



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SWF DISTRICT
819 TAYLOR STREET RM 3A37
FORT WORTH, TEXAS 76102

CESWF-RDE

3 June 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ SWF-2024-00184.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

¹ While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Id	Type	WoUS
ES-1	Ephemeral	No
ES-2	Ephemeral	No
ES-3	Ephemeral	No

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The project area is 21.5 acres located at the southwestern corner of Choate Parkway and FM 2478 in the City of Celina, Collin County, Texas. The site is currently agricultural pastureland with three ephemeral, rain-dependent tributaries. Land slopes south to north and elevation ranges 780-760 feet above mean sea level (Weston East 7.5' Quadrangle, Map Panel 48085C0140J, effective 02 June 2009.) The area is within FEMA's, Zone X (outside the 0.2 percent ACE floodplain per Denton County Map Panel 48085C0140J, effective 02 June 2009). There is a pond to the west of the survey area, which is where the ephemeral tributaries originate. Tributaries are relatively high in the watershed, small size and have sporadic flows and are rain-dependent features. Center coordinates: Latitude: 33.290939, Longitude -96.732825.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Trinity River.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS

Water flows north through unnamed tributaries which flow into Stover Creek. Stover Creek flows into Wilson Creek, which flows into the East Fork Trinity River and then into the Trinity River (TNW).

6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶

Not Applicable. There are no Section 10 jurisdictional waters in the project area.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

a. TNWs (a)(1):

Not applicable. There are no jurisdictional features within the project area.

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

b. Interstate Waters (a)(2):

Not applicable. There are no jurisdictional features within the project area.

c. Other Waters (a)(3):

Not applicable. There are no jurisdictional features within the project area.

d. Impoundments (a)(4):

Not applicable. There are no jurisdictional impoundments within the project area.

e. Tributaries (a)(5):

Not applicable. There are no jurisdictional tributaries within the project area.

f. The territorial seas (a)(6):

Not applicable. There are no territorial seas within the project area.

g. Adjacent wetlands (a)(7):

Not applicable. There are no jurisdictional wetlands within the project area.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

Not applicable.

- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance.

Not applicable.

⁷ 51 FR 41217, November 13, 1986.

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- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system.

Not applicable.

- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland.

Not applicable.

- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC.

Not applicable.

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

ID	Coordinates	Area (AC)	Length (LF)	Determination
ES-1	33.291235, -96.733934	0.04	410	Non-WOTUS. Tributary to a water identified in paragraphs (a)(1) through (4), where the tributary is not a relatively permanent, standing or continuously flowing body of water.
ES-2	33.290101 -96.734368	0.02	375	
ES-3	33.290967, -96.731792	<0.01	103	

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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Contractor site visit date was on March 20, 2024; In-office evaluation by USACE done on May 28, 2024.
 - b. National Wetlands Inventory, National Hydrography Dataset, 3DEP Hillshade, USGS topo Map – National Regulatory Viewer-SWD-Texas, accessed May 28, 2024.
 - a. Maps, delineation report of aquatic resources and other information submitted on behalf of the applicant – Map enclosed, additional project information available within the electronic project file, SWF-2024-00137.
 - b. Aerial imagery provided by online resources, Google Earth Pro and Historicaerial.com all available years, reviewed on May 28, 2024.
10. OTHER SUPPORTING INFORMATION. Not applicable
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

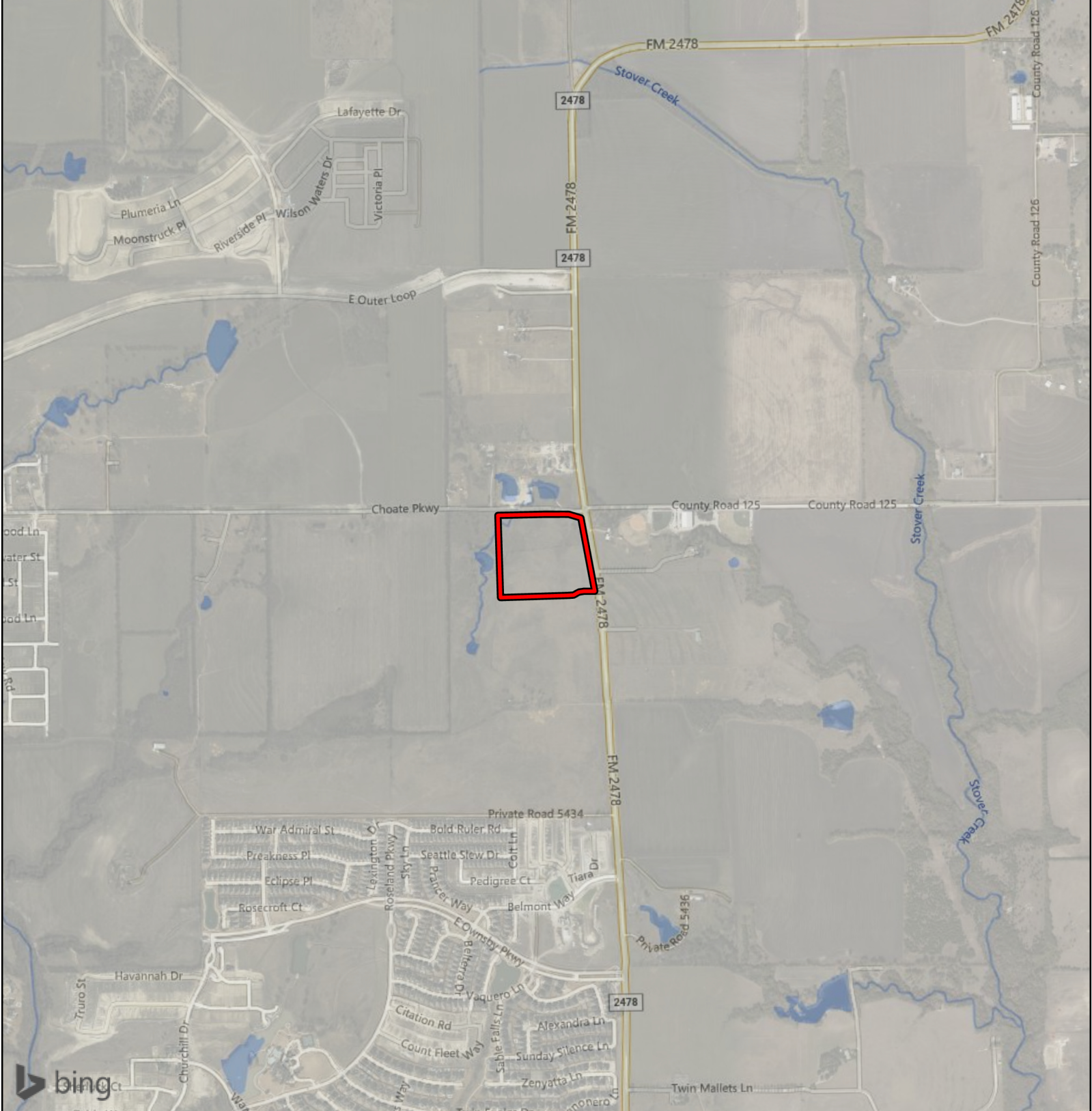




Figure 1.
General Location Map

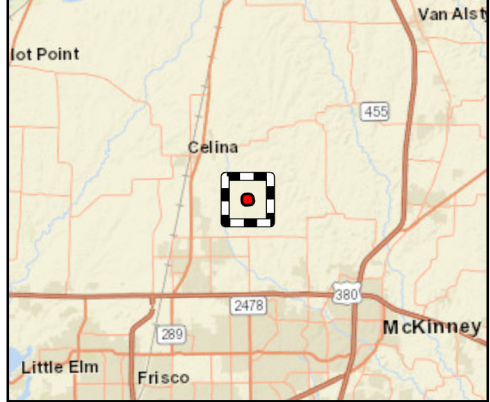
Choate Parkway Celina
City of Celina
Collin County, Texas

 Survey Area

1 in = 1,500 ft 



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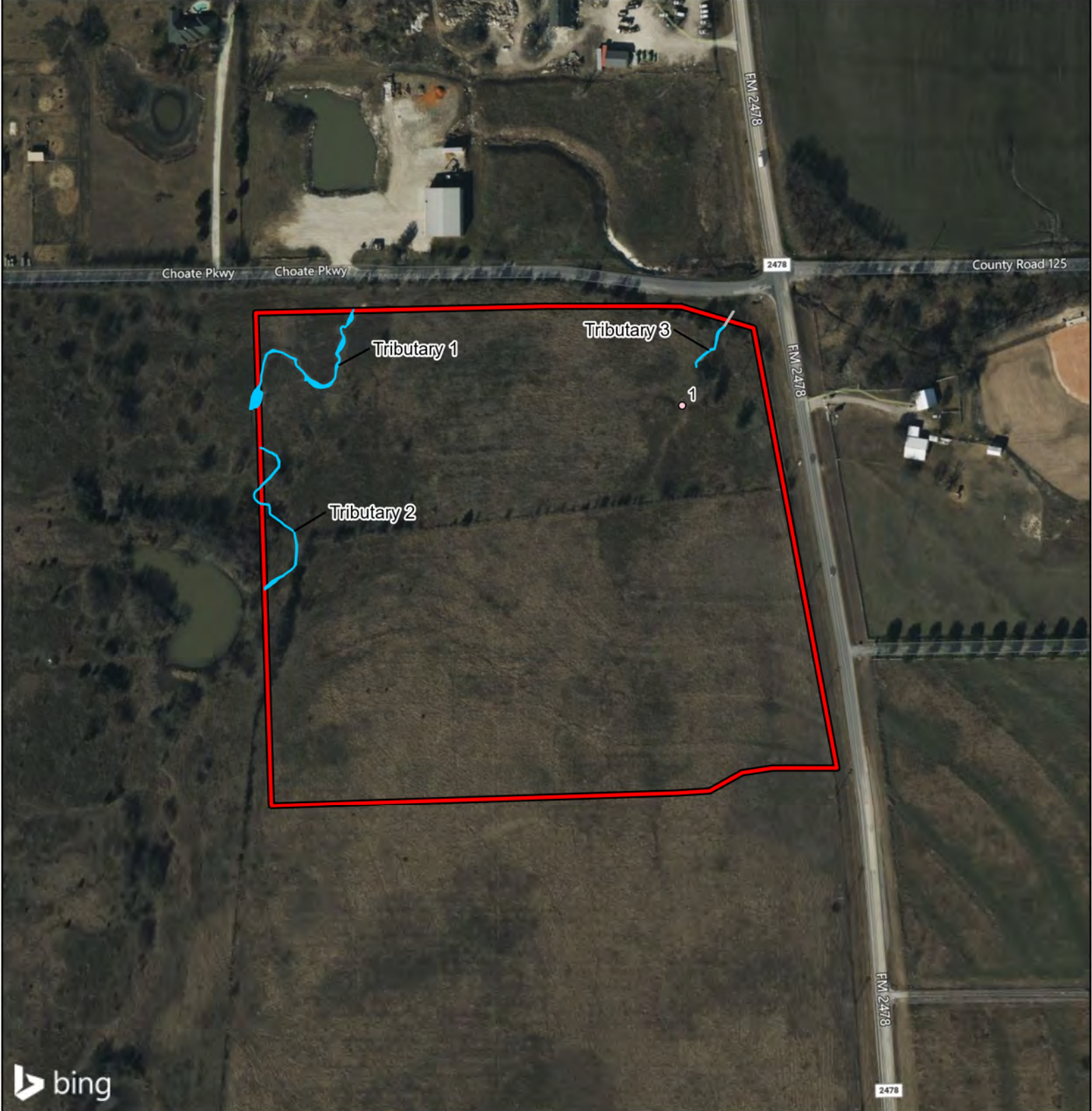


Figure 5.
Aquatic Features Identified
within the Survey Area

Choate Parkway Celina
City of Celina
Collin County, Texas

- Survey Area
- Wetland Determination Data Form

Aquatic Features

- Tributary, Ephemeral
- Culvert

1 in = 250 ft

Feet

0 250



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