



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
400 ROOD AVENUE, ROOM 224
GRAND JUNCTION, CO 81501-2520

June 16, 2022

Regulatory Division

SUBJECT: Jurisdictional Determination- Action No.SPA-2006-00384

BRJM, LLC
Attn: Robert Irwin
Post Office Box 60069
Colorado Springs, Colorado 80903
rcirwin@cmdcllc.com

Dear Mr. Irwin:

This letter responds to your request for a jurisdictional determination (JD) for three wetlands associated with the Latigo Trails Residential Development site. The approximately 505-acre project site is located near unnamed tributaries of Black Squirrel Creek, directly southwest of the intersection of Latigo Boulevard and Eastonville Road, centered at latitude 39.001096°, longitude -104.570607°, Peyton, El Paso County, Colorado. We have assigned Action No. SPA-2006-00384 to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we concur with your aquatic resource delineation for the site, as depicted on the enclosed drawing labeled, *Latigo Trails Review Area*, prepared by the Corps on April 4, 2022 (enclosure 1). We have determined that the site does not contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The approximately 0.60-acre of aquatic resources identified as *Wetland 1, Wetland 2, and Wetland C*, on the above drawing are intrastate isolated aquatic resources with no apparent interstate or foreign commerce connection. As such, these aquatic resources are not regulated by the U.S. Army Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act.

We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 2). A copy of this JD is also available at <http://www.spa.usace.army.mil/reg/JD>. This approved JD is valid for 5 years unless new information warrants revision of the determination before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (enclosure 3). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESP-D-PDS-O, Attn: Tom Cavanaugh, Administrative Appeal Review Officer, P.O. Box 36023, 450 Golden Gate Avenue, San Francisco, CA 94102 within 60 days of the date of this notice. 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.

If you have any questions, please contact Project Manager Ben Wilson by email at Benjamin.R.Wilson@usace.army.mil or telephone at (970) 243-1199, extension 1012. For program information or to complete our Customer Survey, visit our website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>.

Sincerely,

Kara Hellige
Chief, Southern Colorado Branch

Enclosures

cc:

Jon Dauzvarids, Ecosystem Services, LLC, jon@ecologicalbenefits.com

Latigo Trails Review Area

SPA-2006-00384
Prepared by Corps April 4, 2022

GoogleEarth Pro 7.3.3.7786 (October 6, 2019).
Falcon Colorado. Latitude 39.007204, Longitude
-104.576260, eye alt 13054. Retrieved April 2, 2022,
from <http://www.earth.google.com>.

ENCL 1

Review Area (505 acres)

Wetland 1 (0.14 acre)

Wetland 2 (0.10 acre)

Wetland C (0.46 acre)



APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

ENCL 2

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): June 16, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, Latigo Trails Residential Development, SPA-2006-00384

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Colorado** County/parish/borough: **El Paso County** City: **Peyton**

Center coordinates of site (lat/long in degree decimal format): Lat. **39.005°**, Long. **-104.5714°**

Universal Transverse Mercator: **13 537110.69 4317418.8**

Name of nearest waterbody: **Black Squirrel Creek**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Arkansas River**

Name of watershed or Hydrologic Unit Code (HUC): **Chico, 11020004**

☒ 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: **May 23, 2022**

☐ 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 no** "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 waters² (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, wide, and/or acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: **Pick List**

Elevation of established OHWM (if known):

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: **Wetland 1 (0.14 acre), Wetland 2 (0.10 acre), and Wetland C (0.46 acre) are within the review area and each exhibit indicators of wetland vegetation, hydric soils, and hydrology. All three wetlands have potential flow paths through upland swales that lead to the same un-named 1st order tributary reach. None of the wetlands are considered adjacent to the relevant reach because they (1) do not have an unbroken surface connection or shallow sub-surface connection to the relevant reach, (2) they are not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, or the like, and (3) their proximity to a jurisdictional**

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).

³ Supporting documentation is presented in Section III.F.

water is not reasonably close because each is located over 0.75 mile from the relevant reach. No other wetlands or features with an ordinary high water mark are within the review area.

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 waterbody⁴ 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: **Pick List** square miles

Drainage area: **Pick List** square miles

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: **No**.

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

Identify flow route to TNW⁵:
Tributary stream order, if known:

(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):

<input type="checkbox"/> Silts	<input checked="" type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input checked="" type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> 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):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM ⁶ (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. ⁷ Explain:	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

(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:

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.

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.

⁷Ibid.

(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: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: **No.**

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. 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:
 - ☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** 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:

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: **Pick List**

Approximately 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)

Summarize overall biological, chemical and physical functions being performed:

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:
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, wide, 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 wide.
☐ Other non-wetland waters: acres.

Identify type(s) of waters:

3. **Non-RPWs⁸ 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):

⁸See Footnote # 3.

- ☐ Tributary waters: linear feet, wide.
☐ 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:

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 jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 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: **The subject subject aquatic resources are isolated intrastate wetlands with no potential for interstate or intrastate commerce.**
☐ 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, wide.
☐ 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.

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.

- ☒ 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:
- ☐ 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): linear feet, wide.
- ☐ Lakes/ponds: 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, wide.
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource:
- ☒ Wetlands: **0.60** 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: **Updated report titled "Additional Information for Request for Approved Jurisdictional Determination for Latigo Trails Residential Development Project in El Paso County, Colorado USACE File #: DA# SPA-2006-00384, dated April 7, 2022.**
- ☒ 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: **1:24K; Eastonville**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Jurisdiction Determination Request report, prepared by agent, dated August 24, 2021**
- ☒ National wetlands inventory map(s). Cite name: **Jurisdiction Determination Request report, prepared by agent, dated August 24, 2021.**
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Various aerial images compiled by the Corps on April 4, 2022. Citations provided below.**
- or ☒ Other (Name & Date): **Jurisdictional Determination Request, prepared by agent, dated August 24, 2021.**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify):

Latigo Trails Review Area map, prepared by Corps, dated April 4, 2022.

- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 2, 2022, from <http://www.earth.google.com>.

Watershed and Drainage Area Maps, prepared by Corps, dated April 4, 2022.

- USGS. (April 4, 2022). Custom StreamStats Watershed Report for Latigo Trails Study Area (SPA-2006-00384). U.S. Geological Service. Retrieved from <https://streamstats.usgs.gov/ss/>

- GS. (April 4, 2022). Custom StreamStats Watershed Report for Latigo Trails Study Area (SPA-2006-00384). U.S. Geological Service. Retrieved from <https://streamstats.usgs.gov/ss/>

Flow Path Maps, prepared by Corps, dated April 4, 2022.

- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Fountain, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 104 miles. Retrieved April 4, 2022, from <http://www.earth.google.com> and overlay from <https://www.earthpoint.us/topomap.aspx>

- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Falcon, Colorado. Latitude 38.785869, Longitude -104.360767, eye alt 21,789. Retrieved and labeled April 4, 2022, from http://www.earth.google.com.D_

Stream Order and Relevant Reach Map, prepared by Corps, dated April 4, 2022.

- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Falcon, Colorado. Latitude 38.785869, Longitude -104.360767, eye alt 21,789. Retrieved and labeled April 4, 2022, from <http://www.earth.google.com>.

Upland Break Aerial Image, near Black Squirrel Creek, prepared by Corps, dated April 4, 2022.

- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Falcon, Colorado. Latitude 38.785869, Longitude -104.360767, eye alt 21,789. Retrieved and labeled April 4, 2022, from <http://www.earth.google.com>.

Aerial Imagery Compiled by the Corps.

- GoogleEarth Pro 7.3.3.7786 (May 5, 2020). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (October 6, 2019). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 2, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (June 9, 2017). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (November 2, 2015). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (June 12, 2013). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (October 18, 2011). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (August 8, 2006). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (October 16, 2005). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.
- GoogleEarth Pro 7.3.3.7786 (September 22, 2004). Falcon, Colorado. Latitude 39.007204, Longitude -104.576260, eye alt 13054. Retrieved April 4, 2022, from <http://www.earth.google.com>.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Wetland 1, Wetland 2, and Wetland C are not adjacent to a relevant reach and are therefore isolated. None of the wetlands have an unbroken surface connection or shallow sub-surface connection to a relevant reach. Wetlands 1 and 2 are associated with man-made berms but the wetlands (and berms) are far removed from the nearest potential relevant reach and separated by at least 1 mile of upland swale. It is likely that the Wetlands 1 and 2 only exist because the man-made berms allow for prolonged soil saturation sufficient to form wetland indicators. Therefore, the wetlands are not physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, or the like. Lastly, proximity of all the wetlands to a jurisdictional water is not reasonably close because each is located over 0.75 mile from the nearest potential relevant reach. No other wetlands or features with an ordinary high water mark are within the review area.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: BRJM, LLC: Attn Robert Irwin		File No.: SPA-2006-00384	Date: June 16, 2022
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	
→	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/cecw/pages/reg_materials.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 (address on reverse). 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 (address on reverse). 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 (address on reverse). 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:

Benjamin Wilson
Project Manager, NW Colorado Branch
Albuquerque District, U.S. Army Corps of Engineers
400 Rood Avenue, Room 224
Grand Junction, Colorado 81501
Phone: (970) 243-1199, #1012
Email: Benjamin.R.Wilson@usace.army.mil

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

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
1455 Market Street, 2052B
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX 415-503-6646
Email: Thomas.J.Cavanaugh@usace.army.mil

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: