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 (JD): 3/10/2020; Additional Information request completed 4/20/2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CESWF-RD, Fort Worth C&D Landfill Expansion, SWF-2020-00137

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The project area includes the approximately 186-acre landfill site and associated property areas located west of Dick Price Road and south of Everman Kennedale Road, in southeastern Tarrant County. Village Creek acts as the western limit of the facility boundary. The facility is an operating landfill. The proposed landfill expansion would involve approximately 23 acres of land disturbance in areas to the south and northeast of the current landfill operation. Wetland delineations were conducted by qualified Geosyntec ecologists on 17 to 19 June 2019.

Name and Address of Person Requesting AJD: Gary Bartels, Texas Regional Landfill Company, LP, 4144 Dick Price Road, 76140
Phone: 817-705-6072 Email: Gary.Bartels@wasteconnections.com
State: Texas County/parish/borough: Tarrant City: Fort Worth
Center coordinates of site (lat/long in degree decimal format): Lat. 32.630833° **N**, Long. 97.234444° **W**.
Universal Transverse Mercator: 14N
Name of nearest waterbody: Village Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Trinity River
Name of watershed or Hydrologic Unit Code (HUC): Village Creek (1203010204)

☒ 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 (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: 4/24/20
☐ Field Determination. Date(s):

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** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

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:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: 3.45 acres (Wetland 1,2 3, 4,5, and 6) acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Not Applicable.**
      Elevation of established OHWM (if known): .

[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).

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

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Three manmade ponds are located in the review area: Pond 1 is for agricultural use and Ponds 2 and 3 are for stormwater catchment and retention. Wetlands 7 & 8 have no nexus to WOTUS and are non-jurisdictional**.

[3] Supporting documentation is presented in Section III.F.

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 non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: **acres**
Drainage area: **acres**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

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

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

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

Tributary properties with respect to top of bank (estimate):
- Average width: feet
- Average depth: feet
- Average side slopes: **Pick List.**

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: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
- ☐ Dye (or other) test performed: .

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ 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 or 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: .
Identify specific pollutants, if known: .

[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.
[7]Ibid.

(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: .

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

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 3.45 total wetland acres

Wetland type. Explain: Please see wetland summaries in Section 3, below.

Wetland quality. Explain: Please see wetland summaries in Section 3, below.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **No Flow** . Explain: .

Surface flow is**: Overland sheetflow**

Characteristics: .

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

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☒ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☒ Ecological connection. Explain: Within the FEMA 100-year floodplain of Village Creek.
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **No Flow.**

Estimate approximate location of wetland as within the **50 - 100-year** 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: Please see wetland summaries in Section 3, below.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **6**

Approximately (3.45) 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)
Wet 1 - N	0.55	Wet 5 - N	0.94
Wet 2 - N	0.17	Wet 6 - N	0.04
Wet 3 - N	1.44		
Wet 4 - N	0.31		

Summarize overall biological, chemical and physical functions being performed:

Wetland 1 is forested wetland associated with a depressional area adjacent to Village Creek. Vegetation is consistent with that of a forested wetland. It is populated by wetland and facultative over-story plants, including green ash (Fraxinus pennsylvanica) and boxelder (Acer negundo). Because of the standing water, it lacks a dense herbaceous component. Only Virginia wildrye (Elymus virginicus) was identified scattered at the margins of the ponded water. The wetland exhibited hydrology in the form of shallow standing water and a pervasive hydrogen sulfide smell. The ponded water was inhabited by fish and aquatic invertebrates. Wetland 1 is anticipated to be a jurisdictional wetland because it is situated within the Federal Emergency Management Agency (FEMA) mapped 100-year floodplain of Village Creek.

Wetland 2 is an herbaceous wetland associated with the northern fringe of a pond (Pond 1). The herbaceous stratum is dominated by Long's sedge (Carex longii) and sumpweed (Iva annua). This wetland does not exhibit a mid- or over-story. Lightly saturated soils and a hydrogen sulfide odor associated with the pond provide the hydrology for this wetland. Wetland 2 is anticipated to be jurisdictional because of its location within the 100-year floodplain.

Wetland 3 is a mosaic of palustrine emergent wetlands associated with the southern fringe of Pond 1 and connected fringe of a pond east of Pond 1 (Pond 2). A small stand (less than 30% total coverage of the wetland) of mature black willow (Salix nigra) comprise the small overstory component. Long's sedge grows within the inundated areas, while the rest of the surrounding bank is covered in Bermuda grass (Cynodon dactylon). The wetland has no shrub or tree strata beyond the minimal stand of black willow. The wetland exhibited hydrology in the form of shallow standing water associated with Ponds 1 and 2. Wetland 3 is associated with the 100-year floodplain of Village Creek and is assumed jurisdictional.

Wetland 4 comprises a palustrine emergent wetland adjacent to Wetland 5 and a transitional palustrine shrub/scrub wetland between them. These wetlands are located within a depression created by the landfill access road. Herbaceous vegetation includes rough cocklebur (Xanthium strumarium) and spike rush (Eleocharis cellulosa), with small black willow and cottonwood (Populus deltoides) comprising the small shrub/scrub wetland at the southern end. The wetland exhibited hydrology in the form of standing water. Wetland 4 is anticipated to be jurisdictional because of its placement within the 100-year floodplain of Village Creek.

Wetland 5 is a forested wetland mosaic adjacent to Wetland 4, associated with the same access road depression. The three areas comprising Wetland 5 are dominated by overstory species including cedar elm (Ulmus crassifolia), hackberry (Celtis laevigata), and green ash (Fraxinus pennsylvanica). Cedar elm and American elm (Ulmus americana) comprise the midstory, while Virginia wildrye grows sparsely in the understory. The wetland exhibited hydrology in the form of shallow surface water. Wetland 5 is anticipated to be jurisdictional because of its placement within the 100-year floodplain of Village Creek.

Wetland 6 is a forested wetland associated with a depressional area leading to Village Creek. It is situated within an area that had been previously designated for flood relief and wetland mitigation and could be the result of mitigation efforts in the approximately 2004 timeframe (NOTE: TRLC acknowledges that impacts to previously permitted permittee-responsible mitigation areas must be reviewed and approved by the Fort Worth District Regulatory Compliance Section prior to new impacts being reviewed and approved under a new permit action. Because Wetland 6 is outside of the proposed landfill expansion area, TRLC has no plans to impact this wetland. TRLC will comply with all USACE review requirements should there be plans to impact this wetland in the future.). The overstory and midstory of Wetland 6 are both comprised of black willow and American elm. A small amount of sumpweed provides a sparse herbaceous layer. The wetland exhibited hydrology in the form of shallow surface water. Wetland 6 is anticipated to be jurisdictional because of its placement within the 100-year floodplain of Village Creek..

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: This JD Request is for the PEM wetlands adjacent to, but not abutting, a non-RPW that flows into Onion Creek, a tributary of the Colorado River. These wetlands and the non-RPW (a manmade drainage) lie within the floodplain of Onion Creek. No other significant nexus has been identified based on the above connections, as well as the wetland functions and connections observed in the field.

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: .

   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: .

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: .

[8]See Footnote # 3.

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

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: **3.45 total** 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, have 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: **Two isolated wetlands (Wet 7 and 8) did not appear to have an outlet or other hydrologic connection (not located within floodplain) to other waters in the area.**

Wetland 7 is an herbaceous wetland associated with a drainage ditch that directs water south from the landfill access road on the eastern edge. This ditch forms the northern portion of Drainage 2. Herbaceous vegetation includes narrow-leaf cattail (Typha latifolia) and white clover (Trifolium repens). The wetland exhibited hydrology in the form of saturation and a high water table. Wetland 7 is not anticipated to be jurisdictional as it is outside of the Village Creek 100-year floodplain and because Drainage 2 does not provide a nexus to other jurisdictional waters.

Wetland 8 is an herbaceous wetland associated with Drainage 2, downstream of Wetland 7. Vegetation consists of narrow-leaf cattail and willowleaf aster (Symphyotrichum praealtum). The geomorphic position of this wetland, as well as the sparsely

[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.*

vegetated concave surface and water marks on surrounding vegetation, provide hydrological indicators. Wetland 8 is not anticipated to be jurisdictional, as it is outside of the Village Creek 100-year floodplain and Drainage 2 does not provide a nexus to other jurisdictional waters.

☐ Other: (explain, if not covered above): .

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): **2690 total** linear feet **4 foot average** width (ft).
☒ Lakes/ponds: (Pond 1 & Pond 2) 2.03 total acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

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: (Pond 3) 0.83 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: .
☒ 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: .
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: USFWS Wetlands Mapper.
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: Panel 340.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):Google Earth Imagery 2013 & 2015, NAIP 2016.
  or ☒ Other (Name & Date): June 2019.
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Drainage 1 is an unnamed ephemeral feature with headwaters in the elevated landfill spoil pile south of the active landfill. Its Mean Ordinary High Water Mark (OHWM) width is 5 ft. Drainage 1 flows west outside of the facility boundary, where it loses bed and bank features at the transmission line right-of-way (ROW). Although a portion of the drainage is within the floodplain, Drainage 1 was constructed within upland areas to direct surface water away from the landfill during previous construction activities. Available historical aerial imagery from 1995 shows the area prior to landfill construction; no channels are visible.

Drainage 2 is an unnamed ephemeral drainage ditch, with a MEAN OHWM width of 6 ft, that flows south along the edge of the eastern landfill access road before turning to flow west. It is approximately 1223 feet in length. It loses bed and bank features at the western edge of the lease boundary, east of the transmission ROW. Drainage 2 was constructed within upland areas to direct surface water away from the landfill during previous construction activities. Figure 4 shows aerial imagery from 2001, during construction within the southern property. Channels 1 and 2 are not visible, though upland spoil piles are evident. Because there is evidence that Channels 1 and 2 were constructed within uplands for surface water drainage purposes, these channels are anticipated to be non-jurisdictional.

Pond 1 is a manmade pond, likely originally used for agricultural purposes. This pond is potentially jurisdictional due to its placement within the 100-year floodplain of Village Creek.

Pond 2 is a manmade retention pond that collects water west of the landfill area. It is connected to the fringe wetlands of Pond 1 by a small channel approximately eight feet wide. This pond is potentially jurisdictional due to its placement within the 100-year floodplain of Village Creek.

Pond 3 is a manmade retention pond that collects water north of the landfill area. A drainage ditch along the northern access road directs water to this lined pond. It is outside of the 100-year floodplain and has no nexus to jurisdictional waters. It is anticipated to be non-jurisdictional.

The following table summarizes each resource for which a determination is being requested.

Resource	Type	Latitude	Longitude	Acreage/Linear Feet	Anticipated Jurisdictional?
WETLANDS					
Wetland 1	PFO	32.636201	-97.241247	0.55	Yes
Wetland 2	PEM	32.636198	-97.240417	0.17	Yes
Wetland 3	PEM	32.635002	-97.240556	1.44	Yes
Wetland 4	PEM/PSS	32.633062	-97.240467	0.26 PEM, 0.05 PSS	Yes
Wetland 5	PFO	32.632051	-97.240600	0.94	Yes
Wetland 6	PFO	32.632153	-97.242482	0.04	Yes
Wetland 7	PEM	32.628164	-97.234421	0.05	No
Wetland 8	PEM	32.627189	-97.235941	0.32	No
Wetlands Total	3.82 acres				
DRAINAGES					
Stream 1	Ephemeral	32.62889	-97.23945	1460 ft.	No
Stream 2	Ephemeral	32.62705	-97.23536	1230 ft.	No
OTHER WATERS					
Pond 1	Ag. Pond	32.63574	-97.24065	1.6	Yes
Pond 2	Ret. Pond	32.63476	-97.23982	0.43	Yes
Pond 3	Ret. Pond	32.63611	-97.23894	0.83	No
Other Waters Total	2.86 acres				
Total	6.68 acres				

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