



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

October 8, 2020

Regulatory Division

SUBJECT: Project Number SWF-2020-00281, Rockwall Technology Park Phase 3

Mr. Matt Wavering
Rockwall Economic Development Corporation
Director of Project Development
2610 Observation Trail, Suite 104
Rockwall, Texas 75032

Dear Mr. Wavering:

This letter is in regard to information received July 22, 2020, and subsequent submittal dated September 25, 2020, concerning the proposal by Rockwall Economic Development Corporation to construct a commercial development located in the City of Rockwall, Rockwall County, Texas. This project has been assigned Project Number SWF-2020-00281. Please include this number in all future correspondence concerning this project.

Under Section 404 of the Clean Water Act the U.S. Army Corps of Engineers (USACE) regulates the discharge of dredged and fill material into waters of the United States, including wetlands. USACE responsibility under Section 10 of the Rivers and Harbors Act of 1899 is to regulate any work in, or affecting, navigable waters of the United States. Based on your description of the proposed work, and other information available to us, we have determined this project will not involve activities subject to the requirements of Section 404 or Section 10. Therefore, it will not require Department of the Army authorization pursuant to Section 404 or Section 10.

The USACE based this decision on an approved jurisdictional determination (JD) that there are no waters of the United States on the project site. The basis of this approved JD is enclosed. This approved JD is valid for a period of no more than five years from the date of this letter unless new information warrants revision of the delineation before the expiration date.

The Applicant may accept or appeal this approved JD or provide new information in accordance with the enclosed Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA). If the Applicant elects to appeal this approved JD, the Applicant must complete Section II (Request for Appeal or Objections to an Initial Proffered Permit) of the enclosure and return it to the Division Engineer, ATTN: CESWD-PD-O Appeals Review Officer, U.S. Army Corps of Engineers, 1100 Commerce Street Suite 831, Dallas, Texas 75242-0216 within 60 days of the date of this notice. Failure to notify the USACE within 60 days of the date of this notice means you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

Thank you for your interest in our nation's water resources. If you have any questions concerning our regulatory program, please refer to our website at <http://www.swf.usace.army.mil/Missions/Regulatory> or contact Ms. Katie Roeder at the address above, by telephone (817) 886-1740, or by email Katie.O.Roeder@usace.army.mil, and refer to your assigned project number.

Please help the regulatory program improve its service by completing the survey on the following website: http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

For Brandon W. Mobley
Chief, Regulatory Division

Enclosure

Copy Furnished:

Mr. Richard Aldredge
Freese and Nichols, Inc.
2711 North Haskell Dr., Suite 3300
Dallas, Texas 75204
rga@freese.com

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Matt Wavering		File Number: SWF-2020-00281	Date: 10/08/2020
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
x	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Katie Roeder
Regulatory Specialist, Evaluation Branch Regulatory
Division U.S. Army Corps of Engineers Ft. Worth District
819 Taylor Street
Fort Worth, Texas 76102-00300
Phone: 817-886-1740

If you only have questions regarding the appeal process you may also contact:

Mr. Elliott Carman
Administrative Appeals Review Officer (CESWD-PD-O)
U.S. Army Corps of Engineers
1100 Commerce Street, Suite 831
Dallas , Texas 75242-1317
469-487-7061

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 10/8/2020
 ORM Number: SWF-2020-00281
 Associated JDs: N/A
 Review Area Location¹: State/Territory: TX City: Rockwall County/Parish/Borough: Rockwall
 Center Coordinates of Review Area: Latitude 32.910701 Longitude -96.404955

II. FINDINGS

- A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.
- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
 - There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
 - There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
 - There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stream 1	1,847	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Attachment A - Excluded Waters Rationale
Open Water 2	0.13	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	See Attachment A - Excluded Waters Rationale
Open Water 3	0.01	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	See Attachment A - Excluded Waters Rationale
Open Water 4	0.34	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	See Attachment A - Excluded Waters Rationale

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Open Water 6	0.10	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	See Attachment A - Excluded Waters Rationale
Emergent Wetland 3	0.09	acre(s)	(b)(1) Non-adjacent wetland.	See Attachment A - Excluded Waters Rationale
Emergent Wetland 4	0.59	acre(s)	(b)(1) Non-adjacent wetland.	See Attachment A - Excluded Waters Rationale
Emergent Wetland 5	0.01	acre(s)	(b)(1) Non-adjacent wetland.	See Attachment A - Excluded Waters Rationale
Emergent Wetland 6	0.02	acre(s)	(b)(1) Non-adjacent wetland.	See Attachment A - Excluded Waters Rationale
Ditch 1	1,041	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	See Attachment A - Excluded Waters Rationale

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: *N/A*
This information *is* sufficient for purposes of this AJD.
Rationale: *N/A*
- Data sheets prepared by the Corps: *N/A*
- Photographs: *Other: Attachment C Photographs*
- Corps site visit(s) conducted on: *N/A*
- Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Attachment B Figures; Figure 5 Soils Map*
- USFWS NWI maps: *Attachment B Figures; Figure 4 100 YR FEMA Floodplain Map*
- USGS topographic maps: *Title(s) and/or date(s).*



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Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	Attachment B Figures; Figure 4 100 YR FEMA Floodplain Map
USDA Sources	N/A
NOAA Global History Climatology Network	Attachment E NOAA NCEI Record of Observations
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	Attachment B Figures; Figure 4 100 YR FEMA Floodplain Map
Other information (specify)	Attachment D FNI Geotechnical Analysis

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [N/A](#)

Approved Jurisdictional Determination Form (Interim)

Excluded Waters Rationale

Freese and Nichols, Inc. (FNI) is currently assisting Rockwall Economic Development Corporation (EDC) in developing its Rockwall Technology Park Phase 3 project. During the course of preparing documentation for the Section 404 Permit for the project, FNI has found evidence that the channel which provides a hydrological connection for water features associated with the project area would be classified as an ephemeral stream.

FNI environmental scientists originally conducted a pedestrian survey of the project area on July 13th and August 1st, 2017 to investigate possible routes for the extension of Discovery Blvd and associated utilities. The original pedestrian survey identified a single stream crossed by the roadway extension (Stream 1), as well as a man-made ditch (Ditch 1), three open water features (Open Water 2, 3, and 4) and three emergent wetlands (Emergent Wetland 3, 4, 5) (Attachment B, Figure 3).

On August 7th and 9th, 2019 FNI scientists conducted a due diligence survey of the eastern portion of the site, including transect delineations of water features. This pedestrian survey extended the delineation of Stream 1 and identified an additional open water feature (Open Water 6).

FNI scientists conducted additional site visits to the project area on August 14th and 19th, 2020 to verify the continued existence of water features for the design phase of the project. This pedestrian survey completed the delineation of Stream 1 within the current project area and extended the delineation of Emergent Wetland 4.

Stream 1 is an ephemeral stream with an average ordinary high-water mark width of five feet and runs southeast through the limits of investigation (Attachment C, Photos 1 - 2). Stream 1 traverses through abandoned pasture at its northwestern-most segment and then predominantly through a narrow riparian buffer surrounded by eastern red cedar dominated uplands.

Stream 1 is classified by the Strahler Stream Order as a classification 1 stream situated high in the Upper Big Brushy Creek watershed (HUC code 120301070101). Stream 1 headwaters originate within the project limits of investigation (Figure 2). According to the NRCS web soil survey, the native soil within the limits of investigation surrounding Stream 1 consists of Houston Black Clay, 1 to 3 percent slopes. This is a non-hydric soil with a traditionally low water table, slow water permeability, and high water runoff.

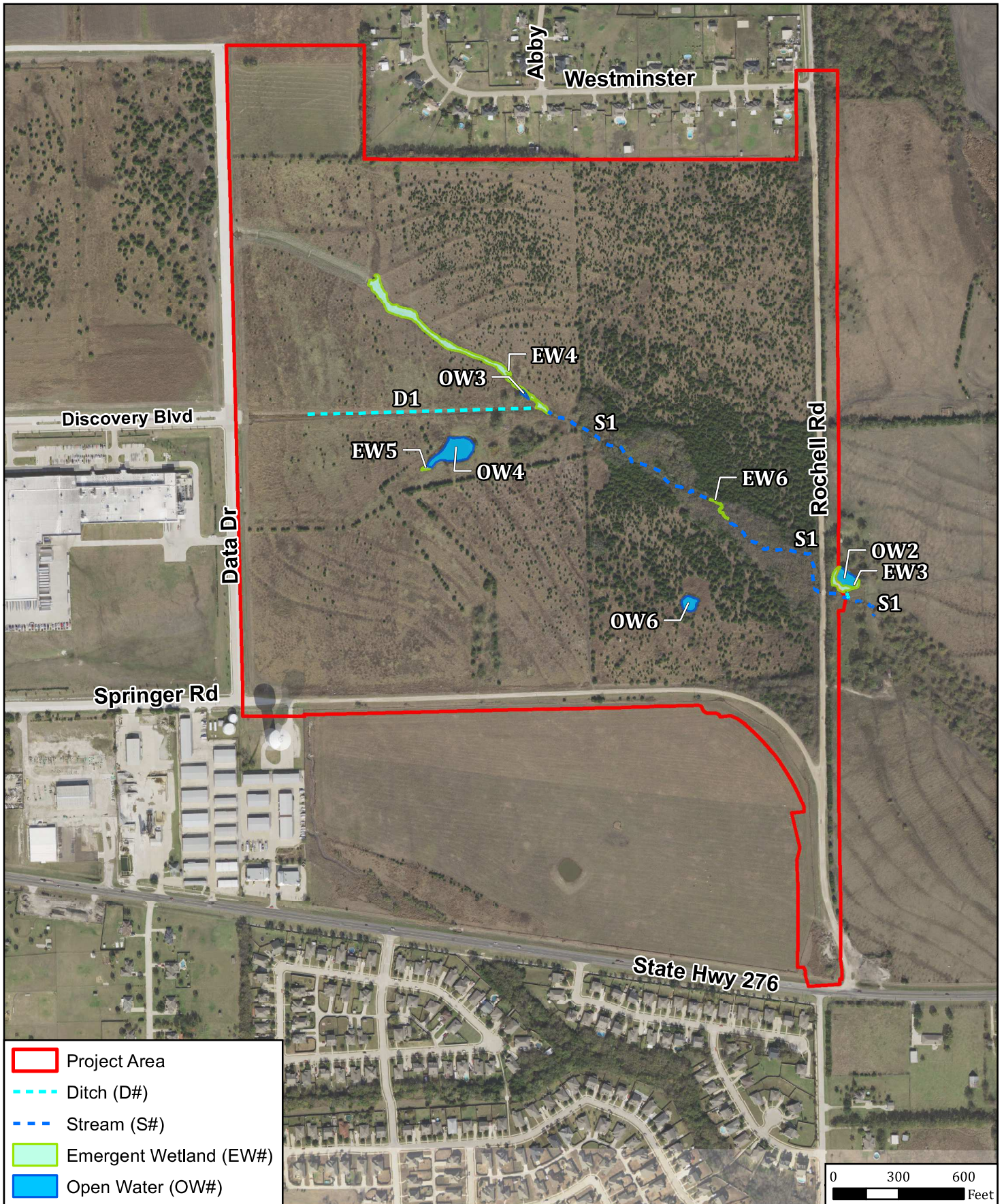
According to FNI's Geotechnical Investigation and Analysis for the Rockwall Technology Park Phase 3 project two bore pits were drilled in close proximity to Stream 1 between 2017 and 2020. Notes on ground water associated with these locations noted that ground water was identified in July 2017 at a depth of 18 feet at the upstream bore pit (B-02) and no ground water was identified in January 2020 at a depth of 25 feet at the downstream bore pit (B-07) at the southwestern extents of the limits of investigation (Attachment D). This suggests that groundwater does not influence the hydrology of Stream 1.

The Navigable Waters Protection Rule (NWPR) defines the term ephemeral as surface water flowing or pooling only in direct response to precipitation (*e.g.*, rain or snow fall). The USACE's long standing definition of an ephemeral stream is "a stream that has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow." Stream 1 meets both definitions of an ephemeral stream. Furthermore, the NWPR excludes ephemeral features including ephemeral streams, swales, gullies, rills, or pools from being waters of the U.S. No flow was observed during any of the site visits conducted since 2017 and only pooling along portions of the channel was observed a few days after a rain event.

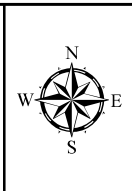
As previously mentioned, surface flow within Stream 1 was not observed on the most recent field visit to the limits of investigation (August 14, 2020), which was 14 days after the most recent rainfall event in Rockwall, Texas (NOAA National Centers for Environmental Information (NCEI) Record of Observations (Attachment E)). FNI has documented many intermittent streams across North Texas. They typically display a well-defined channel and are deeply incised due to downcutting and erosion and have an obvious groundwater influence. Stream 1 lacks incision and only minor signs of erosion were observed where the channel has been cleared of vegetation and crossed by all-terrain vehicles.

Open Water 2 is an off-channel stock pond and Emergent Wetland 3 is a fringe emergent wetland, both of which abut Stream 1 at the southeastern extent of the project area (Photo 3). Emergent Wetland 4 is a depressional emergent wetland and Open Water 3 is an associated pool which capture runoff from the surrounding landscape and drain into the headwaters of Stream 1 (Photos 4 - 5). Based on a review of historical imagery from 1982 to present, Emergent Wetland 4 and Open Water 3 appear to be the result of farmers draining the fields so they can plant crops and are not naturally occurring features. Emergent Wetland 6 is a riverine emergent wetland formed by sedimentation in the channel of Stream 1 and separates the upper and lower segments of Stream 1 (Photo 6). The source of the sedimentation is likely runoff from surrounding development. Stream 1 is the sole hydrological connection of Open Waters 2 and 3 and Wetlands 3, 4, and 6, therefore since Stream 1 is an ephemeral stream, these features would be non-jurisdictional.

Open Water 4 is a stock pond and Emergent Wetland 5 is an associated fringe emergent wetland situated within uplands. According to the USGS 7.5 minute topographic maps and the National Hydrography Dataset (NHD), these water features are hydrologically connected to Stream 1 (Figures 2 and 4). However, based on field observations in July 2017 and again in August 2020, no hydrological connection to Stream 1 was observed (Photos 7 - 8). Open Water 6 is a stock pond constructed wholly in uplands with no mapped or observed hydrological connection to Stream 1. Ditch 1 is a drainage channel constructed wholly in uplands to convey drainage to the headwaters of stream 1 from commercial development located west of the project area (Photo 9).



FRESE AND NICHOLS
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 4055 International Plaza, Suite 200
 Fort Worth, TX 76109 - 4895
 Phone - (817) 735 - 7300



CITY OF ROCKWALL
Rockwall EDC Phase 3 Infrastructure
Aerial Map

FN JOB NO	RKW19711
FILE NAME	3_Water_Features_8x11
DATE	8/31/2020
SCALE	1:7,200
DESIGNED	HMM
DRAFTED	HMM

3
FIGURE