



**US Army Corps  
of Engineers** ®  
Fort Worth District

# Public Notice

Applicant: City of Denton Solid Waste Services

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Project No.: SWF-2014-00224

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Date: June 18, 2015

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## **Purpose**

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

## **Regulatory Program**

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

## **Section 10**

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

## **Section 404**

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

## **Contact**

Name: Mr. Eric Dephouse, Project Manager

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Phone Number: 817-886-1820

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**JOINT PUBLIC NOTICE**

**U.S. ARMY CORPS OF ENGINEERS FORT WORTH DISTRICT**

**AND**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**SUBJECT:** Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the discharge approximately 800 cubic yards of fill material into approximately 0.37 acre of waters of the United States in conjunction with the completion of the existing City of Denton Municipal Landfill.

**APPLICANT:** City of Denton Solid Waste Services  
Attn: Vance Kemler  
1527 S. Mayhill Road  
Denton, Texas 76208

**APPLICATION NUMBER:** SWF-2014-00224

**DATE ISSUED:** June 18, 2015

**LOCATION:** The project would be located on an unnamed intermittent tributary to Pecan Creek in the City of Denton Municipal Landfill at 1527 South Mayhill Road, in the city of Denton, Denton County, Texas. The project area is centered at approximately 33.187317° latitude, -97.079893° longitude on the Denton East 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12030103.

**OTHER AGENCY AUTHORIZATIONS:** State Water Quality Certification

**PROJECT DESCRIPTION:** The City of Denton Solid Waste Services proposes to discharge approximately 800 cubic yards of fill material into 0.37 acre of Waters of the United States (WOUS) consisting of approximately 1,776 linear feet (0.2 acre) of an unnamed tributary and a 0.17 acre man-made siltation pond abutting the ephemeral channel. The siltation pond was constructed on-channel by the applicant to prevent silt and sediment from reaching a downstream unnamed tributary of Pecan Creek. No wetland impacts are proposed.

The City of Denton Solid Waste Services administers the landfill site which is regulated by the Texas Commission on Environmental Quality (TCEQ). The landfill currently operates under TCEQ Municipal Solid Waste (MSW) Permit No. 1590A which was issued on October 3, 1997. Previously, the landfill operated under MSW Permit No. 1590 issued by the Texas Department of Health in 1985. MSW permits authorize a certain airspace volume of waste containment within a specified footprint. The expected life of a landfill is projected forward based on

estimated waste volumes per year for the predicted population of the service area up to the maximum permitted airspace volume. In the instance of a rapidly expanding population in the service area, reaching the maximum permitted landfill volume can be prolonged by recycling and reuse of waste, which the applicant has participated in at the site.

The proposed activity would include the completion of the state authorized landfill as well as a vertical expansion. The applicant was originally authorized to fill all of the jurisdictional areas within the site under Nationwide Permit number 26 by USACE verification letter dated September 15, 1995. However, the work was not completed before the Nationwide Permit 26 authorization expired. Therefore, the applicant is applying for an individual permit to impact approximately 1,776 linear feet (0.2 acre) of an unnamed ephemeral jurisdictional channel and a 0.17-acre man-made siltation pond abutting the ephemeral unnamed channel.

**PURPOSE:** The purpose of the City of Denton Landfill is to provide solid waste disposal services for the citizens of a rapidly growing area, including the City of Denton and surrounding Denton, Collin, Grayson, Cooke, Montague, Wise, Tarrant, and Dallas counties. The proposed project is the continuation of the state authorized landfill process (MSW Permit No. 1590A) and a proposed vertical expansion in the vicinity of the subject tributary stream for completion of the existing City of Denton Municipal Landfill in accordance with the TCEQ MSW rules.

**NEED FOR THE PROJECT:** The landfill serves a large and rapidly growing population in the surrounding counties. The City of Denton Landfill is the primary solid waste disposal facility available to this populace. The completion and continued operation of the landfill is a basic necessity for the population of the area.

**EXISTING CONDITIONS:** The project site is the existing City of Denton Municipal Landfill which has been in operation since prior to 1995. At the present time the landfill operations extend to the edge of the ephemeral jurisdictional channel and a 0.17-acre man-made siltation pond abutting the ephemeral unnamed channel. Remnant vegetation along the bank of the ephemeral channel and siltation pond include black willow (*Salix nigra*), hackberry (*Celtis laevigata*), cedar elm (*Ulmus crassifolia*), yaupon (*Ilex vomitoria*), Chinese privet (*Ligustrum sinense*), western ragweed (*Ambrosia psyllostachya*), giant ragweed (*Ambrosia trifida*), cottonwood (*Populus deltoides*), common sunflower (*Helianthus annuus*), Johnson grass (*Sorghum halapense*) and common greenbrier (*Smilax rotundifolia*).

**ADVERSE IMPACTS OF THE PROPOSED PROJECT:** The project would result in the permanent loss of 1,776 linear feet (0.2 acre) of an unnamed ephemeral channel and a 0.168-acre man-made siltation pond abutting the ephemeral unnamed channel.

**ALTERNATIVES TO THE PROPOSED PROJECT:** The applicant prepared a preliminary alternatives analysis, which includes the following:

#### No-Action Alternative

The No-Action Alternative would be the least environmentally damaging because it would not involve any construction activities that would impact waters of the U.S. The No-Action Alternative

would not meet the need and purpose of the proposed project and is therefore not practicable. The No-Action Alternative was eliminated as it would result in limited continued use of landfill site until maximum capacity was reached. The No-Action Alternative provides potential insight into consequences if a project is not built and is not used as a baseline to compare other alternatives against.

### Off-Site Alternatives

Off-site alternatives were determined not to be practicable because the Denton Landfill is an existing Type I Municipal Solid Waste Landfill that has been permitted by the TCEQ and has been in operation since 1985. Any off-site alternative would involve premature closure of the existing landfill and opening a new landfill which would require acquisition of an alternative site and a new permit approval process at the state, and possibly federal levels. Permitting of an alternate site for landfill is a very lengthy, arduous, and expensive process requiring many years. Additionally, due to the rapidly expanding population of the region, coupled with the recent expansion of oil and gas development, finding an available alternate site of sufficient size for a landfill would be extremely difficult. It is also very likely that an alternative site of sufficient size would also contain jurisdictional waters of at least similar nature to the subject site.

### On-Site Alternatives

Tributary Avoidance Plan. Under the Tributary Avoidance Plan the applicant would not impact all or a portion of the jurisdictional tributary within the approved landfill footprint. This would be the least environmentally damaging alternative. Not impacting the jurisdictional areas would result in a loss of TCEQ permitted solid waste disposal space for the City of Denton that was anticipated to be utilized under the current TCEQ permit. This would result in a landfill space deficit for the landfill and the need for other expansion space at an earlier date than currently planned.

The loss of disposal airspace would be significantly greater than that represented by the area of the jurisdictional tributary avoided. This is so because avoidance would necessitate setbacks from the tributary of at least 50 feet on either side for maintenance access and a vegetative buffer from the landfill, as well as the construction of 4:1 fill slopes on both sides and the upstream end of the jurisdictional tributary for stability of the landfill. This loss of landfill space was not contemplated in the original landfill development plan and would represent a deficit of currently permitted (TCEQ) and future expansion (vertical) landfill capacity of more than 3,000,000 cubic yards under a total avoidance scenario, about 10 years of capacity at current fill rates.

The demand for waste disposal is ever present and increasing with population growth. The currently TCEQ permitted landfill boundary and capacity that includes the subject tributary was intended to provide landfill capacity for many years. The City of Denton has applied to the TCEQ for a vertical and lateral expansion to provide additional capacity to meet future demands. That application process is proceeding through the lengthy regulatory process, but the capacity of the footprint over the tributary area is a significant part of the current and projected future capacity. Additional lateral expansion of the Denton Landfill to make up for the lost volume to avoid the tributary is limited by the presence of Pecan Creek (a relatively permanent water) and

its flood plain to the east, other relatively undisturbed tributaries to the north and south, and existing residential and commercial development to the west. The Tributary Avoidance Plan is not a practicable alternative due to the loss of State authorized landfill capacity and the expense, time and difficulty of permitting alternate space. This alternative would not achieve the purpose of the project of utilizing the landfill as permitted by the State.

TCEQ-Approved Site Plan / Proposed Landfill Plan (Applicant's Preferred Alternative). In order to utilize the landfill footprint and fill airspace volume authorized under the TCEQ issued MSW Permit No. 1590A, the applicant proposes to impact approximately 1,776 linear feet (0.2 acre) of an unnamed ephemeral jurisdictional tributary and a 0.17-acre man-made siltation pond abutting the ephemeral unnamed channel. The siltation pond was constructed on-channel by the applicant to prevent silt and sediment from reaching a downstream unnamed tributary of Pecan Creek. The applicant proposes to place approximately 800 cubic yards of clean clay material below the plane of ordinary high water mark of the jurisdictional channel and adjacent siltation pond to construct the required landfill liner.

Nearly all the area surrounding the unnamed channel and siltation pond has been previously impacted by authorized landfill activities. Under this alternative the landfill would be completed as originally authorized by TCEQ and allow for the proposed vertical expansion, if subsequently approved by TCEQ. This alternative would fulfill the purpose of the project of utilizing the landfill as permitted by the State. The loss of the aquatic resource would be compensated by purchase of mitigation credits from approved mitigation banks in accordance with the 2008 Rule: Compensatory Mitigation for Losses of Aquatic Resources. The applicant believes that this is the least damaging practicable alternative.

**COMPENSATORY MITIGATION:** To offset unavoidable adverse impacts to WOUS, the applicant proposes to purchase credits from an authorized mitigation bank with a service area covering the project site.

**PUBLIC INTEREST REVIEW FACTORS:** This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

**STATE WATER QUALITY CERTIFICATION:** This project would result in a direct impact of greater than three acres of waters of the state or 1,500 linear feet of streams (or a combination of the two is above the threshold), and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

**ENDANGERED AND THREATENED SPECIES:** The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in Denton County, Texas, where the whooping crane (*Grus americana*), least tern (*Sterna antillarum*), and piping plover (*Charadrius melodus*) are the only listed species known to occur or may occur as migrants. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

**NATIONAL REGISTER OF HISTORIC PLACES:** The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

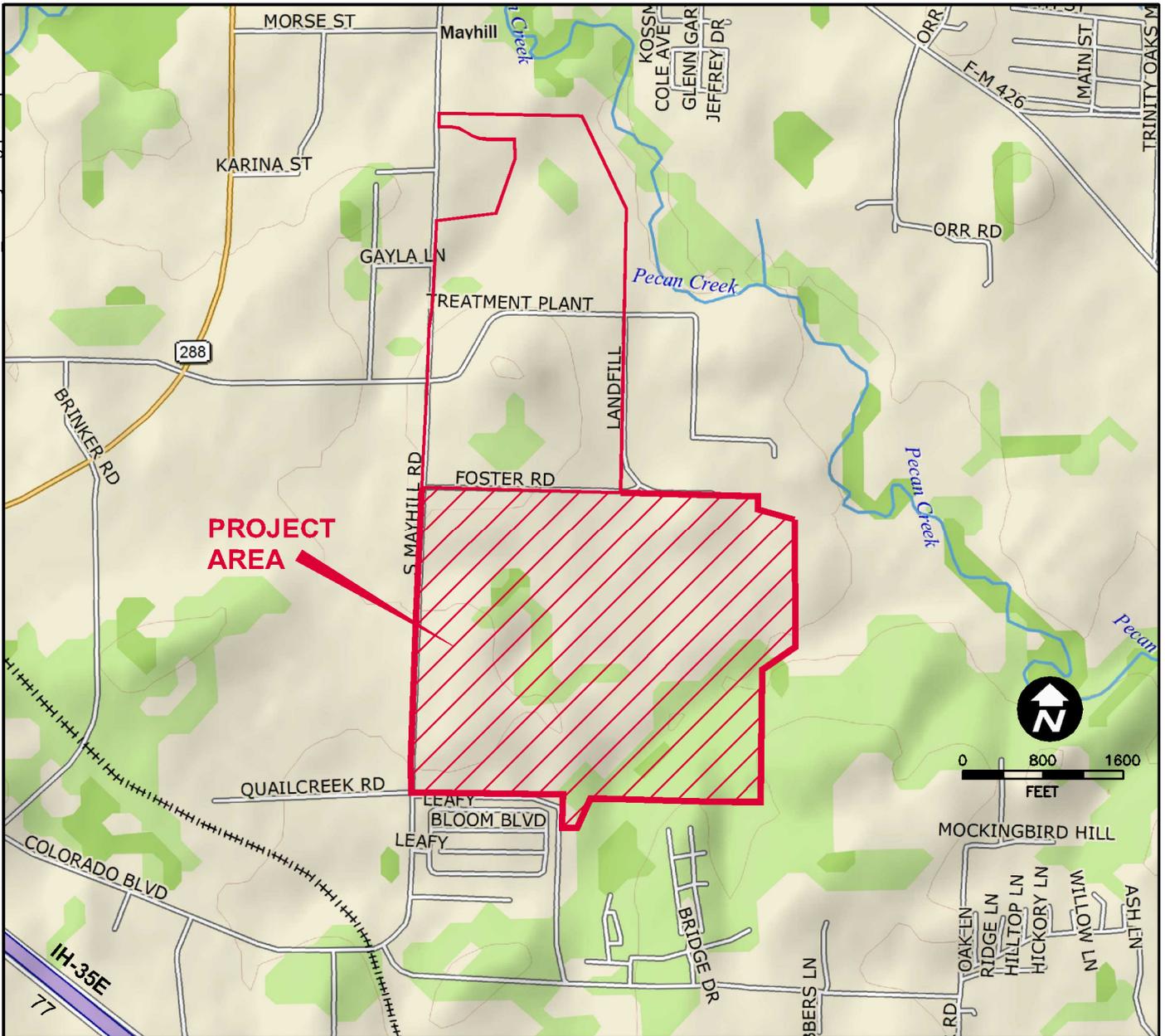
**FLOODPLAIN MANAGEMENT:** The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

**SOLICITATION OF COMMENTS:** The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

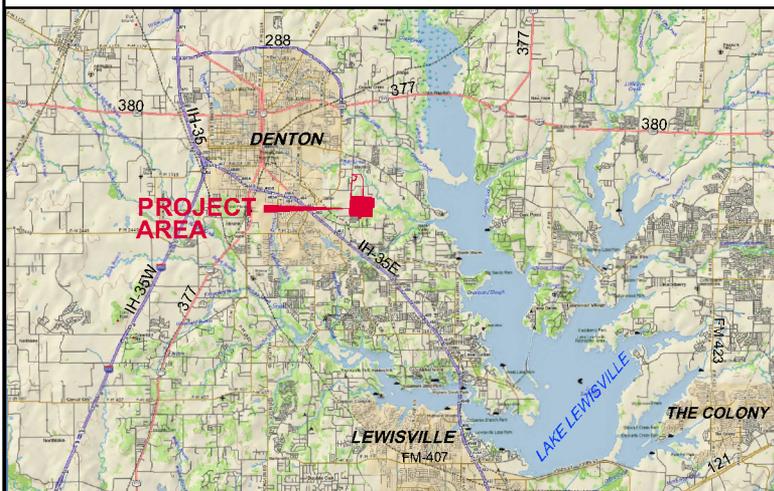
**PUBLIC HEARING:** Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

**CLOSE OF COMMENT PERIOD:** All comments pertaining to this Public Notice must reach this office on or before July 18, 2015, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to ; Regulatory Branch, CESWF-DE-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to Mr. Eric Dephouse at (817) 886-1820. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER  
FORT WORTH DISTRICT  
CORPS OF ENGINEERS



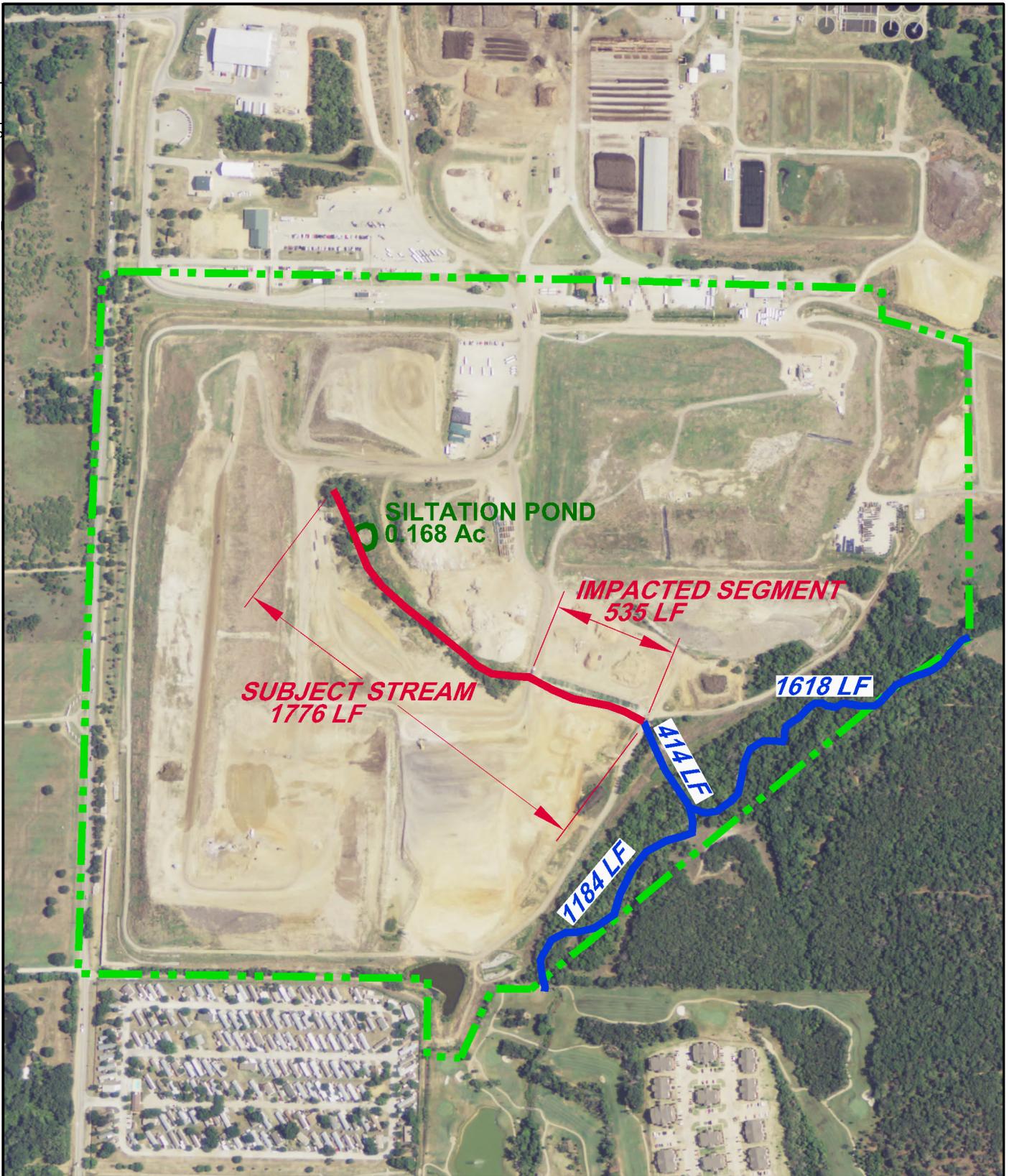
MAP SOURCE: DELORME TOPO NORTH AMERICA 9.0 (2010)



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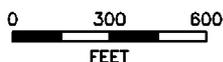


**FIGURE 1**  
VICINITY MAP  
CITY OF DENTON LANDFILL  
DENTON COUNTY, TEXAS



MAP SOURCE:  
 NATIONAL AGRICULTURAL IMAGERY PROGRAM (NAIP);  
 DENTON COUNTY, TEXAS (2012)

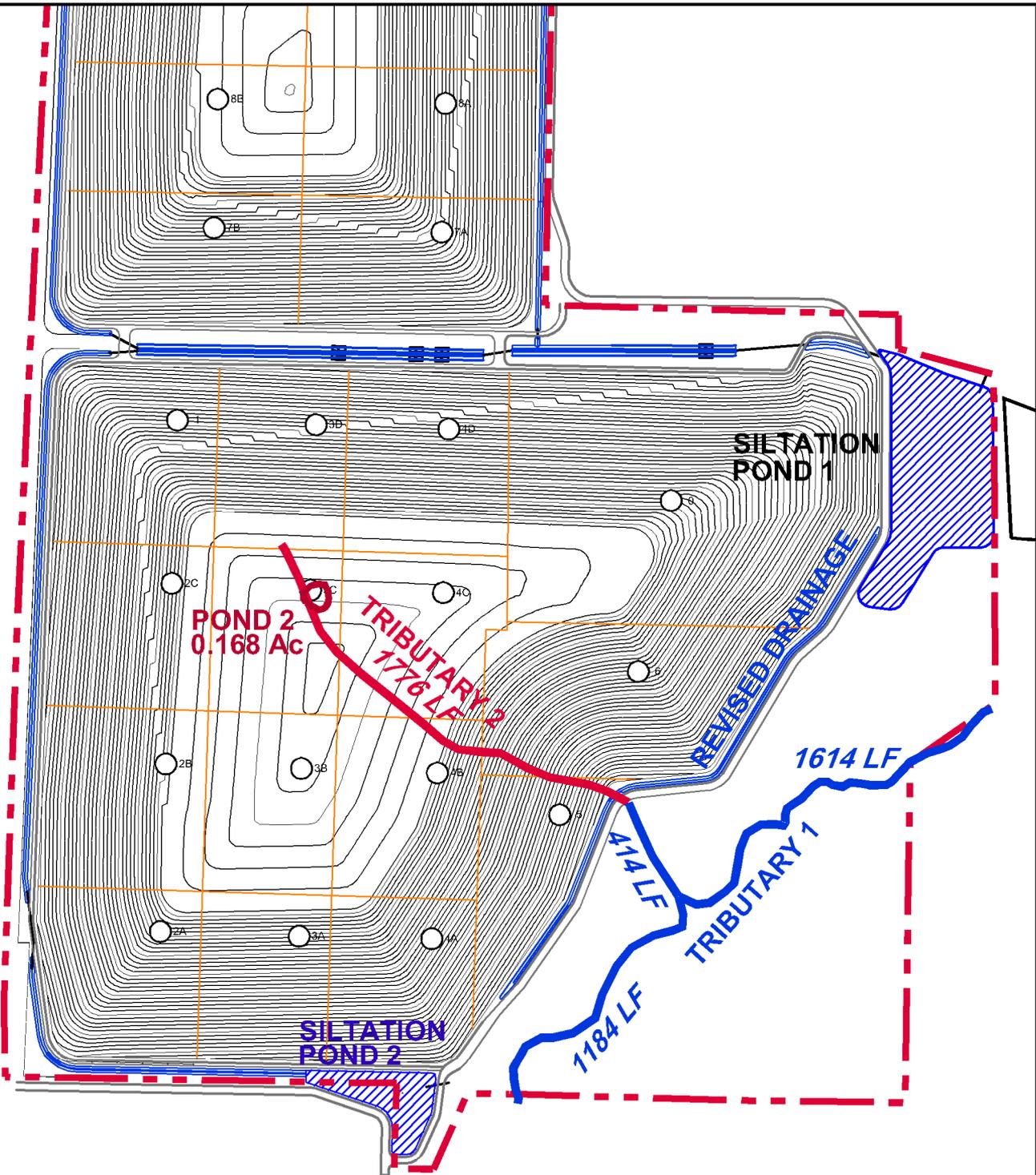
**LEGEND**  
 --- EXISTING PERMIT BOUNDARY  
 --- STREAM CHANNEL



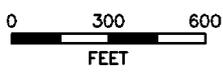
**Horizon**  
 Environmental Services, Inc.

**FIGURE 2**

JURISDICTIONAL DETERMINATION  
 CITY OF DENTON LANDFILL  
 DENTON COUNTY, TEXAS



MAP SOURCE:  
 USGS 7.5-MINUTE SERIES QUADRANGLE  
 DENTON EAST, TEXAS QUADRANGLE (1978)

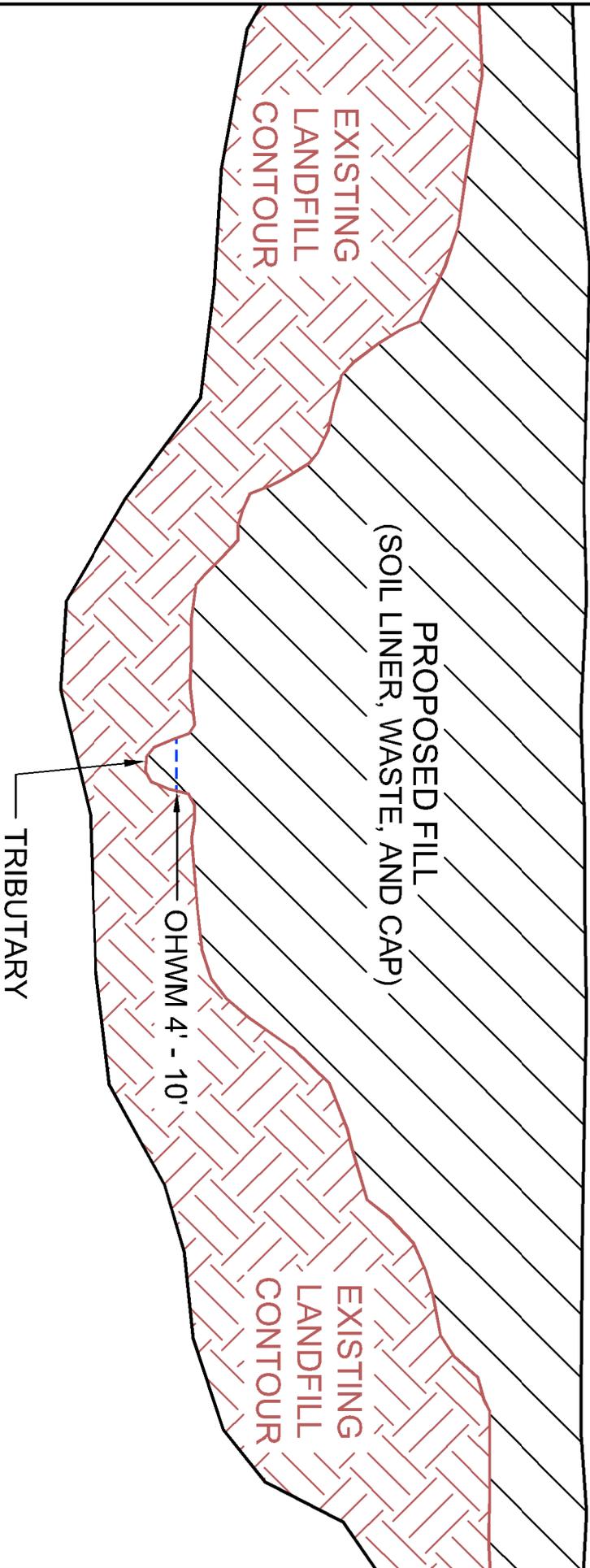


**Horizon**  
 Environmental Services, Inc.

**LEGEND**

- - - - - PROPOSED PERMIT BOUNDARY AS OF 9/11/2014
- JURISDICTIONAL STREAM CHANNEL TO BE FILLED (1776 LINEAR FEET)
- JURISDICTIONAL POND TO BE FILLED (0.168 ACRES)
- JURISDICTIONAL STREAM CHANNEL TO BE AVOIDED (3212 LINEAR FEET)

**FIGURE 3**  
 PROJECT IMPACTS  
 CITY OF DENTON LANDFILL  
 DENTON COUNTY, TEXAS



MAP SOURCE:

NOT TO SCALE

