



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

CESWF-RDE

April 16, 2025

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-2024-00479](#), MFR 1 of 1²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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.

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

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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. 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).

(See table of aquatic features on the following page)

Feature	TNW	Authority	Size (ac)	Size (LF)	Status	Rationale
S-1	No	404	0.01	125	Non-WOTUS	Tributary to a water identified in paragraphs (a)(1) - (a)(4), where the tributary is not relatively permanent, standing or continuously flowing body of water
S-2	No	404	0.12	885	WOTUS	(a)(5) tributary under pre-2015 regime
S-3	No	404	0.01	123	Non-WOTUS	Tributary to a water identified in paragraphs (a)(1) - (a)(4), where the tributary is not relatively permanent, standing or continuously flowing body of water
S-4	No	404	0.03	281	Non-WOTUS	Tributary to a water identified in paragraphs (a)(1) - (a)(4), where the tributary is not relatively permanent, standing or continuously flowing body of water
S-5	No	404	0.02	465	Non-WOTUS	Tributary to a water identified in paragraphs (a)(1) - (a)(4), where the tributary is not relatively permanent, standing or continuously flowing body of water
W-1	No	404	0.03	N/A	Non-WOTUS	This feature was previously jurisdictional due to a discreet CSC. Under the most recent guidance, this feature is no long jurisdictional.
D-1	No	404	N/A	205	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-2	No	404	N/A	23	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-3	No	404	N/A	273	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-4	No	404	N/A	65	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-5	No	404	N/A	129	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-6	No	404	N/A	85	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-7	No	404	N/A	89	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-8	No	404	N/A	51	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-9	No	404	N/A	171	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-10	No	404	N/A	722	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime

D-11	No	404	N/A	112	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
D-12	No	404	N/A	169	Non-WOTUS	Does not meet jurisdictional waters identified under (a)(1)-(a)(6) of the pre-2015 regime
OW-1	No	404	0.02	N/A	Non-WOTUS	Does not meet standing RPW identified in (a)(1)-(a)(6)
SW 1-4	No	404	N/A	N/A	Non-WOTUS	Four swales; Do not have OHWMs

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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 review area is 48.7 acres located in Tarrant County, Texas (32.970096, -97.361394). The applicant is seeking Nationwide Permit 14 for Linear Transportation Projects. A desktop review of the provided wetland delineation report (dated October 2024), various aerial imagery, NHD, and NWI maps show the delineation of nineteen (19) aquatic features (see section 1.a.). There are no previous jurisdictional determinations associated with the review area.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Trinity River](#).⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. [Not Applicable](#).⁷
6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ [Not applicable](#).
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

⁶ 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.

⁷ 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.

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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.

(See table in section 1.a above and attached map.) The 1987 Wetland Delineation Manual and Great Plains Supplement were referenced to identify potential jurisdiction. Indicators described in RGL 05-5 were used to identify the boundaries of non-wetland water features.

Stream S-2 (0.12 acres/885 linear feet) has relatively permanent flow and flows at least seasonally. Stream S-2 connects to an unnamed tributary which connects to Henrietta Creek located Northeast of the project area. The stream is a WOTUS because it is part of a stream reach that is greater than 50% RPW.

- a. TNWs (a)(1): [Not applicable](#).
- b. Interstate Waters (a)(2): [Not applicable](#).
- c. Other Waters (a)(3): [Not applicable](#).
- d. Impoundments (a)(4): [Not applicable](#).
- e. Tributaries (a)(5): [S-2](#)
- f. The territorial seas (a)(6): [Not applicable](#).
- g. Adjacent wetlands (a)(7): [Not applicable](#).

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").⁸ 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.

⁸ 51 FR 41217, November 13, 1986.

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Open water OW-1 (0.02 acres) is a preamble water. The pond appears to have been constructed in uplands. Based on the surrounding area, the pond was likely used to collect storm water run-off.

- 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. Ditches 1-12 are preamble waters. All 12 ditches appear to have been constructed in uplands to drain uplands and do not convey a relatively permanent flow. Based off the surrounding area, these ditches were likely constructed to direct storm water runoff from the roadway running parallel with the features. (See section 1.a. for measurements and additional rationale).

Wetland W-1 (0.03 acres) is an adjacent wetland that historically may have been a pond constructed in uplands for the purpose of watering livestock. This feature conveys a continuous surface connection to a requisite water. The CSC consists of one non-RPW stream which passes through two culverts, measuring approximately 700 linear feet. Under previous guidance, this feature was jurisdictional. Under the most recent guidance, this feature is no longer a WOTUS because is non-adjacent.

- 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

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Stream S-1 (0.01 acres) appears to be a first order stream with ephemeral flow within the project boundary. This feature does not have relatively permanent flow and only flows in response to precipitation.

Stream S-3 (0.01 acres) appears to be a first order stream with ephemeral flow within the project boundary. This feature does not have relatively permanent flow and only flows in response to precipitation.

Stream S-4 (0.03 acres) appears to be a first order stream with ephemeral flow within the project boundary. This feature does not have relatively permanent flow and only flows in response to precipitation.

Stream S-5 (0.02 acres) appears to be a first order stream with ephemeral flow within the project boundary. This feature does not have relatively permanent flow and only flows in response to precipitation.

Open water OW-1 (0.02 acres) is a preambled water. The pond appears to have been constructed in uplands. Based on the surrounding area, the pond was likely used to collect storm water run-off.

(Note: four swales exist within the review area. They are not included in this AJD because they do not have an OHWM.)

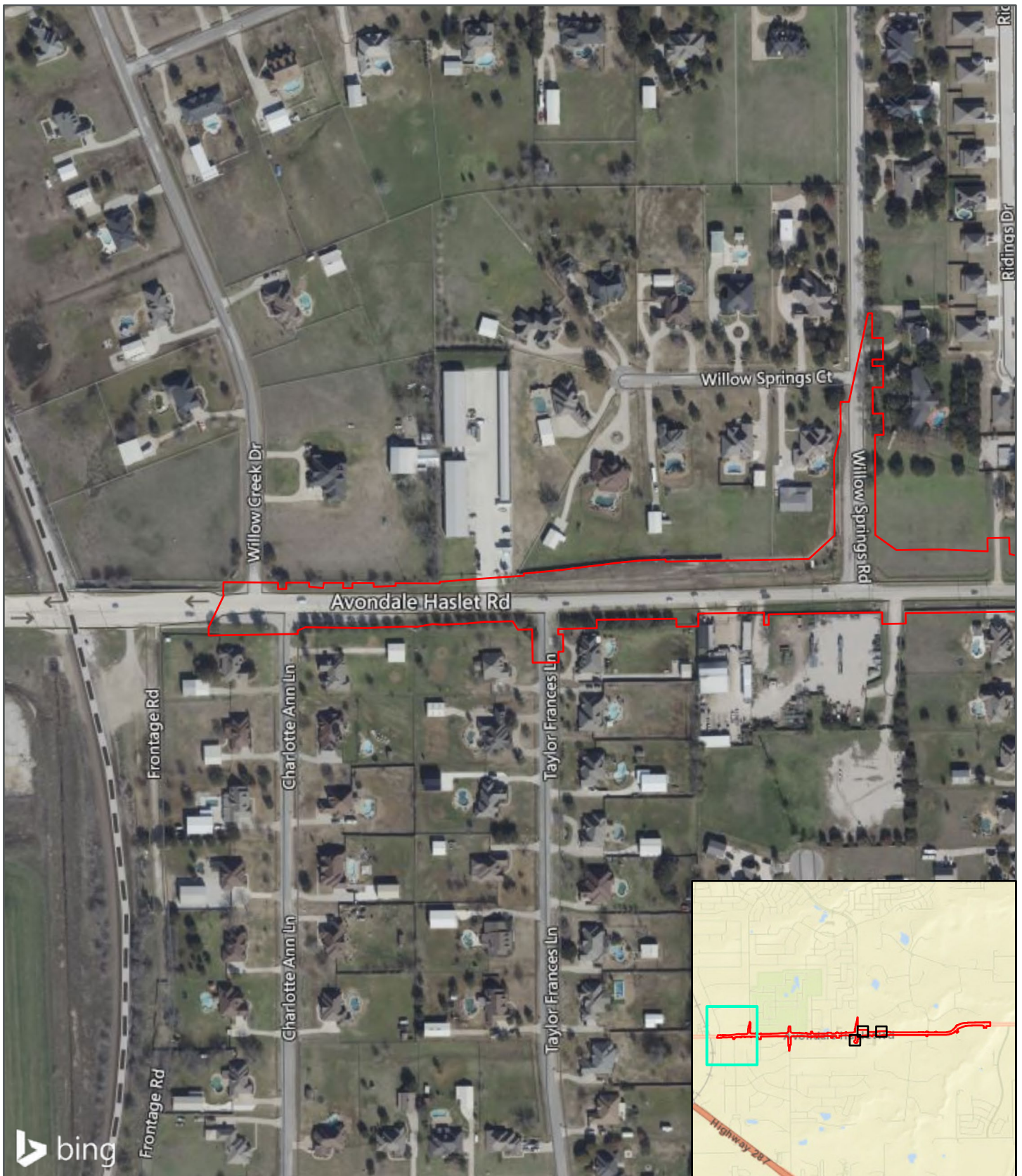
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. USACE site visit was determined unnecessary and a conference call with the consultant followed by a desk-top review of all available information listed herein was used for this determination, multiple dates of review.
 - b. Maps, delineation of aquatic resources, and other information submitted on behalf of the applicant by the consultant, multiple submittal dates.
 - c. National Wetlands Inventory, National Hydrography Dataset, 3DEP Hill shade, USGS Topo Map, Soils Maps, National Regulatory Viewer-SWD-Texas, multiple assessment dates.
 - d. 1987 Wetland Delineation Manual and Great Plains Supplement were referenced to identify potential jurisdiction.
 - e. Aerial imagery provided by online resources, Google Earth Pro and [Historicaerials.com](#), all available years, multiple assessment dates.

10. OTHER SUPPORTING INFORMATION. [None](#)

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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.

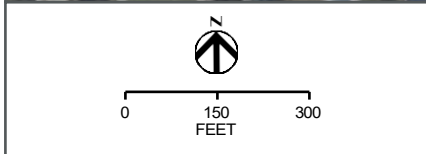
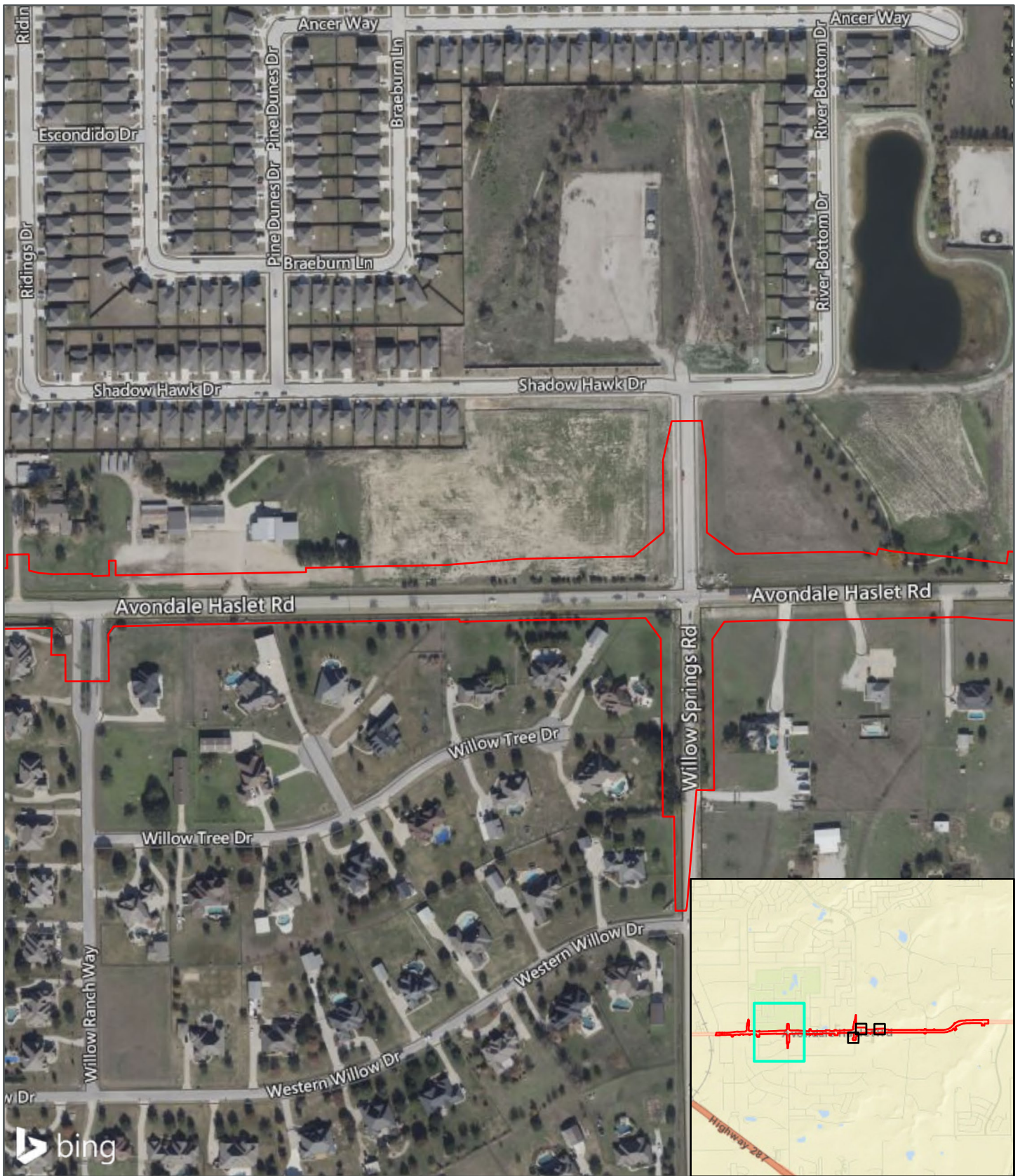


- ▭ STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▭ INTERMITTENT STREAM
- ▭ EPHEMERAL STREAM
- ▭ EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- DITCH
- SWALE
- ▭ STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS

**POTENTIAL
AQUATIC FEATURES**

AVONDALE HASLET
ROAD PROJECT

FEB 2025	FIGURE 4-1
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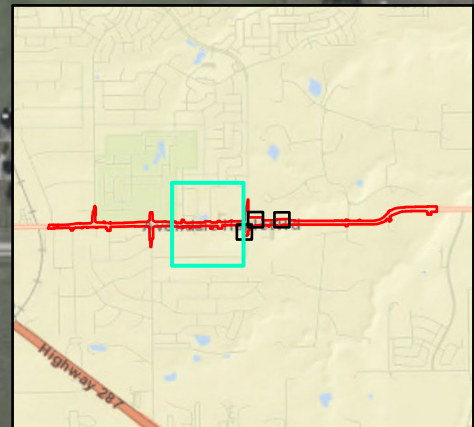


- ▭ STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▬ INTERMITTENT STREAM
- ▬ EPHEMERAL STREAM
- EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- - - DITCH
- - - SWALE
- STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS

**POTENTIAL
AQUATIC FEATURES**
AVONDALE HASLET
ROAD PROJECT

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FIGURE 4-2



bing

0 150 300 FEET

FORT WORTH

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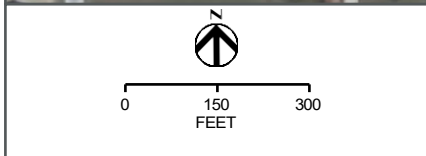
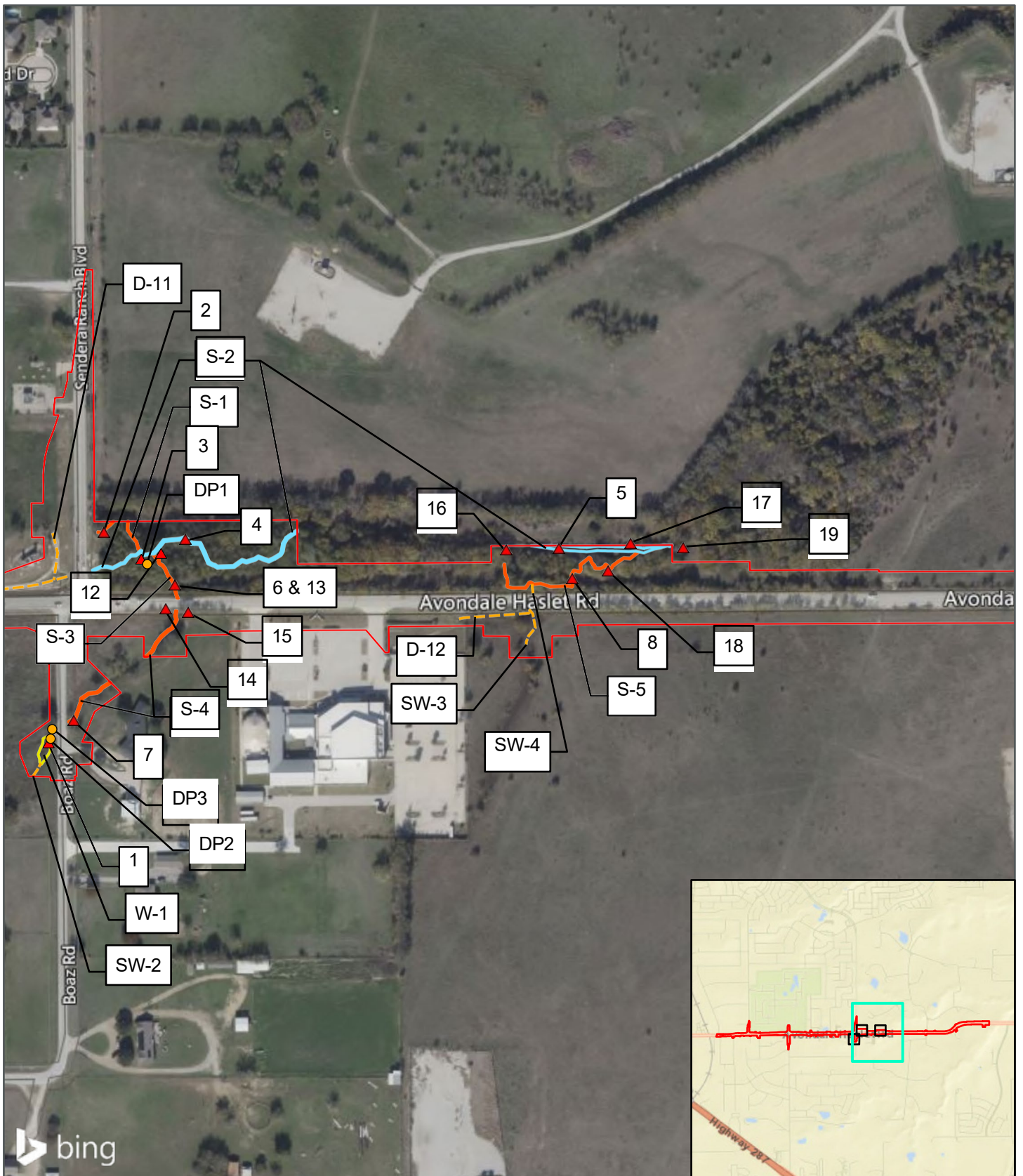
- ▭ STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▭ INTERMITTENT STREAM
- ▭ EPHEMERAL STREAM
- ▭ EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- ▭ DITCH
- ▭ SWALE
- ▭ STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS

POTENTIAL AQUATIC FEATURES

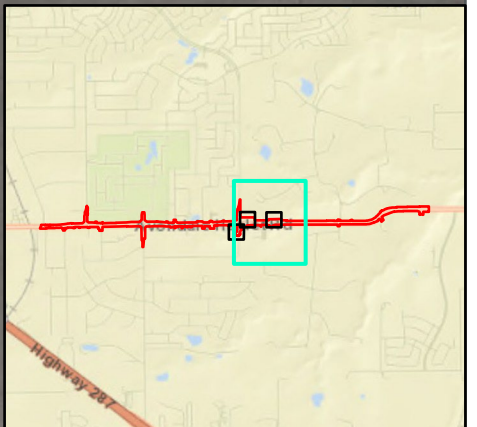
AVONDALE HASLET ROAD PROJECT

FEB 2025

FIGURE 4-3

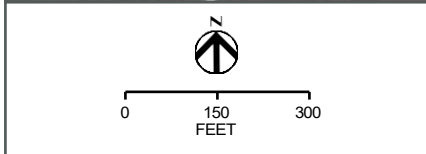
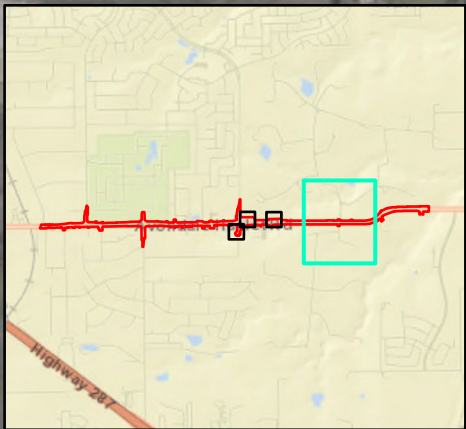


- ▭ STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▭ INTERMITTENT STREAM
- ▭ EPHEMERAL STREAM
- ▭ EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- ▭ DITCH
- ▭ SWALE
- ▭ STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS



**POTENTIAL
AQUATIC FEATURES**
AVONDALE HASLET
ROAD PROJECT

FEB 2025 FIGURE 4-4

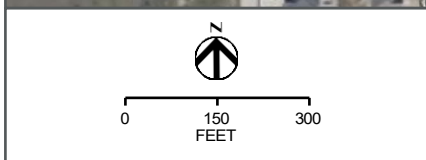


- STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▭ INTERMITTENT STREAM
- ▭ EPHEMERAL STREAM
- ▭ EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- DITCH
- SWALE
- ▭ STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS

**POTENTIAL
AQUATIC FEATURES**
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FIGURE 4-5



- ▭ STUDY AREA
- POTENTIAL AQUATIC FEATURES**
- ▭ INTERMITTENT STREAM
- ▭ EPHEMERAL STREAM
- ▭ EMERGENT WETLAND
- STORMWATER DRAINAGE FEATURES AND SWALES**
- DITCH
- SWALE
- ▭ STORMWATER RETENTION FEATURE
- DETERMINATION POINTS
- ▲ PHOTO PAGE POINTS

**POTENTIAL
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FIGURE 4-6