APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION: 10 November 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Fort Worth District, SWF-2021-00513

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Texas** County: **Tarrant** City: **Fort Worth**

1. Center coordinates of site (lat/long in degree decimal format): Lat. **32.944117º N,** Long. **-97.323314º W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Buffalo Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Lake Grapevine**

Name of watershed or Hydrologic Unit Code (HUC): **120301040302 Lower Denton Creek**

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☒ Office (Desk) Determination. Date: **22 September 2022**

☒ Field Determination. Date(s): **15 February 2022, 11 May 2022**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are No** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): [1]

☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
☐ Non-RPWs that flow directly or indirectly into TNWs
☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area (See attached tables):
Non-wetland waters: -- **626 linear feet (lf): 6 width (ft) and includes expanded open water areas on-channel.**
Wetlands: **0.482 acres**

c. Limits (boundaries) of jurisdiction based on: **1987 Delineation Manual and OHWM indicators.**
Elevation of established OHWM (if known): Unknown.

2. Non-regulated waters/wetlands (check if applicable):[3]

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a **tributary** that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to not be jurisdictional. Explain: **One erosional feature appears to have begun near the north-central part of the review area around 2005 and became more pronounced in 2009. In reviewing recent and historic aerial photographs, it appears this feature lacks OHWM characteristics and appears to have formed from poor industrial land use practices. Runoff from an adjacent property located to the east conveys water through this feature to the wetland-pond complex located to the south. A pond located in the southwestern corner of the review area appears to have formed from filling of the site that subsequently blocked flows for a long enough period to allow for the formation of a pond over time. The pond is in the upper reaches of the watershed and receives hydrology from a water treatment facility located approximately 50 yards to its south. The pond is located within a upland drainage feature; however, no dam was constructed to impound water. The slight elevation difference between the pond and the downstream tributary allows for relatively permanent flows. This feature is a manmade artificial pond in uplands and is not a "natural" pond or "wetland" as identified in 33 CFR 328.3(a). Therefore, the pond is non-jurisdictional and not subject to regulation under Section 404 of the Clean Water Act.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: .
   Summarize rationale supporting determination: .
2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met. The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4. A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law. If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of <u>non-TNWs tributaries</u> that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: -- **20 acres**.

Drainage area: -- **20 acres An evalaution of apparent flow pathways and drainage areas asociated with the subject review area utilizing USGS quad mapping, aerial photography, and observations of connectivity and direction of flow made in the field, indicates that the subject review area is positioned within the upper reaches of the watershed.**

Average annual rainfall: **35 inches**

Average annual snowfall: **<1 inch**

(ii) Physical Characteristics:

(a) <u>Relationship with TNW:</u>

☐ Tributary flows directly into TNW.

☒ Tributary flows through **4** tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.

Project waters are **1 (or less)** river miles from RPW.

Project waters are **10** aerial (straight) miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from RPW.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters cross or serve as state boundaries. **No** Explain: N/A .

Identify flow route to TNW[5]: **Unnamed Intermittent RPW discharges into Buffalo Creek, thence to Henrietta Creek; thence to Elizabeth Creek; thence to Denton Creek; thence to Lake Grapevine which is a TNW.**

Tributary stream order, if known: **First Order**.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural. Explain:
☐ Artificial (man-made). Explain:
☒ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate): **Fill materials have been placed within the tributary as early as 2001 before being reconstructed as a trapezoidal channel along the southwestern property boundary by 2005. The northwestern reach of tributary is comprised of a wetland/open water complex because of on-channel excavation resulting in an expansion of waters. Observable characteristics of the original tributary before its relocation and excavation are identifiable on historic aerials and images from 1942-1995. The first impacts to the tributary were observable in 2001 Google Earth imagery and continued periodically through 2021. Past filling and land use activities have led to the current linear nature and geomorphic position of the tributary. The tributary is located between two properties on its upper and lower reaches within the review area. The tributary has 3 wide open water areas (Ponds 2, 3 & 4) associated with it interspersed with wetlands in its lower reach before leaving the review area to the south.**

Average width: **6 feet**
Average depth: **8 feet**
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts ☒ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: **Relatively stable stream banks, but sparsely vegetated and steep, due to fill used during relocation of tributary.**

. Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Relatively straight**. **The original tributary was meandering but alteration through rerouting has made this a relatively straight feature.**

Tributary gradient (approximate average slope): **Less than 5%**

(c) Flow:

Tributary provides for: **Intermittent seasonal flow**

Estimate average number of flow events in review area/year: **2-5**

Describe flow regime: **Flow regime artificially supplemented by effluent treatment plant located just upstream from review area. The Texas Commission on Environmental Quality (TCEQ) issued a permit for the plant on March 21, 2019, and allows for the discharge of up to 9,500 gallons per day/0.01 cubic feet per second. The amount of discharge varies with time of year since some of the effluent is reclaimed and utilized to irrigate the property via a sprinkler system in hotter dryer months. Most months in 2021-2022 averaged a discharge of approximately 1,000-2,000 gallons per day/0.01 cubic feet per second with less during the May-September timeframe due to reclaimed effluent being used for irrigation, with most days averaging a discharge of less than approximately 1,000 gallons per day/0.01 cubic feet per second. Maximum daily flows for the same time period averaged approximately 2,500-3,500 gallons per day/0.01 cubic feet per second.**

Other information on duration and volume: .

Surface flow is: **Discrete and confined. Characteristics: Surface flow is confined to the channel with inputs from artificial hydrology, direct precipitation, and surrounding wetlands.**

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

☒ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☒ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ the presence of litter and debris
☐ destruction of terrestrial vegetation
☐ the presence of wrack line
☐ sediment sorting
☒ scour
☐ multiple observed or predicted flow events
☒ abrupt change in plant community

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☒ High Tide Line indicated by:
☐ oil or scum line along shore objects
☐ fine shell/debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):
☒ Mean High Water Mark indicated by:
☐ survey to available datum;
☐ physical markings;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: **Water in pond and contributions upstream were clear during site visits.**

Identify specific pollutants, if known: **There was no visible direct evidence of unnatural pollutants. The effluent flowing through the tributary is treated according to TCEQ guidelines and according to their permit.**

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian corridor. Characteristics (type, average width): .
☐ Wetland fringe. Characteristics:
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings: **The tributary provides habitat for aquatic species that would utilize first order tributaries such as insects, ampibians, and crustaceans along wth their predators which feed upon them such as snakes, birds, and mammals; even though the tributary has been rerouted into a relatively linear channel. Crayfish burrows and raccoon tracks were observed within the channel during site visit.**

2. Characteristics of <u>wetlands</u> adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) <u>General Wetland Characteristics:</u>

Properties:

Wetland size: **Jurisdictional Wetland 1 = 0.051 acres, Jurisdictional Wetland 2 = 0.431 acres**

Wetland type. Explain: **Emergent**

Wetland quality. Explain: **Low quality based on anticipated/estimated TXRAM score. Also fully adversely impacted by fill activities.**

Project wetlands cross or serve as state boundaries. Explain: .

(b) <u>General Flow Relationship with Non-TNW</u>:

Flow is: **Intermittent**. Explain:.

Surface flow is**: Discreet within the wetland and Confined when it reaches the relavant reach tributary. Flow bi-directional and occurs from the wetland to the stream as well as stream to wetland dependent on hydrologic conditions.**

Characteristics: **Wetlands 1 & 2 directly abut the unnamed tributary and are directly influenced by its hydrology; flow would also be influenced in response to precipitation events and during the wet season when the wetland reaches storage capacity. Wetland 2 extends offsite to adjacent parcels located to the west and south.**

.

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) <u>Wetland Adjacency Determination with Non-TNW:</u>

[7]Ibid.

☒ Directly abutting: **Wetland 1, 2**
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain:
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain: There is an earthen berm east of the wetland.

(d) Proximity (Relationship) to TNW
Project wetlands are **30 (or more)** river miles from TNW.
Project waters are **10 (or less)** aerial (straight) miles from TNW.
Flow is from: **Wetland to Unnamed Intermittent RPW; thence to Buffalo Creek, thence to Henrietta Creek; thence to Elizabeth Creek; thence to Denton Creek; thence to Lake Grapevine which is a TNW.**
Estimate approximate location of wetland as within the **2-year or greater** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: **Turbid due to sediment accumulation from upstream fill/watershed.**
Identify specific pollutants, if known: **Sediment; treated effluent from waste water treatment plant.**

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width): .
☒ Vegetation type/percent cover. Explain: **Unknown due to fill placement; emergent vegetation typical for the local geographic area and existing adjacent similar areas was present during site visits, available satellite imagery tends to substantiate this hypothesis.**
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings: **Unknown due to fill placement, the emergent wetlands likely provided habitat for aquatic species that would utilize emergent wetlands such as insects, ampibians, and crustaceans along wth their predators which feed upon them such as snakes, birds, and mammals; Crayfish burrows and raccoon tracks were observed within the upstream channel during site visit, as well as adjacent property wetlands of similarv type.**

3. Characteristics of all wetlands adjacent to the tributary:
All wetland(s) being considered in the cumulative analysis: **2**
Approximately **0.482** acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	**0.051**	**Y**	**0.431**

Summarize overall biological, chemical and physical functions being performed: **These wetlands provide natural moderation of floods (regulate water volume, release during lower flow conditions, etc.), reduction in flow velocity and cause deposition of sediments which improves water quality. They also support nutrient cycling, increase productivity, and improve aquatic habitat due to contributions of nutrients and carbon to receiving waters. They assist with water quality maintenance and groundwater recharge. Living resource values relative to vegetation are also provided in addition to wildlife habitat and can provide refugia and travel corridors in a watershed that has been heavily developed.**

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.
Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: **See Section B(1)(ii)(c) above**.
     Provide estimates for jurisdictional waters in the review area (check all that apply):
     - ☒ Tributary waters: **662** linear feet **6** width (ft).
     - ☒ Other non-wetland waters: **0.464** acres.
       Identify type(s) of waters: **Excavated tributary resulting in open water (Pond 2, 3, 4).** .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
     - ☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.482** acres.

[8]See Footnote # 3.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters and have, when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain:.

Identify water body and summarize rationale supporting determination: .
Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
☒ Other: (explain, if not covered above): **There is a pond (Pond 1) approximately 0.1 acre in size within the review area. The pond appears to be a water filled depression created in dry land incidental to past construction operations, i.e., developing the property for commercial development, that has characteristics that would meet the definition of a water of the United States (WOUS). As stated in the Preamble to the November 13, 1986, Regulations found on page 41217, this type of water is not generally considered a WOUS. This feature is not a "natural pond" or "wetland" as identified in 33 CFR 328.3(a). Therefore, Pond 1 is non-jurisdictional and not subject to regulation under Section 404 of the Clean Water Act.**

ISOLATED - Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

FAILS SIGNIFICANT NEXUS - Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **22 August 2022 Delineation Report**
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - ☐ Office concurs with data sheets/delineation report.
  - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☒ U.S. Geological Survey Hydrologic Atlas: .
  - ☒ USGS NHD data.
  - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). **Cite scale & quad name: Keller 7.5'**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Tarrant County Soil Survey** .
- ☒ National wetlands inventory map(s). .
- ☐ State/Local wetland inventory map(s): .
- ☒ FEMA/FIRM maps: **48439C0055K; effective 25 Sept 2009**
- ☐ 100-year Floodplain Elevation is:
- ☒ Photographs: ☒ Aerial (Name & Date): **Historic Aerials dated 1942, 1950, 1968, 1972, 1979, 1984, 1990, 2001, 2003, 2005, 2008, 2009, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021**
  or ☒ Other (Name & Date): **Site Visit Photographs 15 February 2022, 11 May 2022**
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify): **TCEQ Permit to Discharge Wastes WQ0015722001 & Monthly Flow Readings from 2020-2022** .

B. ADDITIONAL COMMENTS TO SUPPORT JD: This AJD utilized historic and existing information to determine the geographic limits of aquatic features and their jurisdictional status. The geographic extent of this jurisdictional determination was recently filled by commercial activity, which subsequently required a forensic investigation into what aquatic features were on-site prior to this activity. A variety of relevant mapping and aerial photography were evaluated to determine the presence and limits of these aquatic features. .