



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SWF DISTRICT
819 TAYLOR STREET, RM 3A37
FORT WORTH, TEXAS 76102

CESWF-RDE

12 JUNE 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SWF-2019-00257.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

Name of Aquatic Resource	Type	Coordinates	Jurisdictional	Authority
SA	Ephemeral, non-RPW	30.475381, -98.217021	No	N/A
SB	Ephemeral, non-RPW	30.476925, -98.213918	No	N/A
SC	Ephemeral, non-RPW	30.477351 -98.211747	No	N/A
SD	Ephemeral, non-RPW	30.477234 -98.21631	No	N/A
SE	Ephemeral, non-RPW	30.478486 -98.214789	No	N/A
SF	Ephemeral, non-RPW	30.478791 -98.214095	No	N/A
SG	Ephemeral, non-RPW	30.478783 -98.21373	No	N/A
SH	Ephemeral, non-RPW	30.478911 -98.21299	No	N/A

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area consists of approximately 139.55 acres and is located off Texas Highway 71 west of Austin in Burnet County, Texas. Topography within the Review Area ranges from 920 to 1060 ft above mean sea level in elevation. ATP report indicates that conditions were wetter than normal during the consultant's site visit. All tributaries on site drained into the Alligator Creek. There was a total of 6,091 LF of ephemeral stream on the site.

Center Coordinates: 30.477253, -98.214761

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Colorado River \(TNW\)](#)⁵
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [All of the features that were identified within the Review Area flow northeast into Alligator Creek which drains directly into the Colorado River \(non-TNW for 35 miles\), and becomes the Colorado River \(TNW\).](#)
6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ [N/A](#)
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): [N/A](#)

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- b. Interstate Waters (a)(2): [N/A](#)
- c. Other Waters (a)(3): [N/A](#)
- d. Impoundments (a)(4): [N/A](#)
- e. Tributaries (a)(5): [N/A](#)
- f. The territorial seas (a)(6): [N/A](#)
- g. Adjacent wetlands (a)(7): [N/A](#)

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁸ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. [N/A](#)
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. [N/A](#)
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. [N/A](#)
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. [N/A](#)
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January

⁸ 51 FR 41217, November 13, 1986.

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2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. [N/A](#)

- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Name of Aquatic Resource	Type	Coordinates	Linear Feet	Jurisdictional
SA	First order ephemeral, non-RPW with upland overflow stretches throughout, not continuous.	30.475381, -98.217021	702	No, Non-RPW
SB	First order ephemeral, non-RPW and joins with SC to form a secondary stream with upland overflow stretches throughout, not continuous.	30.476925, -98.213918	949	No, non-RPW
SC	First order ephemeral, non-RPW joins SB to form a second order ephemeral stream with upland overflow stretches throughout, not continuous.	30.477351 -98.211747	783	No, Non-RPW
SD	First order ephemeral, merges with SE with upland overflow stretches throughout, not continuous.	30.477234 -98.21631	660	No, non-RPW
SE	First order stream ephemeral, non-RPW which becomes a second order stream after SD merges with it. There are upland overflow stretches throughout, not continuous.	30.478486 -98.214789	2543	No, Non-RPW
SF	ephemeral, non-RPW, joins with SE secondary stream segment	30.478791 -98.214095	92	No, non-RPW
SG	ephemeral, non-RPW, joins with SE secondary stream segment	30.478783 -98.21373	131	No, Non-RPW

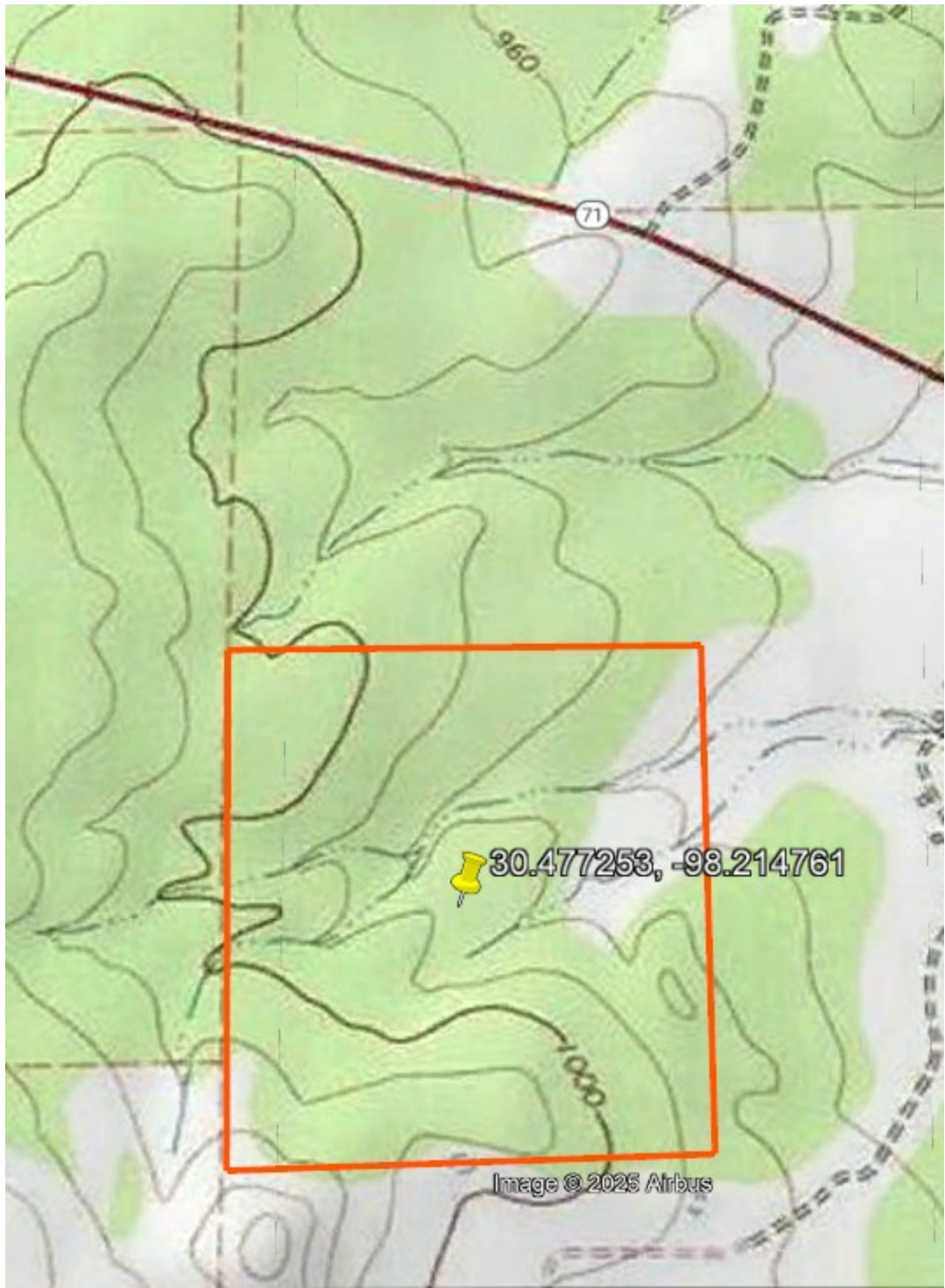
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SH	ephemeral, non-RPW, joins with SE secondary stream segment	30.478911 -98.21299	231	No, non-RPW
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A total of 6,091 LF of ephemeral streams were delineated on site and based upon (OHWM) indicators including wrack lines, sediment on plants and debris, sediment sorting and some confinement with bed and bank or other indicators of a groundwater connection such as algae or hydrophytic vegetation were observed anywhere within the reach. Along the flow path of these ephemeral streams, short stretches were observed to lack any OHWM indicators. A total of 1,735 LF of such reaches were mapped and are depicted as overland flow areas on the map. It was the contractor's opinion that the Review Area is void of any jurisdictional Waters of the United States.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Contractor field visit was on February 22, 2024, USACE office evaluations were conducted on June 11, 2025.
 - b. Google Earth images and topographic and TNW files.
 - c. Regulatory Viewer layers including topography, NWI, FEMA FIRM, NHD, HUC, Hillshade and aerial
 - d. Vulcan Materials Company – Spicewood Quarry, Burnet County, Texas, Approved Jurisdictional Determination Request, by HHNT (Hodges, Harbin, Newberry & Tribble, Inc., HHNT Project Number: 8021-030-01
 - e. OTHER SUPPORTING INFORMATION. Consultant's Report, Vulcan Materials Company – Spicewood Quarry, Burnet County, Texas, Approved Jurisdictional Determination Request, by HHNT (Hodges, Harbin, Newberry & Tribble, Inc., HHNT Project Number: 8021-030-01
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

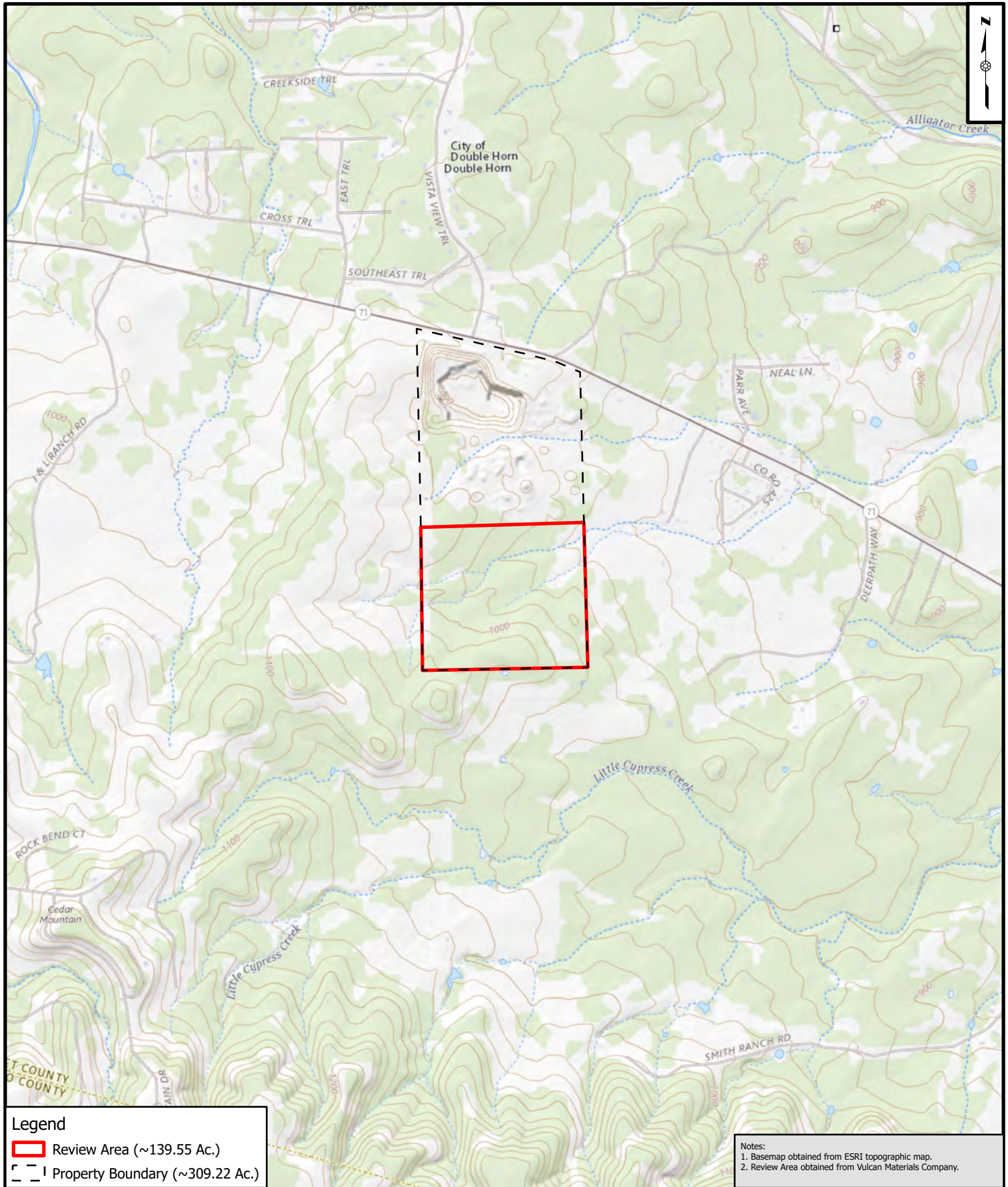


30.477253, -98.214761

Image © 2025 Airbus



Image © 2025 Airbus

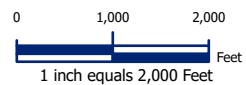


- Legend**
- Review Area (~139.55 Ac.)
 - Property Boundary (~309.22 Ac.)

- Notes:**
1. Basemap obtained from ESRI topographic map.
 2. Review Area obtained from Vulcan Materials Company.

Figure 2 - Topographic Map

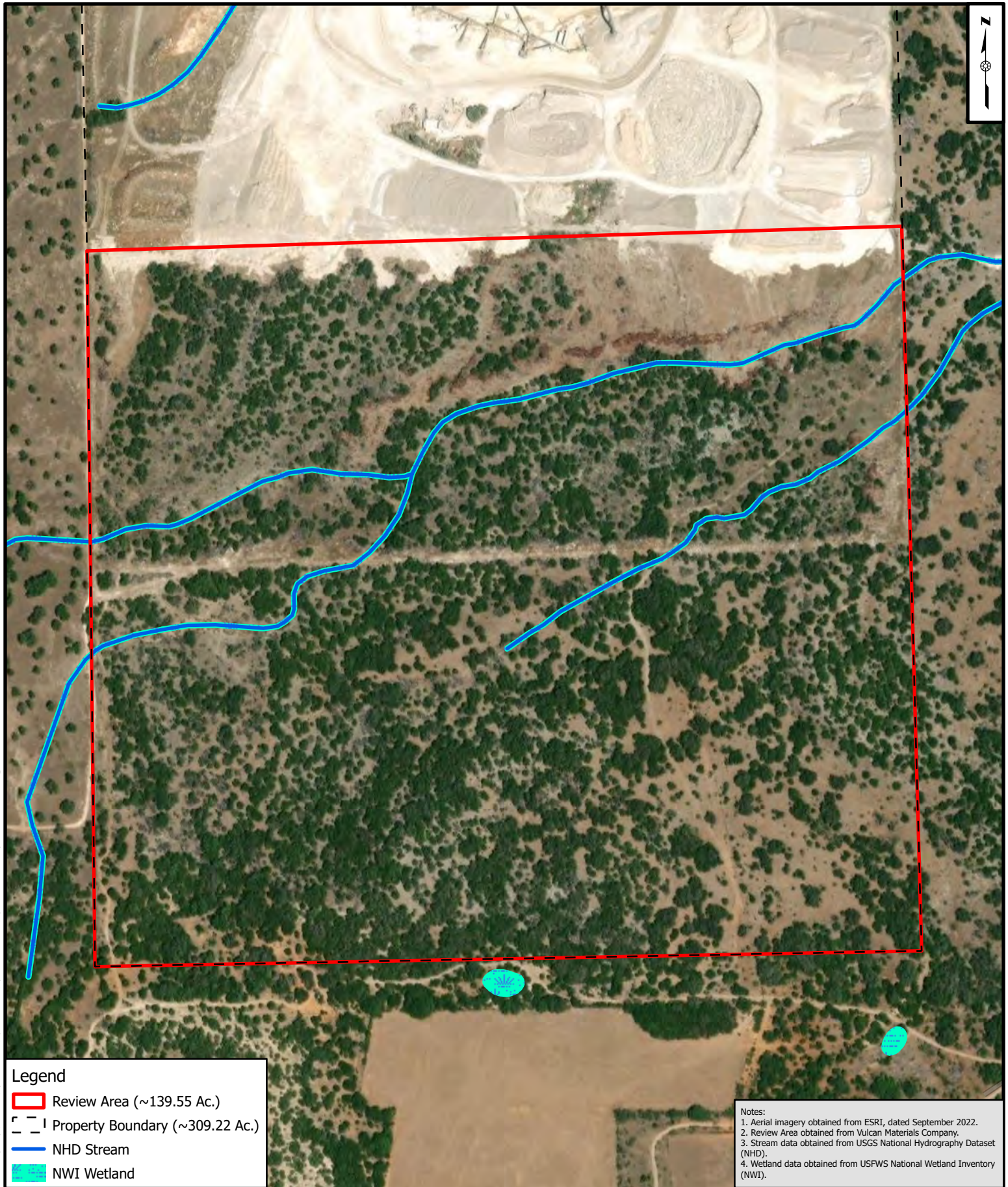
Spicewood Quarry
 Vulcan Materials Company
 Burnet County, TX
 3/14/2024



DISCLAIMER:
 This drawing and the information contained herein is for general presentation purposes only and is a compilation of shapefile(s) provided by various source(s). The source and accuracy of the file(s) has not been verified by HHNT and therefore the drawing is not intended for use as an engineering drawing or for design purposes.



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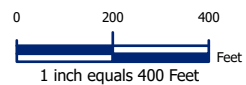
- Review Area (~139.55 Ac.)
- Property Boundary (~309.22 Ac.)
- NHD Stream
- NWI Wetland

Notes:

1. Aerial imagery obtained from ESRI, dated September 2022.
2. Review Area obtained from Vulcan Materials Company.
3. Stream data obtained from USGS National Hydrography Dataset (NHD).
4. Wetland data obtained from USFWS National Wetland Inventory (NWI).

Figure 4 - NWI Map

Spicewood Quarry
 Vulcan Materials Company
 Burnet County, TX



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
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ZONEX-AREA OF MINIMAL FLOOD HAZARD

Legend

 Review Area (~139.55 Ac.)

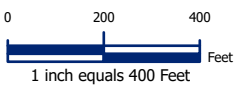
 Property Boundary (~309.22 Ac.)

Notes:

1. Aerial imagery obtained from ESRI, dated September 2022.
2. Review Area obtained from Vulcan Materials Company.
3. Floodplain data obtained from FEMA Flood Hazard Layer Viewer, county-wide download. No floodplain visible within extent.

Figure 5 - Floodplain Map

Spicewood Quarry
 Vulcan Materials Company
 Burnet County, TX



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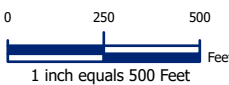


- Legend**
- Review Area (~139.55 Ac.)
 - Property Boundary (~309.22 Ac.)
 - Ephemeral Stream (~6,091 Linear Ft.)
 - ➔ Overland Flow (~1,735 Linear Ft.)

- Notes:**
1. Aerial imagery obtained from ESRI, dated September 2022.
 2. Review Area obtained from Vulcan Materials Company.
 3. Aquatic resources delineated by HHNT ecologists February 22, 2024.

Figure 6 - Delineation Map

Spicewood Quarry
 Vulcan Materials Company
 Burnet County, TX
 3/14/2024



DISCLAIMER:
 DEPICTED WATERS OF THE U.S. DELINEATION REMAINS AN OPINION
 OF HHNT UNTIL IT IS FORMALLY VERIFIED IN WRITING BY THE U.S. ARMY
 CORPS OF ENGINEERS VIA A FORMAL DETERMINATION LETTER.

**DELINEATED STREAMS HAVE NOT BEEN
 APPROVED BY ACOE.**



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