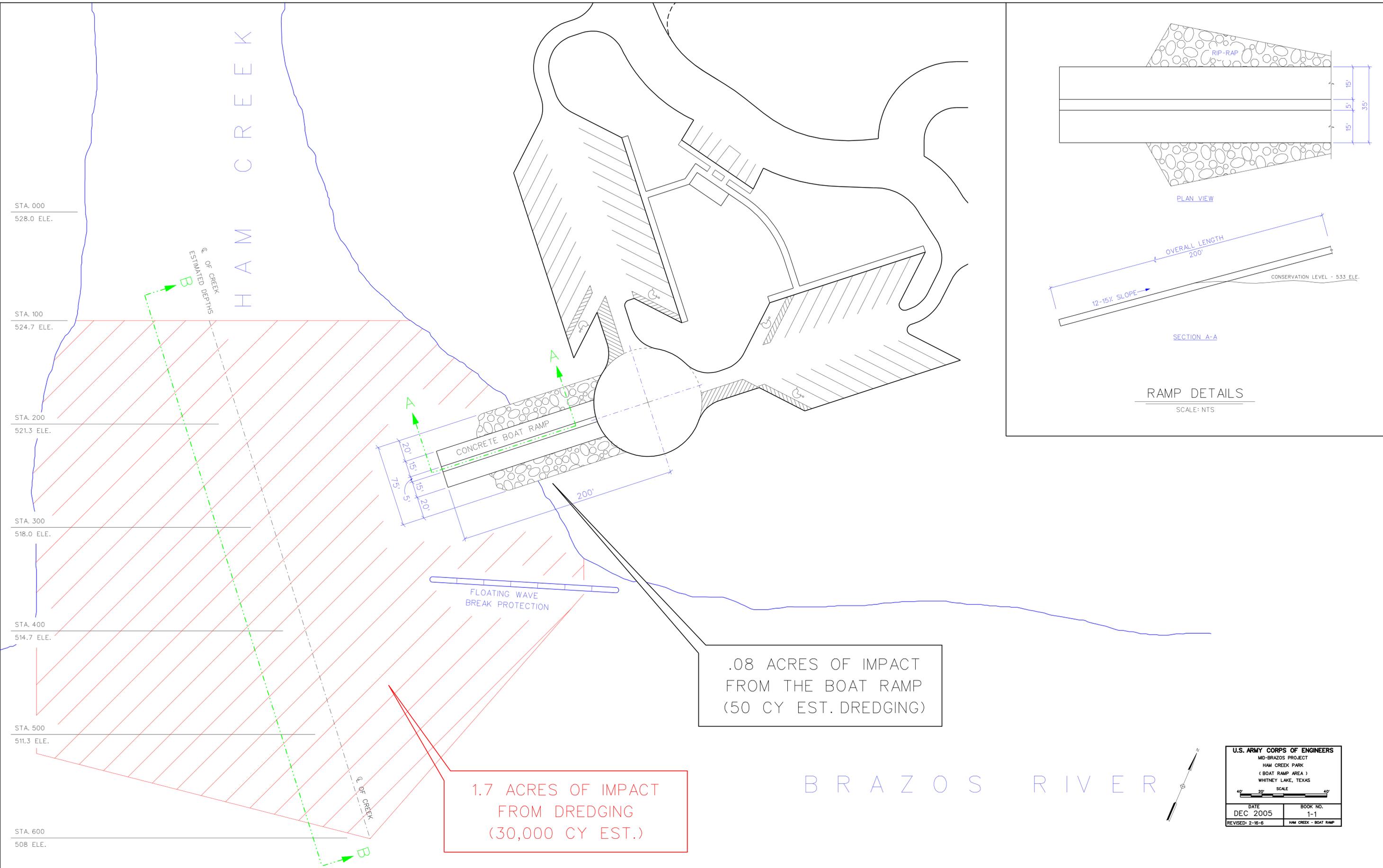
PHASE 1 PAVILION

PHASE 1 RESTROOMS

PHASE 2 PAVILION

PHASE 2 RESTROOM

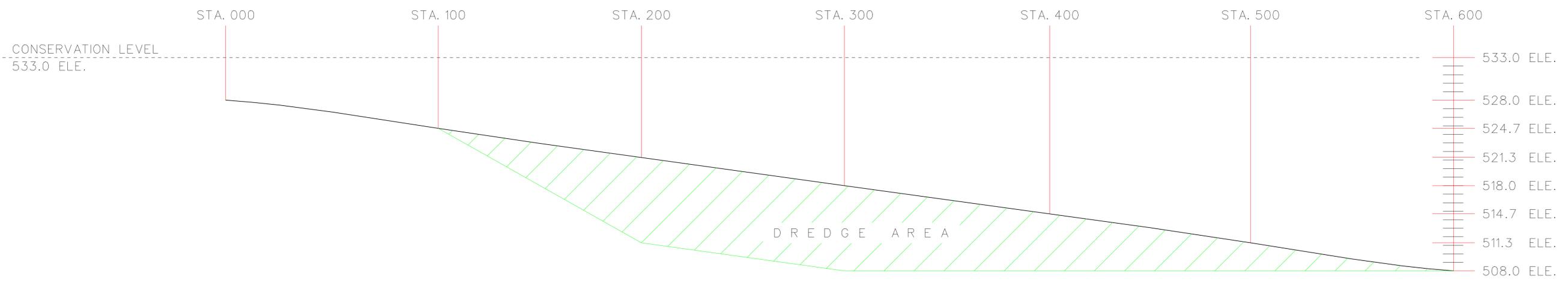
FUTURE RIVERFRONT TRAIL



B R A Z O S R I V E R



U.S. ARMY CORPS OF ENGINEERS	
MID-BRAZOS PROJECT	
HAM CREEK PARK	
(BOAT RAMP AREA)	
WHITNEY LAKE, TEXAS	
SCALE: 1" = 40'	
DATE	BOOK NO.
DEC 2005	1-1
REVISED: 2-16-6	HAM CREEK - BOAT RAMP



SECTION B-B

HAM CREEK PARK
SCALE: NTS

APPENDIX B
THREATENED AND ENDANGERED
SPECIES INFORMATION

BOSQUE COUNTY

Federal Status State Status

*** BIRDS ***

- Arctic Peregrine Falcon (*Falco peregrinus tundrius*)** - potential migrant DL T
- Bald Eagle (*Haliaeetus leucocephalus*)** - found primarily near seacoasts, rivers, and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds LT-PDL T
- Black-capped Vireo (*Vireo atricapilla*)** - oak-juniper woodlands with distinctive patchy, two-layered aspect; shrub and tree layer with open, grassy spaces; requires foliage reaching to ground level for nesting cover; return to same territory, or one nearby, year after year; deciduous and broad-leaved shrubs and trees provide insects for feeding; species composition less important than presence of adequate broad-leaved shrubs, foliage to ground level, and required structure; nesting season March-late summer LE E
- Golden-cheeked Warbler (*Dendroica chrysoparia*)** - juniper-oak woodlands; dependent on Ashe juniper (also known as cedar) for long fine bark strips, only available from mature trees, used in nest construction; nests are placed in various trees other than Ashe juniper; only a few mature junipers or nearby cedar brakes can provide the necessary nest material; forage for insects in broad-leaved trees and shrubs; nesting late March-early summer LE E
- Henslow's Sparrow (*Ammodramus henslowii*)** - wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses occur along with vines and brambles; a key component is bare ground for running/walking; likely to occur, but few records within this county
- Interior Least Tern (*Sterna antillarum athalassos*)** - this subspecies is listed only when inland (more than 50 miles from a coastline); nests along sand and gravel bars within braided streams, rivers; also know to nest on man-made structures (inland beaches, wastewater treatment plants, gravel mines, etc); eats small fish & crustaceans, when breeding forages within a few hundred feet of colony LE E
- Migrant Loggerhead Shrike (*Lanius ludovicianus migrans*)** - open and semi-open grassy areas with scattered trees and brush; breeding March-late August
- Mountain Plover (*Charadrius montanus*)** - breeding: nests on high plains or shortgrass prairie, on ground in shallow depression; nonbreeding: shortgrass plains and bare, dirt (plowed) fields; primarily insectivorous
- Western Burrowing Owl (*Athene cunicularia hypugaea*)** - open grasslands, especially prairie, plains, and savanna, sometimes in open areas such as vacant lots near human habitation or airports; nests and roosts in abandoned burrows and man-made structures, such as culverts
- Whooping Crane (*Grus americana*)** - potential migrant; winters in and around Aransas National Wildlife Refuge and migrates to Canada for breeding; only remaining natural breeding population of this species LE E

*** FISHES ***

- Guadalupe Bass (*Micropterus treculii*)** - introduced in Nueces River system; endemic to perennial streams of the Edwards Plateau region
- Sharpnose Shiner (*Notropis oxyrhynchus*)** - endemic to Brazos River drainage; also, apparently introduced into adjacent Colorado River drainage; large turbid river, with bottom a combination of sand, gravel, and clay-mud C1

BOSQUE COUNTY, cont'd

Federal Status	State Status
	C1

Smalleye Shiner (*Notropis buccula*) – endemic to upper Brazos River system and its tributaries; apparently introduced into adjacent Colorado River drainage; medium to large prairie streams with sandy substrate and turbid to clear warm water; presumably eats small aquatic invertebrates

***** INSECTS *****

Leon River Winter Stonefly (*Taeniopteryx starki*) - habitat not described in detail, but apparently breeds in rivers; several members of this genus are known to use warm lotic environments, while others use cold lotic environments

***** MAMMALS *****

Cave Myotis Bat (*Myotis velifer*) - roosts colonially in caves, rock crevices, old buildings, carports, under bridges, and even in abandoned Cliff Swallow (*Petrochelidon pyrrhonota*) nests; roosts in clusters of up to thousands of individuals; hibernates in limestone caves of Edwards Plateau and gypsum caves of Panhandle during winter; opportunistic insectivore

Plains Spotted Skunk (*Spilogale putorius interrupta*) – catholic in habitat; open fields, prairies, croplands, fence rows, farmyards, forest edges, and woodlands; prefers wooded, brushy areas and tallgrass prairie

*****MOLLUSKS*****

False Spike Mussel (*Quincuncina mitchelli*) - substrates of cobble and mud, with water lilies present; Rio Grande, Brazos, Colorado, and Guadalupe (historic) river basins

Pistolgrip (*Tritogonia verrucosa*) - stable substrate, rock, hard mud, silt, and soft bottoms, often buried deeply; east and central Texas, Red through San Antonio River basins

Rock-pocketbook (*Arcidens confragosus*) - mud, sand, and gravel substrates of medium to large rivers in standing or slow flowing water, may tolerate moderate currents and some reservoirs, east Texas, Red through Guadalupe River basins

Smooth Pimpleback (*Quadrula houstonensis*) - small to moderate streams and rivers as well as moderate size reservoirs; mixed mud, sand, and fine gravel, tolerates very slow to moderate flow rates, appears not to tolerate dramatic water level fluctuations, scoured bedrock substrates, or shifting sand bottoms, lower Trinity (questionable), Brazos, and Colorado River basins

Texas Fawnsfoot (*Truncilla macrodon*) - little known; possibly rivers and larger streams, and intolerant of impoundment; flowing rice irrigation canals, possibly sand, gravel, and perhaps sandy-mud bottoms in moderate flows; Brazos and Colorado River basins

***** REPTILES *****

Brazos Water Snake (*Nerodia harteri*) - upper Brazos River drainage; in shallow water with rocky bottom and on rocky portions of banks

T

Texas Garter Snake (*Thamnophis sirtalis annectens*) - wet or moist microhabitats are conducive to the species occurrence, but is not necessarily restricted to them; hibernates underground or in or under surface cover; breeds March-August

	Federal Status	State Status
Texas Horned Lizard (<i>Phrynosoma cornutum</i>) - open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive; breeds March-September		T
Timber/Canebrake Rattlesnake (<i>Crotalus horridus</i>) - swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland, limestone bluffs; sandy soil or black clay; prefers dense ground cover, i.e. grapevines or palmetto		T

Status Key:

LE,LT - Federally Listed Endangered/Threatened

PE,PT - Federally Proposed Endangered/Threatened

E/SA,T/SA - Federally Endangered/Threatened by Similarity of Appearance

C1 - Federal Candidate, Category 1; information supports proposing to list as endangered/threatened

DL,PDL - Federally Delisted/Proposed for Delisting

NL - Not Federally Listed

E,T - State Endangered/Threatened

"blank" - Rare, but with no regulatory listing status

Species appearing on these lists do not all share the same probability of occurrence. Some species are migrants or wintering residents only, or may be historic or considered extirpated.

JOHNSON COUNTY

Federal Status State Status

*** BIRDS ***

Arctic Peregrine Falcon (<i>Falco peregrinus tundrius</i>) - potential migrant	DL	T
Bald Eagle (<i>Haliaeetus leucocephalus</i>) - found primarily near seacoasts, rivers, and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds	LT-PDL	T
Black-capped Vireo (<i>Vireo atricapilla</i>) - oak-juniper woodlands with distinctive patchy, two-layered aspect; shrub and tree layer with open, grassy spaces; requires foliage reaching to ground level for nesting cover; return to same territory, or one nearby, year after year; deciduous & broad-leaved shrubs & trees provide insects for feeding; species composition less important than presence of adequate broad-leaved shrubs, foliage to ground level, & required structure; nests mid April-late summer	LE	E
Golden-cheeked Warbler (<i>Dendroica chrysoparia</i>) - juniper-oak woodlands; dependent on Ashe juniper (also known as cedar) for long fine bark strips, only available from mature trees, used in nest construction; nests placed in various trees other than Ashe juniper; only a few mature junipers or nearby cedar brakes can provide the necessary nest material; forage for insects in broad-leaved trees & shrubs; nests late March-early summer	LE	E
Henslow's Sparrow (<i>Ammodramus henslowii</i>) - wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses occur along with vines and brambles; a key component is bare ground for running/walking; likely to occur, but few records within this county		
Interior Least Tern (<i>Sterna antillarum athalassos</i>) – this subspecies is listed only when inland (more than 50 miles from a coastline); nests along sand and gravel bars within braided streams, rivers; also know to nest on man-made structures (inland beaches, wastewater treatment plants, gravel mines, etc); eats small fish & crustaceans, when breeding forages within a few hundred feet of colony	LE	E
Migrant Loggerhead Shrike (<i>Lanius ludovicianus migrans</i>) - open and semi-open grassy areas with scattered trees and brush; breeding March-late August		
Mountain Plover (<i>Charadrius montanus</i>) – breeding: nests on high plains or shortgrass prairie, on ground in shallow depression; nonbreeding: shortgrass plains and bare, dirt (plowed) fields; primarily insectivorous		
Western Burrowing Owl (<i>Athene cunicularia hypugaea</i>) - open grasslands, especially prairie, plains, and savanna, sometimes in open areas such as vacant lots near human habitation or airports; nests and roosts in abandoned burrows and man-made structures, such as culverts		
White-faced Ibis (<i>Plegadis chihi</i>) - prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats		T
Whooping Crane (<i>Grus americana</i>) - potential migrant; winters in and around Aransas National Wildlife Refuge and migrates to Canada for breeding; only remaining natural breeding population of this species	LE	E

Federal State
Status Status

LE, LT - Federally Listed Endangered/Threatened
PE, PT - Federally Proposed Endangered/Threatened
E/SA, T/SA - Federally Endangered/Threatened by Similarity of Appearance
 C1 - Federal Candidate, Category 1; information supports proposing to list as
 endangered/threatened
DL, PDL - Federally Delisted/Proposed Delisted
 E, T - State Endangered/Threatened
 “blank” - Rare, but with no regulatory listing status

Species appearing on these lists do not share the same probability of occurrence. Some species are migrants or wintering residents only, or may be historic or considered extirpated.

HILL COUNTY

Federal Status State Status

*** BIRDS ***

- Arctic Peregrine Falcon (*Falco peregrinus tundrius*)** - potential migrant DL T
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- Western Burrowing Owl (*Athene cunicularia hypugaea*)** - open grasslands, especially prairie, plains, and savanna, sometimes in open areas such as vacant lots near human habitation or airports; nests and roosts in abandoned burrows and man-made structures, such as culverts
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- Whooping Crane (*Grus americana*)** - potential migrant; winters in and around Aransas National Wildlife Refuge and migrates to Canada for breeding; only remaining natural breeding population of this species LE E

*** FISHES ***

- Smalleye Shiner (*Notropis buccula*)** - endemic to upper Brazos River system and its tributaries; apparently introduced into adjacent Colorado River drainage; medium to large prairie streams with sandy substrate and turbid to clear warm water; C1

Federal State
Status Status

presumably eats small aquatic invertebrates

***** MAMMALS *****

Cave Myotis Bat (*Myotis velifer*) - roosts colonially in caves, rock crevices, old buildings, carports, under bridges, and even in abandoned Cliff Swallow (*Petrochelidon pyrrhonota*) nests; roosts in clusters of up to thousands of individuals; hibernates in limestone caves of Edwards Plateau and gypsum caves of Panhandle during winter; opportunistic insectivore

Plains Spotted Skunk (*Spilogale putorius interrupta*) – catholic in habitat; open fields, prairies, croplands, fence rows, farmyards, forest edges, and woodlands; prefers wooded, brushy areas and tallgrass prairie

*****MOLLUSKS*****

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***** REPTILES *****

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Texas Horned Lizard (*Phrynosoma cornutum*) – open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive; breeds March-September

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T

T

LE, LT - Federally Listed Endangered/Threatened

PE, PT - Federally Proposed Endangered/Threatened

E/SA, T/SA - Federally Endangered/Threatened by Similarity of Appearance

C1 - Federal Candidate, Category 1; information supports proposing to list as



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
WinSystems Center Building
711 Stadium Drive, Suite 252
Arlington, Texas 76011

21420-2006-F-0055

February 14, 2006

Ronald L. Bruggman
Department of the Army
Fort Worth District, Corps of Engineers
Whitney/Aquilla Lakes
285 CR 3602
Clifton, Texas 76634

Dear Mr. Bruggman:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the U.S. Army Corps of Engineers (USACE) proposed development of Ham Creek Park for future recreational use and its effects on the federally listed golden-cheeked warbler (*Dendroica chrysoparia*) (GCWA). The park encompasses approximately 191 acres and is located in Johnson County, Texas on the northern portion of Whitney Lake.

This biological opinion has been prepared in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) The biological opinion is based on the Biological Assessment included with your letter initiating consultation, information provided by USACE staff, and other sources of information. A complete administrative record of this consultation is on file at the Service's Arlington, Texas, Ecological Services Field Office.

Consultation History

August 4, 2005: Initial meeting and site visit hosted by members of Whitney Lake USACE staff to discuss proposed development of Ham Creek Park for future recreational use. Whitney Lake USACE personnel provided information on the presence of listed species on the park property. Service representatives identified habitat indicators found on the property and discussed the consultation process, including timelines and biological assessment content, provided a copy of the Consultation Handbook, and provided guidelines on minimization measures.

- August 12, 2005: E-mailed additional information to Whitney Lake USACE staff regarding assembly of a Biological Assessment (BA) and invited them to share any draft copies as they became available.
- September 9, 2005: Received telephone request from Ernest Eberly of the Whitney Lake USACE for additional information regarding the BA. Mr. Eberly was advised that the Service would be responsible for evaluating the estimated effects of the action to listed species and that the USACE should provide an account of all planned actions, project timeframes, and details of park usage after completion.
- November 7, 2005: Arlington Field Office received written request from USACE initiating formal consultation on the proposed action. Written acknowledgement of the initiation package was sent to USACE on November 21, 2005.
- December 21, 2005: Second site visit conducted at Ham Creek Park property. Service personnel and Ronald Bruggman and Sam Masters of Whitney Lake USACE clarified the dimensions of GCWA habitat within and beyond USACE property boundaries potentially impacted by the proposed project. Current account of project plans also disclosed and minimization measures discussed.

BIOLOGICAL OPINION

I. Description of Proposed Action

The USACE in conjunction with Johnson County proposes to develop Ham Creek Park at Whitney Lake for future recreational opportunities. The property proposed for development is approximately 191 acres and is located in Johnson County on the northern portion of Whitney Lake. The park is divided east and west by Ham Creek and its riparian corridor and is further designated into sections A, B, and C, each differing in topography, vegetation, and proposed development.

General: Park development would include facilities for day-users and campers. Existing facilities and roadways would be utilized to the maximum extent possible. Park development would be contained within the footprint of existing park facilities as much as possible. Trails may extend outside the described footprint. Figure 1 details the proposed park development.



Figure 1. Proposed Park Development

Existing roadway surfaces are 20 feet wide and are mostly gravel overgrown with grass and forbs, with the exception of asphalt roadways located on the west side of the park. The tree canopy overhanging the road surface would be trimmed to a height of 15 feet. All roadway surfaces would remain 20 feet wide. Gravel roadway surfaces would be improved to an asphalt surface and existing asphalt surfaces would have new asphalt surfacing applied. Road shoulders and adjacent drainage ditches would be widened. Existing shoulders and drainage ditches vary up to 5 feet from the edge of the roadway. New road shoulders would be up to 2 feet on both sides of the road. New drainage ditches, with culverts under the roadway as necessary to allow for adequate drainage, would be up to 6 feet wide. Utility lines, including electric, water, sewer and telephone, would be placed within the road shoulders. Road surfaces and corresponding rights-of-way (ROW) would total a width of 36 feet throughout their lengths.

The trails would support hiking, biking and equestrian use. Trail size would average 11 feet wide and would consist of an unimproved surface. Trails situated within woody vegetation would be designed to minimize vegetation removal and no trees would be removed. Tree limbs overhanging the trail at a height less than 16 feet would be trimmed to allow for horse and rider clearance. Specific trail length is not yet determined, but it is estimated approximately 1.5 miles of trail may extend through GCWA habitat within Ham Creek Park. Barriers would be placed at trail entrances to prevent vehicular access, and trails would only be available during daylight hours. Trail entrances would also have signs noting restrictions in order to minimize potential impacts to GCWAs.

Barbed-wire fence and/or pipe fence would be installed along the perimeter of the entire park to prevent ATV access. Vehicle barriers in the form of pipe fence would be placed along roadways and parking areas to restrict vehicle access to road surfaces only. Security lights would be installed at the boat ramp, restrooms, and gatehouse complex for security and safety purposes. Refuse receptacles would be utilized throughout the recreation area.

It is anticipated that initial construction would occur between March and September 2006. Construction would occur in phases over several years as funding is received. Phase I includes renovating existing roadways and constructing a boat ramp with parking lot and courtesy dock. Phase II would involve the renovation of an existing restroom, construction of a new gatehouse entrance complex, new restroom and installing utility lines. Campsites, group shelters, and trails would be constructed in Phase III.

The action area for the proposed project includes the anticipated extent of the direct and indirect effects. The Service has determined the action area to include the proposed 191 acre property and an approximately 51.4 acre area immediately adjacent to the property for reasons that are discussed in the "Effects of the Action" section of this opinion.

Park Sections:

Section A (56 acres) is approximately 4200 feet in length and begins at FM 916, extending to confluence with the Brazos River and varying in width from 153-1,080 feet (Figure 1). The canyon slope along this section is vegetated with mature juniper/oak woodlands. Ashe juniper (*Juniperus ashei*) and plateau live oak (*Quercus fusiformis*) are the dominant tree species in the overstory. Other species occurring less frequently include Texas red oak (*Quercus buckleyi*), white shin oak (*Quercus sinuata* var. *breviloba*), American sycamore (*Platanus occidentalis*), netleaf hackberry (*Celtis reticulata*), cedar elm (*Ulmus crassifolia*), and Texas ash (*Fraxinus texensis*). The canopy cover of the wooded upland areas ranges from 75-90%.

A gate entrance complex would be installed along the access road. The specific location is not yet determined, but would either be placed in Section A or B, with Section A being the preferred alternative (Ronald Bruggman, pers. comm. 2005). The complex would include one-way entrance and exit lanes, gatehouse, parking lot, pull-off lanes, and two gate attendant pads. The complex would be comprised of approximately 4 acres. Section A is a long wooded corridor paralleling the east side of the creek bed, which would serve as the main access road for the park.

Section B (58 acres) is comprised of relatively flat, grassy lowlands situated along the flood plain of the Brazos River that would serve as the camping and day use area. The area is generally vegetated with herbaceous species including Johnsongrass (*Sorghum halapense*), silver bluestem (*Bothriochola laguroides*), giant ragweed (*Ambrosia trifida*), Texas bluebonnet (*Lupinus texensis*) and goldenrod (*Solidago* sp.) Low shrubs, Virginia creeper (*Parthenocissus quinquefolia*), wild grape and green briar vines, along with small clusters of young elm, hackberry, and oak trees, are scattered throughout. A mature juniper-oak complex occupies the fence line along northwestern boundary of this section, while a mix of mature pecan, oak and elm trees line the river bank on the southern edge.

This area would include most of the park facilities. A two-lane boat ramp with a parking lot containing approximately 50 parking spaces to accommodate vehicles with boat trailers would be constructed adjacent to Ham Creek just upstream of the lake. A courtesy dock for boat loading and unloading would also be placed adjacent to the boat ramp. An existing waterborne restroom with showers may be renovated and an additional waterborne restroom would be constructed. It is anticipated that the existing county water system may provide water services. Thirty-five campsites with electricity and water hook-ups would be constructed along the upper portion of the section and twenty picnic sites would be placed near the lakeshore. Additional amenities would include a playground, dump station, group shelters, a hiking/equestrian trail and other various amenities. Trails in Section B may extend beyond the park footprint.

Section C (46 acres) is located on the west side of Ham Creek and appears to contain no suitable GCWA habitat (Anjna O'Connor, pers. comm. 2005). Ashe juniper and plateau live oak are the dominant tree species in the overstory, although few mature ashe junipers are present. Other species occurring less frequently include Texas red oak, white shin oak, American sycamore, netleaf hackberry, cedar elm, and Texas ash. The canopy cover of the wooded upland areas ranges from 75-90%. The area is generally vegetated with herbaceous species including Johnsongrass, silver bluestem, giant ragweed, Texas bluebonnet, and goldenrod. Low shrubs, Virginia creeper, wild grape and green briar vines, along with small clusters of young elm, hackberry, and oak trees are scattered throughout the interior.

The trail in Section C would be for hiking-only and would have an unimproved surface 8 feet wide. Like the other hiking and equestrian trails, it would be routed to minimize woody vegetation removal and no trees would be removed. A shelter may be placed adjacent to the road near the middle of Section C. The existing boat ramp within the section would be closed. The road below the hiking trail and group shelter may be closed preventing vehicle access.

Minimization Measures: The proposed action also includes several minimization measures in the form of preservation of existing GCWA habitat on the property and efforts to minimize the impacts of human disturbance before and after the park becomes operational. In order to protect and minimize impacts to existing habitat while allowing for the development of the park, perpetual No-Build Zones would be established to preserve GCWA habitat. No-Build Zones would include portions of Sections A and C (Figure 2) after completion of (and outside of) the proposed roadway widening, entrance complex, group shelters, perimeter fencing, and trails. The remaining portion of Section A not included within the No-Build Zone is privately owned, but USACE retains an easement.

Vehicle barriers would also be placed along all roadways and parking areas to prevent vehicular access within GCWA habitat and barbed-wire and/or pipe fence installed along park perimeter to prevent illegal ATV access. Construction would only be permitted outside of the No-Build Zones. Previously disturbed areas would be utilized whenever possible when establishing specific locations for facilities. Whenever possible, facilities would be located as far away as possible from GCWA habitat.

Figure 2: No-Build Zones, Ham Creek Park, Johnson County, Texas



It is anticipated the park would operate under Title 36 Rules and Regulations and any additional restrictions placed by the Corps of Engineers and Johnson County. Park gates would be open from 6 am to 10 pm and quiet hours would be in effect from 10 pm to 6 am. All pets would be required to remain restrained at all times. Campfires would be permitted in accordance with local county authority. Gathering firewood would be permitted; however, gathering firewood within GCWA habitat would not be permitted and signs would be installed adjacent to GCWA habitat to that effect.

Construction activities would take place outside of the GCWA nesting season, March through end of July, as much as possible. Due to the fiscal year budgeting process, road construction activities will be necessary during the nesting season. Construction of the remaining facilities adjacent to and within GCWA habitat would occur outside of the GCWA nesting season, with timely funding of project appropriations.

Trees would remain undisturbed to every extent possible. Specific facility locations would be determined by the location of trees and the location for which the least tree disturbance would occur. Tree canopies over roadways would remain intact as much as possible.

Potential impacts of lighting generated by the park development would be minimized through the use of directional lighting. The lighting would be directed away from GCWA habitat as much as possible.

Monitoring of GCWAs would be performed to aid in preservation of habitat within Ham Creek Park. Potential disturbances would be reduced as much as possible following Service recommendations. In addition, as funding allows, wildlife and plant communities would be monitored and appropriate management measures taken as recommended by the Service. This includes the monitoring of oak wilt fungus which if detected, would be controlled to reduce and prevent its spread, depending on availability of funding.

II. Status of the Species

The current list of federally threatened (T), endangered (E), and candidate (C) species that are known to occur, or have been documented in Johnson County consists of the following:

- bald eagle (*Haliaeetus leucocephalus*) – T
- black-capped vireo (*Vireo atricapilla*) – E
- golden-cheeked warbler (*Dendroica chrysoparia*) – E
- whooping crane (*Grus americana*) – E

The black-capped vireo and whooping crane are known to occur in Johnson County, but are not expected to occur in the action area due to the lack of habitat. For this reason, USACE has determined that the proposed action would have no effect on the black-capped vireo and whooping crane. Therefore, these species will not be discussed further in this biological opinion, and no take of these species is authorized.

The bald eagle has been reported at various locations at Whitney Lake, but none within or

adjacent to Ham Creek Park have been reported. Habitat within the park and along the shoreline is not considered preferred habitat; however, it is possible that bald eagles could potentially utilize trees along the shoreline for perching. For these reasons, the proposed action is not likely to adversely affect bald eagles. Therefore, this species will not be discussed further in this biological opinion, and no take of this species is authorized.

The federally listed endangered species that does occur in the action area and that may be affected by the proposed action is the GCWA. The Service emergency listed the GCWA on May 4, 1990 (55 FR 18844) and published a final rule on December 27, 1990 (55 FR 53160). The recovery plan for the GCWA was finalized on September 30, 1992. Critical habitat has not been designated for this species.

The GCWA is a small, insectivorous songbird, 4.5 to 5 inches long, with a wingspan of about 7.9 inches. The male has a black back, throat, and cap, and yellow cheeks with a black stripe through the eye. Females are similar, but less colorful. The lower breast and belly of both sexes are white with black streaks on the flanks (USFWS 1992).

The GCWA nests in the juniper-oak woodlands of the Texas Hill Country and winters in the pine-oak woodlands of southern Mexico, Guatemala, Honduras, and Nicaragua. Its entire nesting range is confined to 33 counties in central Texas. Typical nesting habitat is found in tall, dense, mature stands of Ashe juniper mixed with deciduous trees such as Texas red oak, Lacey oak (*Quercus glaucooides*), white shin oak, plateau live oak, post oak (*Quercus stellata*), Texas ash, cedar elm, hackberry (*Celtis occidentalis*), bigtooth maple (*Acer grandidentatum*), American sycamore, Arizona walnut (*Juglans major*), escarpment cherry (*Prunus serotina*), and pecan (*Carya illinoensis*). This type of woodland is often found in relatively moist areas such as steep-sided canyons and slopes. GCWAs are also occasionally found in drier, upland juniper-oak, i.e., live oak, post oak, blackjack oak (*Quercus marilandica*) woodlands over flat topography. Although the composition of woody vegetation may vary from place to place, Ashe juniper, which is necessary for nest construction, is always present.

The males arrive in central Texas in early March and begin to establish breeding territories, which they defend against other males by singing from visible perches within their territories. The females arrive a few days later but are more difficult to detect in the dense woodland habitat. Usually three or four eggs are laid. The average nest height is 16.4 feet above ground. Eggs are generally incubated in April and, unless there is a second nesting attempt, nestlings fledge in May to early June. By early August, GCWAs begin their migration south.

Most studies report GCWA territory sizes ranging from 0.09 to 0.21 pairs per acre (Ladd 1985). Wahl et al. (1990) reported that density estimates ranged from zero to 0.26 pairs per acre with a median of 0.06 pairs per acre among several sites throughout the GCWA's range. Pulich (1976) classified warbler habitat into excellent, average, and marginal corresponding to 0.05, 0.02, and 0.01 pairs per acre.

The primary threats to the GCWA are habitat loss and urban encroachment. Other factors include the loss of deciduous oaks (used for foraging) to oak wilt, nest parasitism by brown-headed cowbirds (*Molothrus ater*), and predation and competition by blue jays (*Cyanocitta cristata*) and other urban-tolerant birds (USFWS 1992).

III. Environmental Baseline

a. Status of the species within the action area.

Ham Creek Park encompasses approximately 191 acres at the confluence of Ham Creek and the Brazos River (Whitney Lake). It is located at the northern portion of the approximately 20,000 acre *in fee* property surrounding Whitney Lake owned by USACE which lies across portions of Bosque, Hill, and Johnson Counties in northern central Texas (DLS Assoc. 1996). This area lies within the Lampasas Cut Plain subregion of Texas. This subregion is typically vegetated with oaks such as Texas red oak, plateau live oak, and white shin oak on the rocky Edwards limestone summits of small divides (Diggs et al. 1999). On large divides, areas of deeper soil typically support the westward extension of the Washita Prairie (Hayward et al. 1992). On the chalky thin soiled slopes derived from the underlying Comanche Peak limestone, white shin oak, sumac species, and Ashe juniper may be seen; these dry rocky areas have a distinctly desert-like microclimate (Hayward et al. 1992) and thus support plants with xerophytic adaptations. Below these slopes, on benches in valleys or on the summits of uplands lacking caprock, extensive areas of prairie can be found on the clay soils derived from the Walnut formation where it is exposed (Diggs et al. 1999). The basal Trinity Group sands (Paluxy, Antlers, Twin Mountains-Travis Peak) underlying the Walnut formation developed typical Cross Timbers vegetation such as post oak and blackjack oak (Hill 1901).

The topographic diversity and deeply cut streams found in various parts of the Lampasas Cut Plain provide important microhabitat variation. In particular, the diverse microhabitats allow the northward extension of many species otherwise found primarily on the Edwards Plateau. Some plants that were traditionally considered Edwards Plateau endemics can be found in the Lampasas Cut Plain. These include big-tooth maple, plateau gerardia (*Agalinis edwardsiana*), wild mercury (*Argythamnia aphoroides*), Wright's milk-vetch (*Astragalus wrightii*), plateau false nightshade (*Chamaesaracha edwardsiana*), scarlet clematis (*Clematis texensis*), Lindheimer's silktassel (*Garrya ovata* var. *lindheimeri*), plateau milkvine (*Matelea edwardsensis*), Lindheimer's muhly (*Muhlenbergia lindheimeri*), devil's-shoestring (*Nolina lindheimeriana*), Heller's marbleseed (*Onosmodium helleri*), Lindheimer's rock daisy (*Perityle lindheimeri*), escarpment cherry, turnip-root scurfpea (*Pediomelum cyphocalyx*), plateau spiderwort (*Tradescantia edwardsiana*), Colorado Venus'-looking-glass (*Triodanis coloradoensis*), Lindheimer's crownbeard (*Verbesina lindheimeri*), and twisted-leaf yucca (*Yucca rupicola*). When considering vegetation, soils, geologic layers, and general aspects of the landscape, some parts of the Lampasas Cut Plain are remarkably similar to the Edwards Plateau (Diggs et al. 1999).

Whitney Lake is located within Bosque, Hill, and Johnson Counties, Texas, all of which are located in GCWA Recovery Unit 2. Our current information indicates that potential suitable

habitat in these counties is estimated at 4,147 acres in Bosque, 566 acres in Hill, and 4,197 acres in Johnson. DLS Associates (1996) determined that approximately 2,800± acres, or 14 per cent, of the estimated 20,000± acres of *in fee*, USACE-owned land in the Whitey Lake Project is suitable habitat for the GCWA. USACE has determined that potential suitable habitat for GCWA within the Ham Creek Park property to be 66 acres (Anjna O'Connor, pers. comm. 2005).

Monitoring and research activities for the GCWA within the vicinity of Whitney Lake have been sparsely documented beginning with the 1878 collection of the second GCWA specimen in the United States by G. H. Ragsdale (USFWS 1992). The most recent and thorough accounts of GCWA status at Whitney Lake have come from the USACE-sponsored 1996 study conducted by DLS Associates and follow-up reports conducted by Espy, Houston & Associates, Inc. (1997, 1998).

DLS Associates (1996) observed a minimum of seven and a maximum of nine male GCWAs holding territories at Whitney Lake within three of the five vegetation areas surveyed which did not include Ham Creek Park. Two of four vegetation areas surveyed during the 1997 breeding season revealed two singing males each (Espy, Houston & Associates, Inc. 1997), also not including Ham Creek Park. The subsequent survey (Espy, Houston & Associates, Inc. 1998) yielded observations of 26 GCWAs including one at Ham Creek Park and 23 within close proximity clustered at the apex of Kimball Bend ranging from approximately 0.5 to 1.8 miles from the park property.

Recent GCWA sightings specific to Johnson County include nine individuals near the intersection of Buck Creek and CR 1234, approximately 8.3 miles from Ham Creek Park (Hicks & Company 1999). Information obtained from USACE indicates that on April 24, 2004, Dr. Guilfoyle and Ranger Sam Masters saw one bird and heard at least two others on the Ham Creek Park property. Service records also indicate the documented presence of GCWAs on privately owned land adjacent to the western portion of Ham Creek Park including three individuals in 2001 and nine individuals in 2005. During this same 2005 survey, an additional male was captured and banded on the Ham Creek Park property.

b. Factors affecting species environment within the action area

Ham Creek Park was constructed in the late 1950's and remained fully operational until the early 1980's when the east side of the park was closed due to budget limitations. The west side of the park (Section C) contains a one-lane boat ramp which has remained open and is functional when lake levels are adequate for boat launching.

Factors affecting the species environment include vehicular traffic disturbances from FM 916 on the park's northern and western boundaries and a residential development (Fisherman's Paradise) on the northeastern side. Unauthorized use of off-road recreational vehicles is also known to occur within the action area.

IV. Effects of the Action

The proposed action consists of the development of Ham Creek Park for future recreational use. It is anticipated that direct and indirect effects to the GCWA would result from the action as discussed below. Quantitative measurements of length and area of proposed actions, property perimeters, and on and off-property habitats were calculated using shapefiles provided by USACE and utilizing ArcGIS 9.0.

The direct effects consist of the subsequent construction, operation, and maintenance of a recreational facility for public use. The widening of road ROW to a total width of 36 feet in Section A would remove GCWA habitat averaging approximately 16 feet wide and 5,111 feet in length. An 8 foot wide, 2,799 foot long section of habitat would be eliminated along the northern and eastern portions of the existing roadway in Section B. Maximum total habitat removed by widening the road ROW would be 2.5 acres. Construction of the entrance complex may take place along the roadway in Section A and would directly impact up to 4 acres of GCWA habitat. An additional 2 acres of GCWA habitat could be removed dependant upon the placement of other recreational facilities to be located at unspecified locations in Section B. The regular maintenance of these facilities would also contribute to the disturbance effects discussed further in this section. Construction of the 7,159 foot barbed-wire or pipe perimeter fence and its corresponding 8 foot wide ROW would remove a maximum of 1.3 acres of GCWA habitat in Sections A and B; but, it is anticipated that this ROW would not impact GCWAs if it is constructed outside of the breeding season (Campbell 1995, Horne 2000). However, the regular maintenance of the fence and its ROW could contribute to the disturbance effects discussed further in this section. The construction of these facilities (not including the perimeter fence) is expected to directly remove a total of approximately 8.5 acres of GCWA habitat. The conversion of GCWA habitat into these facilities makes it no longer suitable for GCWAs, thus harming the birds that may utilize the habitat during the breeding season.

The effects of human disturbance related to the construction, operation, and maintenance of the recreational facilities include, but are not limited to, elevated noise levels, presence of humans and machinery, lighting, and increased predation. The adverse effects of human activities on avian communities have been well documented (e.g., Blair 1996, Friesen, et al. 1995, Gutzwiller et al. 1998, Riffell et al. 1996, Wilcove 1988). Additional widening of the road ROW to 36 feet in width could negatively affect GCWAs, since clearing of corridors as narrow as 33 feet have been known to negatively affect GCWA breeding habitat through fragmentation (Horne 2000). Coldren (1998) determined territory selection from habitat edges by GCWAs as related to reproductive success and suggested 492 feet as the point at which GCWA territories are affected by edge habitat.

The proposed hiking/equestrian trails may also negatively affect GCWAs. Miller et al. (1998) demonstrated that composition and abundance of birds can be altered adjacent to recreational trails in forest ecosystems. In particular, some species do not occur, or occur in lower densities, near recreational trails than at greater distances, whereas some species, mainly generalists, were more abundant near trails. Species sensitive to disturbance by humans may avoid areas where human activity is common, or may occur in reduced abundance. GCWAs are especially

sensitive to these effects and are not usually found in close proximity to human developments (e.g., Benson 1990, Engels and Sexton, 1994, Sexton 1987).

Dependant upon the unspecified placement of the hiking/equestrian trails, all GCWA habitat on the property could potentially be subject to the disturbance effects resulting from the construction of these trails, road ROW, and other facilities located within or adjacent to defined GCWA habitat. The design of the park restoration would incorporate No-Build Zones to preserve the remaining GCWA habitat on the property. However, the remaining 57.5 acres of total “on-property” GCWA habitat in Sections A and C (which contains no habitat) less all habitat directly removed, would likely be rendered unsuitable for use by the birds and constitute harassment.

Effects related to harassment are expected to extend outside the boundaries of Ham Creek Park to the point at which they deter GCWAs from utilizing adjacent habitat or affect the reproductive success of birds using the adjacent habitat. Because the property is bound by roadways on the north and west, and the Brazos River to the south, the disturbance effects would only be expected to extend to the adjacent private property east of Section A and north of Section B, and to the USACE-owned property east of Section B.

Indirect effects are those project related effects which are reasonably certain to occur, but later in time. Increases in predator presence could result from increasing the width of the road ROW. Rich et al. (1994) found that corridors as narrow as 26.3 feet may attract cowbirds and nest predators to corridors and adjacent forest interiors. Maintenance and use of these ROWs may also attract cowbirds which forage in mowed areas within ROWs and to powerline poles on which males display (Rich et al. 1994). Although GCWAs prefer nesting in the interior forest (Coldren 1998), they are often observed at forest edges (Sexton 1991). Avian predators (e.g., American crow [*Corvus brachyrhynchos*], blue jay, grackle [*Quiscalus sp.*]) are more abundant in GCWA habitat within 328 feet from edges (Arnold et al. 1996) which may affect GCWA use and/or reproductive success (Coldren 1998, Fink 1996). Further indirect effects in the form of increased predator presence could result from the installation of the hiking/equestrian trails. Miller et al. (1998) indicated that habitat edge species, such as blue jays, which have been shown to be incompatible with GCWA's (Engels 1995, Engels and Sexton 1994), were more abundant on sites with recreational trails than on sites without trails. Additional indirect effects include the potential import and spread of noxious vegetation within the action area. Noxious plants have the ability to displace native vegetation, thereby reducing habitat quality.

The extent of the direct and indirect effects of the action may occur outside the boundaries of Ham Creek Park. Currently, there are no specific guidelines on the distance from commercial/urban land use that would not be expected to affect GCWAs; however, it is believed that large habitat patch size and/or connectivity to larger blocks of habitat reduce the effects (Arnold et al. 1996, Coldren 1998, Sexton 1991). GCWA habitat located east of Section A and north of Section B does not benefit from connectivity to larger blocks of habitat due to encroachment from Fisherman's Paradise residential development. This habitat, located off the park, is also noncontiguous and is made up of five peninsular parcels east of Section A and one narrow linear strip north of section B totaling 32.2 acres ranging in area from 0.4 acres to 11.5 acres. GCWA habitat east of Section B is contiguous and is currently not bound by development

or natural features and is known to support GCWA territories (Espy, Houston & Associates, Inc. 1998).

Based on Coldren's (1998) work, it is anticipated that the effects regarding the construction, operation, and maintenance of the park and the use of the unspecified hiking/equestrian trails could extend from the boundary of the property to a maximum distance of 492 feet onto adjacent off-property habitat totaling 28.9 acres of affected habitat east of Section A and north of Section B (Figure 3). Unaffected habitat remaining beyond this 492 foot point would consist of two small, disconnected fragments totaling 3.3 acres unsuitable to support a GCWA territory and therefore would be included in the action area. East of Section B effects of the action would be expected to impact habitat 492 feet beyond the park boundary totaling an additional 19.2 acres to be included in the action area.

It is expected that harassment of GCWAs related to the effects of the development of the property would potentially reduce suitability of the adjacent off-property habitat a total of approximately 51.4 acres outside the park property. Therefore, the action area includes the approximately 191 acre Ham Creek Park property and up to 51.4 acres immediately adjacent to the eastern side of the property.

IV. Cumulative Effects

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

At this time, no future state, tribal, local or private actions are known to be planned within the action area. Site visits, as well as discussions with USACE staff, indicate that most all developable space between USACE property and Fisherman's Paradise has presently been converted to residential properties. Future actions occurring within the action area on adjacent USACE property, including planned expansion of the hiking/equestrian trails east of Section B, would require a separate consultation.

V. Conclusion

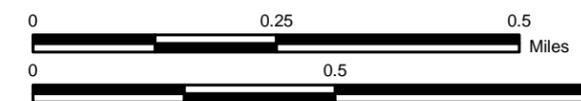
Possible harm and/or harassment to GCWAs would only occur on a small portion of the total nesting habitat in Texas. Habitat within the action area is not representative of that which would be considered most critical to GCWA recovery because it is bound by fragmenting obstacles on three sides, comprised of varied vegetative quality, and has been the source of only three confirmed sightings in recent years. Larger contiguous blocks of habitat occur within the vicinity of the action area providing possible relocation opportunities for potentially displaced GCWAs. After reviewing the current status of the GCWA, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the development of Ham Creek Park for future recreational use, as

Figure 3: GCWA off-property affected habitat, Ham Creek Park, Johnson County, Texas.



U.S. Fish & Wildlife Service
Arlington, Texas, Ecological Services Field Office
 Projection: UTM Zone 14N, NAD 1983, GRS 1980
 Production Date: 12/29/2005

- Off-property GCWA Habitat
- Section A
- Section B
- Section C
- Sections A & B 150m Buffer



proposed, is not likely to jeopardize the continued existence of the GCWA. No critical habitat has been designated for these species, therefore, none will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and must be undertaken by USACE so that they become binding conditions for any action, grant, or permit issued, as appropriate, for the exemption in section 7(o)(2) to apply. USACE has a continuing duty to regulate the activity covered by this incidental take statement. If USACE (1) fails to assume and implement the terms and conditions or (2) fails to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, USACE must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement (50 CFR §402.14[i][3]).

Amount or Extent of Take Anticipated

The Service anticipates that the proposed action could result in the incidental take of GCWAs. Take would be in the form of harm and harassment. Harm to the GCWA would occur from the direct conversion of approximately 8.5 acres of GCWA habitat on the property proposed for development. Take in the form of harassment would occur on approximately 109 acres of GCWA habitat resulting from the maintenance and future use of project facilities.

Take, in the form of harm and/or harassment, is difficult to quantify and usually cannot be estimated in terms of numbers of individuals. Population densities of GCWAs have been shown to be proportional to habitat quality (Pulich 1976). Habitat quality of Ham Creek Park is perceived to be of varied quality due to vegetation composition; encroachment from residential development to the east and the effects of fragmentation brought about by the residential development; the Brazos River to the south; and FM 916 to the north and west. Estimates of average GCWA territory size within suitable habitat found on USACE property at Whitney Lake are not currently available.

Population estimates for GCWAs are quantified in terms of total estimated area of potential suitable habitat divided by the estimated average area of breeding territories. Because of the difficulty in determining territory size due to varied habitat quality, and because harm to GCWAs will be from actions taken which reduce habitat area, the maximum amount of incidental take allowed under this BO is prescribed in terms of area.

Based upon estimates by USACE detailed in the Biological Assessment, two site visits conducted by USFWS, and a review of publicly available information and scientific literature, it is anticipated that 117.5 acres of suitable habitat for GCWAs could be taken.

Effect of the take

In the accompanying biological opinion, the Service determined that the level of anticipated habitat take is not likely to result in jeopardy to the GCWA.

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize impacts of incidental take of the GCWA:

- 1) Clearing of GCWA habitat to construct the barbed-wire and/or pipe perimeter fence will be scheduled outside (September through February) of GCWA breeding and nesting season. The resulting ROW will be no wider than 8 feet and will also be maintained outside of the breeding and nesting season. All vegetation clearing will be consistent with the current practices recommended by the Texas Forest Service to prevent the spread of oak wilt.
- 2) The No-Build Zones will be clearly marked prior to construction, vegetation removal, or other earth-disturbing activities to prevent accidental clearing by work crews. The No-Build Zones will be managed as GCWA habitat as appropriate. Buffer areas between the proposed facilities and the No-Build Zones will be planted and/or maintained as native vegetation to create a transitional area between these facilities and remaining habitat.
- 3) Hiking/equestrian trails developed within No-Build Zones will be designed as 'nature trails' with no hard surfaces, minimal vegetation removal, and will be constructed and maintained outside (September through February) of GCWA breeding and nesting season.
- 4) Impacts related to lighting generated by the facilities will be minimized by the use of directional lighting and buffers around GCWA habitat. Available lighting designs and methods will be investigated and used as appropriate to reduce impacts to birds.

Terms and conditions

In order to be exempt from the prohibitions of section 9 of the Act, USACE must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

- 1) USACE will develop and implement an appropriate monitoring plan for reporting progress in development of the property and implementation of the reasonable and prudent measures. Breeding season surveys will be conducted until construction of all facilities is completed and results reported to the Service. The content, schedule, and format of the monitoring plan will be at the discretion of the USACE.
- 2) USACE must provide sufficient guidance to its employees and contracted employees to ensure compliance with the reasonable and prudent measures of this biological opinion before the proposed actions may be covered by the incidental take allowed by this opinion.

The Service anticipates that no more than 117.5 acres of GCWA habitat would be taken as a result of the proposed action (max. of 8.5 acres directly removed and max. of 109 acres reduced in habitat suitability). Reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded, reinitiation of consultation will be required. USACE must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

The Service will not refer the incidental take of any migratory bird for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

Conservation Recommendations

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. The following recommendation is provided for consideration by USACE.

Whitney Lake currently operates under a Master Plan revised in June 1972 prior to the listing of the GCWA and the black-capped vireo. USACE is encouraged to partner with the Service in the development and implementation of supplements to this Master Plan regarding resident threatened and endangered species as originally suggested by this office in a letter dated October 16, 2001.

The most recent partial survey of USACE property at Whitney Lake for federally-listed species was conducted in 1998 and was the last in a series of three limited surveys initiated in 1996. Updated surveys to quantify listed species habitat and subsequent designations of environmentally sensitive areas (ESAs) could prove useful to USACE and the Service with respect to future development pressure at Whitney Lake by preventing the need for (or streamlining the process of) future consultations. Such information would also be very beneficial to USACE in fulfilling its section 7(a)(1) duties.

In light of the increased and anticipated urban growth around Whitney Lake, we suggest that a proactive approach to conservation through supplementing or revising the current Master Plan could save time and money by identifying areas with specific management needs, expediting future section 7 consultations, and allowing for continued management of USACE property for its intended purposes. In addition to these benefits, further knowledge of the little-known GCWA populations at Whitney Lake and vicinity could prove invaluable to the recovery of the species. Whitney Lake lies entirely within Recovery Unit 2 for the GCWA, which currently has a known population of less than 50 birds. Criterion 1 of the GCWA Recovery Plan requires the protection of enough habitat to support a viable population within each of the eight Recovery Units. Current information indicates that a viable population could range from 1,000 to 3,000 pairs of GCWAs. The large amount of habitat identified on USACE property could further the recovery goal in this unit. The Service would be happy to assist in future habitat surveys and the designation of ESAs as our resources allow.

Reinitiation Notice

This concludes formal consultation on the actions outlined in the request. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The Service appreciates the cooperation extended by USACE staff and participating parties during this consultation. If further assistance or information is required, please contact Mr. Sean Edwards or myself at the above address or telephone (817) 277-1100.

Sincerely,



Thomas J. Cloud, Jr.
Field Supervisor

cc: Regional Director, FWS, Albuquerque, NM

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PERSONAL COMMUNICATIONS

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O'Connor, Anjna. 2005. Whitney Lake USACE, Clifton, Texas.

APPENDIX C
LETTER OF PERMISSION CESWF-97-LOP-1



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

Public Notice

Number: CESWF-97-LOP-1

Activity: Activities at Certain Reservoirs and
Federal and State Sponsored Projects

Date: October 6, 1998

The purpose of this public notice is to inform you of the issuance of the Letter of Permission procedure identified above.

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 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

Fort Worth District
Regulatory Branch
PO Box 17300
Fort Worth, TX 76102-0300
(817) 978-2681

Albuquerque District
El Paso Regulatory Office
PO Box 6096
Fort Bliss, Texas 79906-0096
(915) 568-1359

Galveston District
Regulatory Branch
PO Box 1229
Galveston, TX 77553-1229
(409) 766-3930

Tulsa District
Regulatory Branch
PO Box 61
Tulsa, OK 74121-0061
(918) 669-7400

LETTER OF PERMISSION PROCEDURE

ACTIVITIES AT CERTAIN RESERVOIRS AND FEDERAL AND STATE SPONSORED PROJECTS

Interested parties are hereby notified that, in accordance with Title 33 CFR 325.2(e)(1), published in the Federal Register on November 13, 1986, the U. S. Army Corps of Engineers (USACE), Fort Worth, Albuquerque, Galveston, and Tulsa Districts, have adopted a Letter of Permission (LOP) procedure for authorizing the work described herein in the State of Texas. The purpose of this procedure is to expedite Section 404 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued will include the general conditions identified herein by reference and case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by individual permit. However, compliance with the LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

SCOPE OF WORK

Work that may be authorized by LOP using this procedure includes any activity at a USACE, Bureau of Reclamation, state river authority, regional water district, city, county, or utility reservoir, including, but not limited to, bank stabilization, beach nourishment, property protection, and sediment removal. Work authorized by LOP may also include any projects conducted, sponsored, or funded, in whole or in part, by the USACE, U. S. Fish and Wildlife Service (FWS), U. S. Environmental Protection Agency (EPA), Natural Resources Conservation Service (NRCS), Texas Parks and Wildlife Department (TPWD), Texas Natural Resources Conservation Commission (TNRCC), or the Texas Water Development Board. Activities associated with such programs as the Water Resources Development Act of 1986, as amended, Section 1135 Project Modifications for Improvement of Environment, Partners for Wildlife, the North American Waterfowl Management Plan, and the Wetlands Reserve Program and activities at National Wildlife Refuges, State Wildlife Management Areas, and State Parks are eligible for authorization under this procedure.

LOCATION OF WORK

This LOP procedure shall apply to work in all waters of the United States, including navigable waters of the United States, in the State of Texas.

CONDITIONS OF THE LETTER OF PERMISSION

In addition to limitations discussed in the scope of work, projects authorized by LOP are subject to the general conditions contained in Appendix A.

WATER QUALITY CERTIFICATION

The TNRCC has certified pursuant to Section 401 of the Clean Water Act, for the activities for which they are responsible, that the LOP procedure would not result in a violation of established Texas Water Quality Standards provided the standard provisions in Appendix B are followed. The Railroad Commission of Texas (RCT) has waived certification pursuant to Section 401 of the Clean Water Act, for the activities for which they are responsible.

COASTAL ZONE PROGRAM CONSISTENCY

The USACE certifies that the proposed LOP procedure complies with the approved Texas Coastal Management Program and will be implemented in a manner consistent with such program. The USACE certifies that the issuance of this LOP Procedure is consistent to the maximum extent practicable with the Louisiana Coastal Resources Program.

AUTHORIZATION FROM OTHER AGENCIES

The permittee is responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. When stream bed materials such as sand, shell, gravel and marl are to be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department (TPWD), 4200 Smith School Road, Austin, Texas 78744. All activities occurring on lands owned or managed by the TPWD require a signed agreement from that agency prior to commencing operations.
2. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned stream beds, state-owned uplands, or coastal public lands in Texas may require the issuance of a lease or easement from the GLO.
3. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.
4. Projects involving government property on USACE reservoirs will require submission of detailed design information to the reservoir manager and USACE approval of the proposed activity, including a real estate consent to easement.

5. Activities within a 100-year floodplain may require a permit from the local floodplain administrator or the TNRCC. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.
6. Activities such as clearing, grading, and excavation that would disturb five or more acres of land may require a National Pollutant Discharge Elimination System storm water management permit from the U.S. Environmental Protection Agency (EPA), Region 6, Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas Texas 75202.
7. The use of scrap tires for bank stabilization and erosion control requires notification of the TNRCC Waste Tire Recycling Program, P. O. Box 13087, Austin, Texas 78711-3087.
8. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Tex. Nat. Res. Code Ann. §91.101, may require authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340, and/or the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.
9. The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Proposed activities subject to authorization under this permit and affecting an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.
10. Projects involving construction of a bridge or equivalent thereof across a navigable water of the United States may require authorization from the Commander, Eighth Coast Guard District (ob), Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396.
11. Activities outside the permit area of the USACE that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service (FWS) to prevent a violation of the Endangered Species Act under Section 9.
12. Activities that may affect the land or water use or natural resources of the Texas Coastal Zone may require a Coastal Use Permit or other authorization or waiver from the Texas Coastal Management Program, Texas Coastal Coordination Council, 1700 North Congress, Room 617, Austin, Texas 78701-1495.

13. Activities that may affect the land or water use or natural resources of the Louisiana Coastal Zone may require a Coastal Use Permit or other authorization or waiver from the Louisiana Department of Natural Resources, Coastal Management Division, P. O. Box 44487, Baton Rouge, Louisiana 70804.

APPLICATION PROCEDURES

An application for authorization of work under this LOP procedure must include a written description of the project, proposed work schedule, and the address and telephone number of a point of contact who can be reached during working hours. The information may be submitted on an Application for Department of the Army Permit form (ENG Form 4345) or in any other form convenient to the applicant. A description of the project must include at least the following information, as applicable:

1. The purpose of, and need for, the project.
2. A vicinity map (e.g., county map, USGS quad sheet, etc.) showing the location of the project, including any borrow or disposal site(s).
3. Plan, profile, and cross-section views of all work, both permanent and temporary, in or adjacent to waters of the United States, including wetlands.
4. The volume of material proposed to be discharged into and/or excavated from waters of the United States and the proposed type and source of the material. In cases where the activity may result in a change to pre-construction contours or drainage patterns, provide the reasons why the changes are necessary and a description of the anticipated outcome of the changes.
5. A delineation and description of wetlands and other waters of the United States in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at <http://www.wes.army.mil/el/wetlands/wlpubs.html>), including all supplemental guidance (currently includes guidance dated October 7, 1991, and March 6, 1992). The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. In addition, the width and depth of the water body and the waterward distance of any structures from the existing shoreline.
6. A statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project. Direct coordination with the FWS concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged.

7. The applicant should include any other relevant information, including available information on cultural resources and hydrology.

Address applications and inquiries regarding proposed activities to the appropriate district office (see Appendix C):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-EV-R, P.O. Box 17300, Fort Worth, TX 76102-0300, or telephone the Regulatory Branch at (817)978-2681

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESPA-OD-R, P.O. Box 6096, Fort Bliss, TX 79906-0096, or telephone the Regulatory Office at (915) 568-1359

Galveston District: Regulatory Branch, U.S. Army Corps of Engineers, Galveston District, ATTN: CESWG-CO-R, P.O. Box 1229, Galveston, TX 77553-1229, or telephone the Regulatory Branch at (409) 766-3930

Tulsa District: Regulatory Branch, U.S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-PE-R, P.O. Box 61, Tulsa, OK 74121-0061, or telephone the Regulatory Branch at (918) 669-7400

This application procedure will also suffice as the LOP application for work proposed in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899. When Section 10 applies, the Section 10 work will be evaluated using the Section 10 LOP procedures at 33 CFR 325.2(e)(1).

EVALUATION PROCEDURES

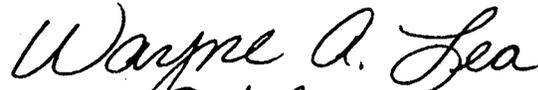
Prior to authorizing any project, the USACE shall conduct a public interest evaluation and coordinate with the EPA, FWS, TPWD; either the TNRCC or RCT (depending on the nature of the proposed activities); the National Marine Fisheries Service and the GLO for projects that would be located within the boundaries of the Galveston District; the Louisiana Department of Environmental Quality and the Louisiana Department of Wildlife and Fisheries for projects along the Sabine River and its impoundments where the Sabine River is the border between the states of Texas and Louisiana; and the Louisiana Department of Natural Resources (Coastal Management Division) for projects in the Sabine River watershed which might affect the land or water use or natural resources of the Louisiana Coastal Zone to obtain their concurrence with authorizing the proposed work under this LOP procedure. Coordination may be by telephone, facsimile transmission, letter, or a combination of the above. Should one of the appropriate agencies not concur, the proposed work would require authorization by individual permit or other means. A verbal or written response from each contacted agency is required to complete the interagency coordination process. Concurrence may not be presumed in the absence of a

response unless written procedures for such presumption are developed between the USACE and the agency in question. Projects within the boundaries of the Texas Coastal Management Plan must have certification from the Coastal Coordination Council of consistency with the Texas Coastal Management Program. Projects in the Sabine River watershed that might affect the land or water use or natural resources of the Louisiana Coastal Zone must have certification from the Louisiana Department of Natural Resources of consistency with the Louisiana Coastal Resources Program. The USACE strongly encourages pre-application coordination with these agencies through the USACE.

Work may not proceed prior to written notification that the USACE has issued an LOP. It is the applicant's responsibility to insure that the authorized project meets the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act. Projects outside the scope of this LOP may be considered for authorization by individual permit.

This LOP procedure shall become effective on the date of the signature of the District Engineers, or their authorized representative.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:
FOR THE DISTRICT ENGINEERS:



Wayne A. Lea
6 October 1998

James S. Weller
Colonel, Corps of Engineers
District Engineer
Fort Worth District

Thomas N. Fallin
Lieutenant Colonel, EN
District Engineer
Albuquerque District

Nicholas J. Buechler
LTC(P), Corps of Engineers
District Engineer
Galveston District

Leonardo V. Flor
Colonel, U.S. Army
District Engineer
Tulsa District

APPENDIX A

GENERAL CONDITIONS OF LETTERS OF PERMISSION ISSUED UNDER "Letter of Permission Procedure, Activities at Certain Reservoirs and Federal and State-Sponsored Projects"

1. In issuing a letter of permission (LOP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to issuing an LOP, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOP's do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.
4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the structures or activities authorized herein which may result from existing or future operations undertaken by the United States in the public interest.
7. No attempt shall be made by the permittee to prevent the full and free public use of all navigable waters of the United States at or adjacent to a project authorized by LOP.

8. Permittees shall not cause any unreasonable interference with navigation by the existence or use of the permanent and temporary structures authorized by LOP using this procedure.

9. Permittees shall make every reasonable effort to conduct the activities authorized by LOP in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly mast-producing trees such as oaks and hickories.

10. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.

10. The impact of activities authorized by LOP using this procedure on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the USACE prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area. If a known historic property would be encountered, the permittee shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, have been satisfied. If a previously unknown historic property is encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

12. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date.

13. Permittees shall remove all temporary fills in their entirety.

14. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.

15. Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.

16. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

17. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area unless the primary purpose of the activity is to impound water.
18. Permittees shall properly maintain any structure or fill, including maintenance to ensure public safety.
19. Permittees shall address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.
20. Stream realignment is not authorized.
21. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the United States through the use of practicable alternatives.
22. To the maximum extent practicable, permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to impound water.
23. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.
24. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

APPENDIX B

Attachment No. 1
USCOE Public Notice No. CESWF-97-LOP-1
September 15, 1997
Page 1 of 3

WORK DESCRIPTION: As described in public notice dated August 8, 1997.

SPECIAL CONDITIONS: None

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the application or joint public notice and shall expire 5 years from the date of issuance of the Corps of Engineers (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The TNRCC reserves the right to require full joint public notice on a request for minor revision. If this application is a modification of an original permit or any modification thereof for which a special condition was cited by the Commission or a predecessor agency, such conditions shall remain valid. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TNRCC or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the Corps of Engineers and shall be followed by the permittee or any employee, agent, contractor or subcontractor of the permittee during any phase of work authorized by a Corps permit.

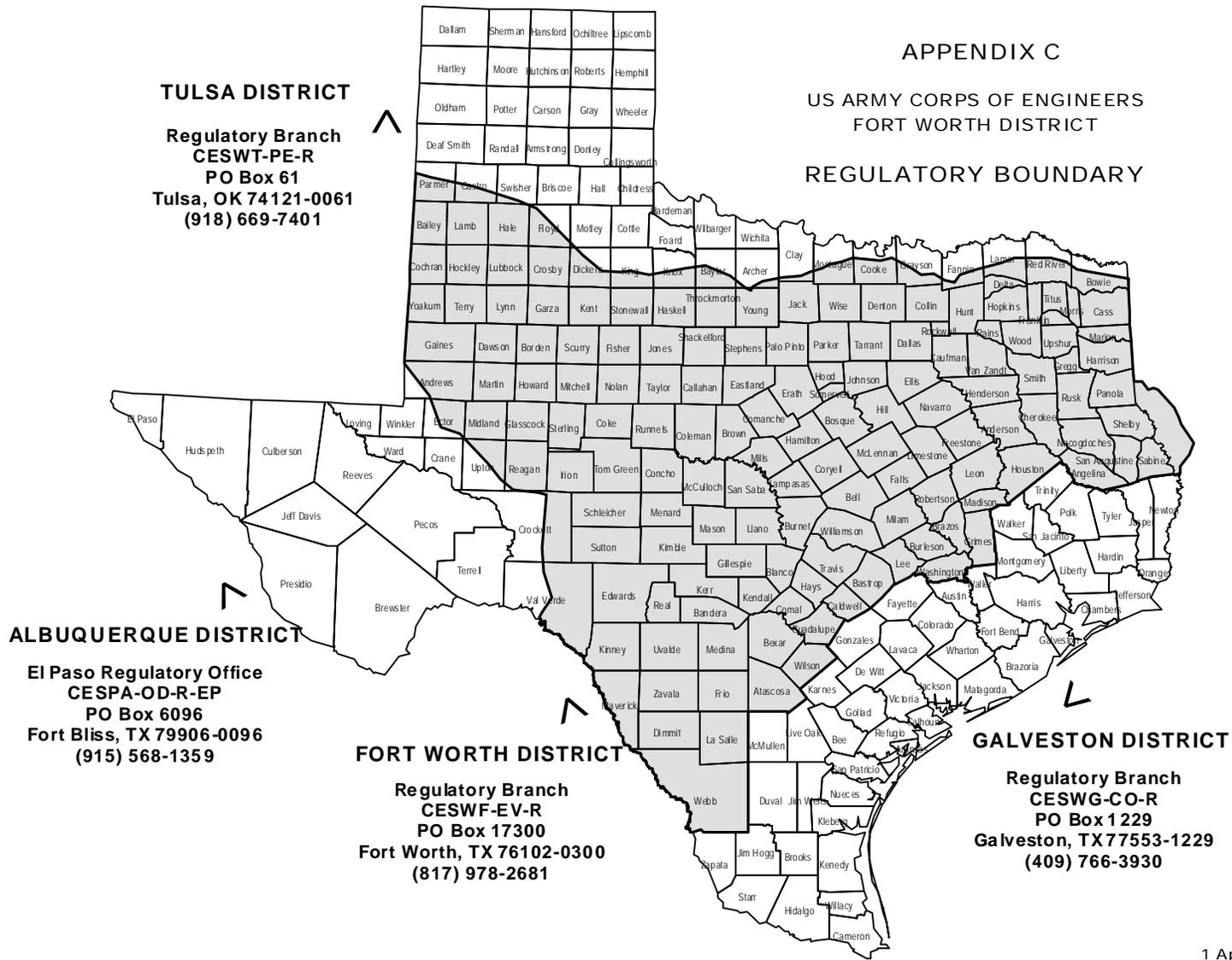
1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life or terrestrial life.
3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TNRCC, Emergency Spill Response, at (512) 463-7727.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.
6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.

Attachment No. 1
USCOE Public Notice No. CESWF-97-LOP-1
September 15, 1997
Page 2 of 3

7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.
8. Dredged Material Placement: Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.
9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TNRCC, Emergency Spill Response, shall be contacted at (512) 463-7727. Dredging activities shall not be resumed until authorized by the Commission.
10. Contaminated water, soil or any other material shall not be allowed to enter a watercourse. Noncontaminated stormwater from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Stormwater runoff from construction activities (US EPA Category X) is governed by the requirements of the US Environmental Protection Agency. Applications to apply for a general permit are to be obtained from Region 6, US EPA at (214) 665-7185.
12. Upon completion of earthwork operations, all temporary fills shall be removed from the watercourse/wetland, and areas disturbed during construction shall be seeded, ripped, or given some other type of protection to minimize subsequent soil erosion. Any fill material shall be clean and of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters.
13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.

Attachment No. 1
USCOE Public Notice No. CESWF-97-LOP-1
September 15, 1997
Page 3 of 3

16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms or putrescible sludge deposits or sediment layers which adversely affect benthic biota or any lawful uses.
17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes and bays.
18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition and foaming or frothing of a persistent nature is avoided. Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.



APPENDIX D
CORRESPONDENCE, NEWS RELEASES,
NOTICES AND COMMENTS



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

News Release

Release No. CESWF-PA-05-033 Contact: Judy Marsicano

For Release: Immediate 1 Aug 05 Phone: (817) 886-1517

Recreational Volunteers Needed for Development of Park at Whitney Lake

FORT WORTH, Texas – The U.S. Army Corps of Engineers is looking for volunteers to participate in a series of workshops for the planning and development of Whitney Lake's Ham Creek Park. Once the park is designed and developed, Johnson County will be assuming management and operation.

Submit your name, address, phone number, and a letter of interest describing how you could contribute to the planning effort to: Whitney Lake Office, 285 CR 3602, Clifton, TX 76634, attention: Ronald Bruggman, Lake Manager. Letters will be accepted until August 30, 2005. Volunteers will be asked to attend regular meetings over an extended period of time. For more information, please contact the Whitney Lake Office at (254)622-3332.

-30-

Visit the Fort Worth website at www.swf.usace.army.mil .



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
WHITNEY/AQUILLA LAKES
285 CR 3602
CLIFTON, TEXAS 76634
Telephone 254-622-3332 Fax 254-622-3243

2 November 2005

United States Fish and Wildlife Service
Ecological Services, ATTN: Sean Edwards
711 Stadium Drive, Suite 252
Arlington, TX 76011

Dear Mr. Edwards:

The U.S. Army Corps of Engineers in conjunction with Johnson County proposes to develop Ham Creek Park at Whitney Lake for future recreational opportunities. Ham Creek Park is located in Johnson County on the northern portion of Whitney Lake. The park encompasses approximately 191 acres and is divided into two areas by Ham Creek.

It is determined that the proposed action will affect the golden-cheeked warbler and its habitat. The U.S. Army Corps of Engineers, Whitney Lake Office, would like to initiate a formal consultation regarding the proposed action.

An initiation package is submitted for your review and consultation. Should you have any questions regarding this request, please contact myself at 254-622-3332 or Mr. Russel Meier at 979-596-1622.

A handwritten signature in black ink, appearing to read "Ronald L. Bruggman", with a long horizontal line extending to the right.

Ronald L. Bruggman
Reservoir Manager



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
WinSystems Center Building
711 Stadium Drive, Suite 252
Arlington, Texas 76011

21420-2006-F-0055

November 21, 2005

Ronald L. Bruggman
Department of the Army
Fort Worth District, Corps of Engineers
Whitney/Aquilla Lakes
285 CR 3602
Clifton, Texas 76634

Dear Mr. Bruggman:

This letter acknowledges the U.S. Fish and Wildlife Service's receipt of your November 2, 2005, letter requesting initiation of formal section 7 consultation under the Endangered Species Act (ESA). Your request was received in our office on November 7, 2005. The consultation concerns the potential effects to the endangered golden-cheeked warbler (*Dendroica chrysoparia*) resulting from the proposed development of Ham Creek Park for future recreational use. The park encompasses approximately 191 acres and is located in Johnson County, Texas on the northern portion of Lake Whitney.

The information required to initiate consultation was either included with your letter or is otherwise accessible for our consideration and reference. Please refer to the consultation number at the top of this letter in future correspondence regarding the proposed action.

Section 7 of the ESA allows the Service up to 90 calendar days to conclude formal consultation with your agency and an additional 45 calendar days to prepare our biological opinion (unless we mutually agree to an extension). Therefore, we expect to provide you with our biological opinion no later than March 22, 2006.

Rec'd 11/23/05

If you have any questions concerning the consultation process, please contact Sean Edwards of my staff at (817) 277-1100.

Sincerely,

A handwritten signature in cursive script that reads "Tom Cloud". The signature is written in black ink and is positioned above the printed name and title.

Thomas J. Cloud, Jr.
Field Supervisor

January 20, 2006

Operations Division

Mr. Lawrence Oaks
State Historic Preservation Officer
Texas Historical Commission
P.O. Box 12276
Austin, Texas 78711-2276

Dear Mr. Oaks:

The U.S. Army Corps of Engineers, Fort Worth District, plans to redevelop Ham Creek Park at Whitney Lake in Johnson County, Texas. The proposed construction will be confined primarily to areas disturbed by the original construction and operation of the park. Enclosed for your review is a draft report of a cultural resources survey for this project. Based on the results of this survey, we have determined that no historic properties will be affected by the proposed project. We request your concurrence with this determination.

Sincerely,

William H. Collins
Chief, Natural Resources
and Recreation Branch

Enclosure



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF:

February 16, 2006

NOTICE OF AVAILABILITY

DRAFT ENVIRONMENTAL ASSESSMENT HAM CREEK PARK DEVELOPMENT WHITNEY LAKE, TEXAS

Description. Interested parties are hereby notified that the District Commander, Fort Worth District, has prepared a draft Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) regarding the proposed Ham Creek Park Development, Whitney Lake, Johnson County, Texas.

Statutory Authority. This notice is being issued to all interested parties in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality (CEQ) Code of Federal Regulations (40 CFR parts 1500-1508), and Engineering Regulation 200-2-2.

Background. Ham Creek Park was constructed as part of the recreation plan for Whitney Lake when it was constructed in the 1950's. In the 1980's the park was officially closed as a high intensity recreational facility and was designated as a low intensity use area limited to pedestrian traffic with the exception of a boat ramp that remains open only when lake levels allow use. Recently, Congress Appropriated \$900,000 in funds for the construction of a recreation facility to be constructed at Ham Creek Park, Whitney Lake, Johnson County, Texas to be expended in fiscal year 2006. The EA addresses the impacts of four construction alternatives and the no action alternative.

Proposed Action. The proposed action is for the U.S. Army Corps of Engineers to construct a Class A Campground at Ham Creek Park, Whitney Lake as discussed in the EA. This would include paved roads, recreational vehicle and primitive camping sites, picnic sites, group pavilions, an amphitheater, hiking trails, an equestrian center, and a boat ramp and parking spots. Construction would be phased as additional funds are appropriated.

Public Hearing. A public hearing has not been scheduled for this proposed action. 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 Commander will determine whether the issues raised are substantial and should be considered in his decision. If a public hearing is warranted, all known interested parties will be notified of the time, date, and location of such a hearing.

Public Review. Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 as amended in 1975 (40 Code of Federal Regulations [CFR], Parts 1500 through 1508), the U.S. Department of the Army gives notice that it has prepared the required environmental documentation for the Ham Creek Park Development, Whitney Lake, Texas. This document is available for review on the Fort Worth District Website www.swf.usace.army.mil or at the following addresses:

Cleburne Public Library
302 W. Henderson Street
Cleburne, Texas 76033
(817) 645-0934

Whitney Lake Office
285 CR 3602
Clifton, TX 76634
(254) 622-3332

County Judges Office
Johnson County Annex Building
1 North Main (Room 304)
Cleburne, TX 76033

Comment Period. The comment period for this action is 30 days from the date of this Public Notice. Please address any comments to Mr. Rob Newman, CESWF-PER-EE, Post Office Box 17300, Fort Worth, Texas 76102-0300, or by e-mail at Rob.Newman@swf02.usace.army.mil. Hard or cd copies of the draft EA and FONSI may be requested in writing at the above address or by telephone at (817) 886-1762.

William Fickel, Jr.
Chief, Planning, Environmental,
And Regulatory Division

Mr. Newman/1762 *W*
PAXTON, CESWF-PER-EE
HARBERG, CESWF-PER-E *PHJ*
FICKEL, CESWF-PER-*W*

Copies Furnished to:
BRUGGMAN, CESWF-OD-WH
COLLINS, CESWF-OD-R
FELIGER, CESWF-OD
HEAD, CESWF-RE
CROSSWHITE, CESWF-OC
MARSICANO, CESWF-PA
MOCEK, CESWF-PM



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF:

Feb. 16, 2006

Planning, Environmental, and Regulatory Division

Cleburne Public Library
302 W. Henderson Street
Cleburne, TX 76033

To Whom It May Concern:

The U.S. Army Corps of Engineers, Fort Worth District, has prepared an Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) regarding the Ham Creek Park Development, Whitney Lake, Johnson County, Texas. Enclosed is a copy of a Notice of Availability, draft Environmental Assessment, and draft Finding of No Significant Impact.

The Public has an opportunity to review the document for thirty days from the date on the Notice of Availability. To ensure that the public has a chance to review the document, please keep a copy of this document until May 2006, and make it available to the public at their request.

Thank you for your cooperation in this matter. If you have any questions please contact Mr. Rob Newman at 817-886-1762.

Sincerely,

William Fickel, Jr.
Chief, Planning, Environmental, and
Regulatory Division

Enclosures

Newman/1762 *KN*
PAXTON, CESWF-PER-EE *PLJ*
HARBERG, CESWF-PER-E *PLJ*
FICKEL, CESWF-PER *WJ*

Same Letter Sent to:

County Judges Office
Johnson County Annex Building
1 North Main (Room 304)
Cleburne, TX 76033



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF:

February 16, 2006

Planning, Environmental, and Regulatory Division

Mr. F. Lawrence Oaks
State Historic Preservation Office
P.O. Box 12276
Capital Station
Austin, Texas 78711

Dear Mr. Oaks:

The U.S. Army Corps of Engineers (USACE) is assessing the potential impacts to the environment which may result from the proposed Ham Creek Park Development, Whitney Lake, Texas. USACE is proposing to develop a Class A campground at Ham Creek Park that would be leased to Johnson County after construction. USACE is disclosing all associated impacts for public review in a draft Environmental Assessment (EA).

A Public Notice has been prepared to notify the public of this action and to solicit comments. The Public Notice, draft FONSI and EA are enclosed with this communication for your review and to solicit any additional comments or concerns your agency may have regarding this action including use of letter of permission CESWF-97-LOP-1 to comply with Section 404 of the Clean Water Act.

We began consultation with SHPO with a letter dated January 20, 2006 and your agency requested additional information in the area where the boat ramp is proposed to be constructed. The surveys have been completed and the report is being written. As soon as the report is finalized it will be forwarded for your review.

Please address any comments you may have to the contact indicated in the Public Notice. Thank you for your cooperation in this matter. If you have any additional questions or concerns please feel free to contact Mr. Dan McGregor, Archeologist, at 817-886-1573 or Mr. Rob Newman, Environmental Planner, at 817-886-1762

Sincerely,

William Fickel, Jr.
Chief, Planning, Environmental, and
Regulatory Division

Enclosures

Newman/1762 *KW*
MCGREGOR, CESWF-OD-R *DM*
PAXTON, CESWF-PER-EE *DD*
HARBERG, CESWF-PER-E *DD*
FICKEL, CESWF-PER- *W*



DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P. O. BOX 17300
FORT WORTH, TEXAS 76102-0300

REPLY TO
ATTENTION OF:

February 16, 2006

Planning, Environmental, and Regulatory Division

Kathy Boydston
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Dear Ms. Boydston:

The U.S. Army Corps of Engineers (USACE) is assessing the potential impacts to the environment which may result from the proposed Ham Creek Park Development, Whitney Lake, Texas. USACE is proposing to develop a Class A campground at Ham Creek Park that would be leased to Johnson County after construction. USACE is disclosing all associated impacts for public review in a draft Environmental Assessment (EA).

A Public Notice has been prepared to notify the public of this action and to solicit comments. The Public Notice, draft FONSI and EA are enclosed with this communication for your review and to solicit any additional comments or concerns your agency may have regarding this action including use of letter of permission CESWF-97-LOP-1 to comply with Section 404 of the Clean Water Act. We will consider any comments that we receive from you by the close of the comment period as indicated on the Public Notice. Please address any comments you may have to the contact indicated in the Public Notice. Thank you for your cooperation in this matter.

Sincerely,

William Fickel, Jr.
Chief, Planning, Environmental, and
Regulatory Division

Enclosures

Newman/1762 *RW*
PAXTON, CESWF-PER-EE *BSB*
HARBERG, CESWF-PER-E *BSB*
FICKEL, CESWF-PER-*BSB*
CARMAN, CESWF-PER-RP LL
Hatcher, CESWF-PER-RP/BSB

Same Letter Sent to:

Ms. Ronda Smith
Office of Planning and Coordination
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Dallas, Texas 75202

Mr. Thomas Cloud, Jr.
U.S. Fish and Wildlife Service
Ecological Services
711 Stadium Drive, Suite #252
Arlington, TX 76011

Rollin MaCrae
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Mr. F. Lawrence Oaks
State Historic Preservation Office
P.O. Box 12276
Capital Station
Austin, Texas 78711

Mr. Mark Fisher
Research and Environmental Assessment Section
Water Planning and Assessment Division
Texas Commission on Environmental Quality MC 150
12100 Park Circle 35, Building F
P.O. Box 13087, Capitol Station
Austin, Texas 78711



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
FORT WORTH DISTRICT, CORPS OF ENGINEERS
P.O. BOX 17300, 819 TAYLOR STREET
FORT WORTH, TEXAS 76102-0300

February 16, 2006

Planning, Environmental and Regulatory Division

SUBJECT: Ham Creek Park Development, Whitney Lake, Johnson County, Texas

Honorable Wallace Coffey, Chairman
ATTN: Mr. Fred Nahwooksy
Comanche Nation
7 Miles N of Lawton on HE Bailey Tpke, Medicine Park Exit
Lawton, OK 73502
580-492-4988

Dear Chairman Coffey:

In accordance with Section 106 of the National Historic Preservation Act and its implementing regulations, 36 CFR Part 800, the U.S. Army Corps of Engineers (USACE), Fort Worth District is initiating the consultation process with your office regarding the proposed project noted above. The U.S. Army Corps of Engineers, Fort Worth District is proposing to redevelop Ham Creek Park on Whitney Lake, Johnson County, Texas. The proposed project includes construction of a Class A campground in the 191 acre park.

In an effort to comply with Section 106 requirements, we have had a professional archaeologist survey the proposed park area to locate any cultural resources that would have been impacted by the restoration activities. The survey results did not find any significant archeological resources. We will have the construction monitored to insure archeological resources are protected. If you are aware of any Sacred Sites or other Traditional Cultural Properties that might be affected by this proposed project, we ask that you please contact us immediately so that we may avoid those areas.

We request your comments and input on our proposed plan and construction monitoring. Also enclosed is the Notice of Availability, the draft FONSI and draft EA for your comment. If you have any questions, please feel free to contact Mr. Rob Newman (817) 886-1762.

Sincerely,

William Fickel, Jr.
Chief, Planning, Environmental
and Regulatory Division

Enclosure

Mr. Newman, Ext. 1762
PARRISH, CESWF-PER-EC
PATTERSON, CESWF-PER-EC
HARBERG, CESWF-PER-EC
FICKEL, CESWF-PER-EC

Same Letter Sent to:

Honorable Billy Evans Horse, Chairman
Kiowa Tribe of Oklahoma
Hwy 9 West
Carnegie, OK 73015
580-654-2300

Honorable Gary McAdams, President
Wichita Executive Committee
1 Mile North of Anadarko on HWY 281.
Anadarko, Oklahoma 73005
(405) 247-2425