



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

CESWF-RDE

7 MAY 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-2025-00185

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.

CESWF-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00185

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).
 - i. WET01, PFO wetland, non-jurisdictional, no authority
 - ii. SW01, Swale, non-jurisdictional, no authority

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 Project area lies within the Northern Blackland Prairies (ecoregion 32a) subdivision of the Texas Blackland Prairies Level III ecoregion. Coordinates: 29.317449, -98.545284. Elevation within the project area ranges from 636 to 682 feet above mean sea level. Current land use adjacent to the project area is urban high-density housing and commercial developments. The site is within the Leon Creek watershed of the San Antonio River Basin. There are three vegetational communities on the site – scrub/shrub upland, forested upland and PFO Wetland. APT indicated a normal conditions and a dry season in a severe drought period was occurring (2025-02) at the time of the site visit. Google Earth indicated that the mapped features were areas quarried or used as borrow areas in the early mid-1990s and were subsequently filled around 2019-2021. FEMA Panel 48091C0455G effective 9/29/2010 shows the area within zone X, areas of minimal flood hazard.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Gulf of Mexico

CESWF-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00185

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS Not Applicable
6. SECTION 10 JURISDICTIONAL WATERS⁵: 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 10.⁶ Not Applicable
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): Not Applicable
 - b. Interstate Waters (a)(2): [Not Applicable
 - c. Other Waters (a)(3): Not Applicable
 - d. Impoundments (a)(4): Not Applicable
 - e. Tributaries (a)(5): Not Applicable
 - f. The territorial seas (a)(6): Not Applicable

⁵ 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.

⁶ 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.

- g. Adjacent wetlands (a)(7): Not Applicable

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”).⁷ 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. Not Applicable
- 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. Not Applicable
- 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. Not Applicable
- 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. Not Applicable
- 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 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*. Not Applicable
- 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

⁷ 51 FR 41217, November 13, 1986.

CESWF-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00185

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Feature Name	Feature Type	Coordinates	Jurisdiction	Justification
SW01	Swale	29.317449, -98.545284	Not a WOUS	Swales are not regulated aquatic features. The swale is not connected to any other aquatic feature or water body
WET01	PFO wetland	29.319353, -98.544807 or 29.318125, -98.544607	Not a WOUS	The wetland is not abutting or adjacent to any other aquatic features. It is not shown on NWI or NHD maps.

WET01 is approximately 0.18-acre in size and is a PFO wetland surrounded by upland. It is not connected to any other aquatic feature. The NWI does not show a wetland in this area and it is likely the product of Loop 410 road drainage. The swale is also not associated with any other aquatic feature. Per the consultant's report the NWI and NHD mapped features appeared to be areas quarried or borrow areas and were constructed during the mid-1990s. These features were subsequently filled during the period of 2019-2021 as evident in Google Earth historical aerials. Therefore, there is no evidence supporting jurisdiction of these features. They are not (a)1, (a)2, (a)3, (a)4, (a)5 or (a)6 waters.

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's field visit: March 6, 2025; office evaluation: May 6, 2025
- b. Regulatory National Viewer, various layers, accessed May 6, 2025
- c. USACE Google Earth aerials, several years, and topo accessed on May 6, 2025
- d. Aquatic Resources Delineation for the 13107 SW Loop 410 Project, Bexar County, Texas, prepared by SWCA Environmental Consultants, SWCA Project No. 91095, dated March 2025.

10. OTHER SUPPORTING INFORMATION. N/A

CESWF-RDE

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWF-2025-00185

11. 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.

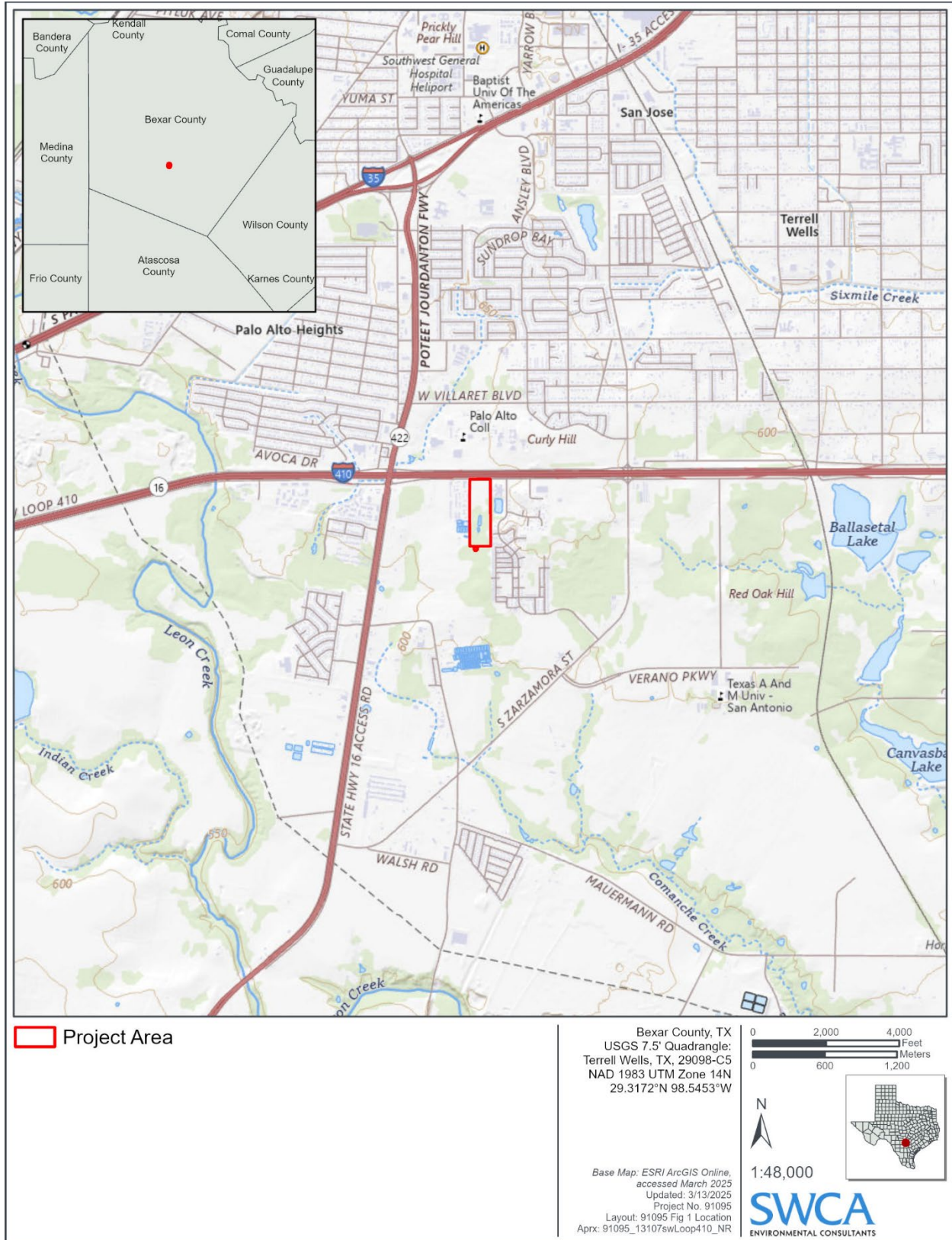


Figure 1. Project location map.

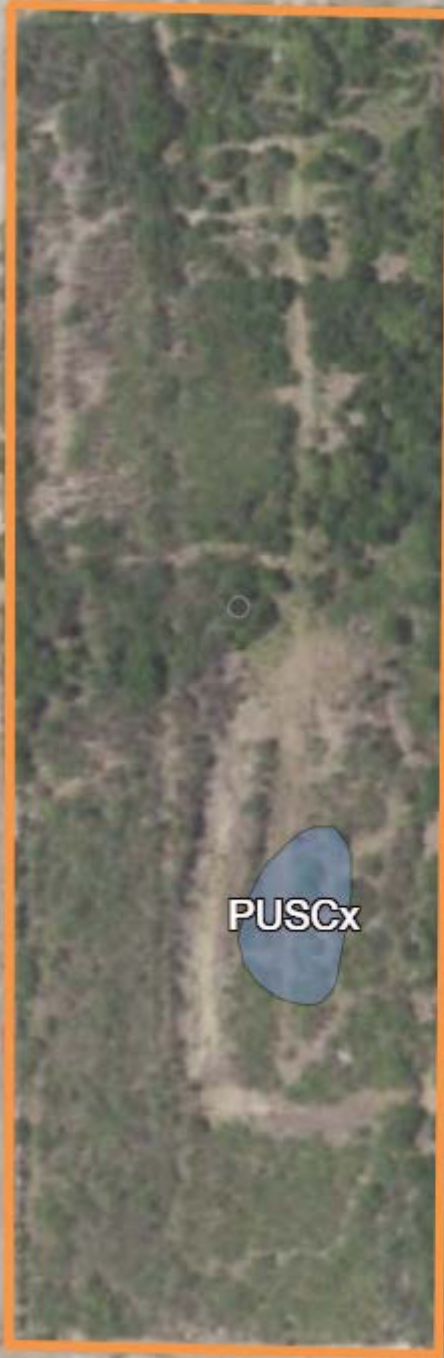


Figure 3. Aquatic resources delineation results map.



+ 29.317449, -98.545284 X Q

Show search results for 29.317449, -9...



PUSCx

PUBHh

PANEL
48029C0560F
eff. 9/29/2010

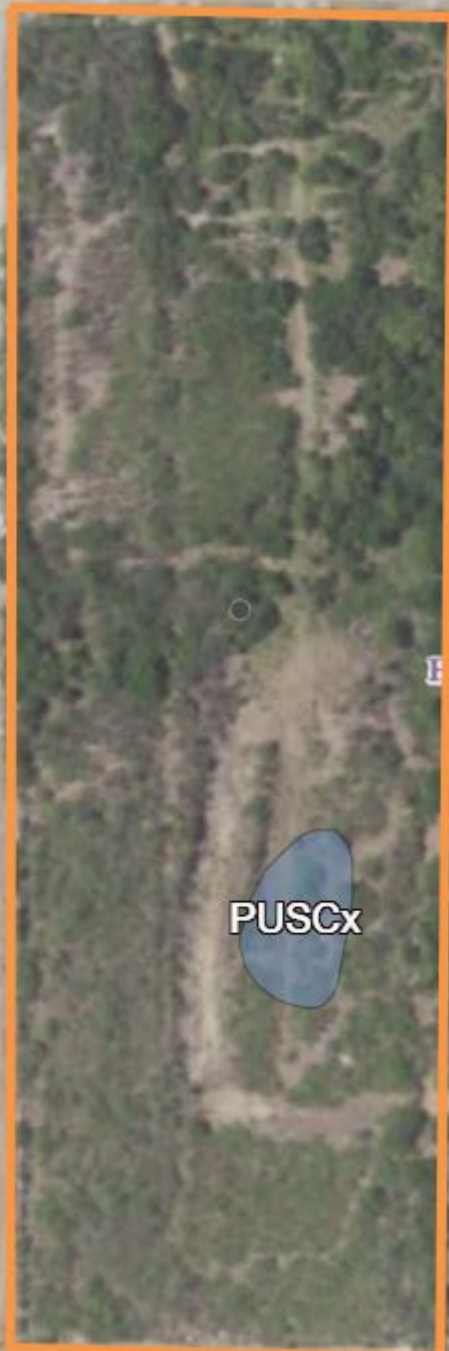
300ft



29.317449, -98.545284



Show search results for 29.317449, -9...



PUBHh

EUC 12-121003020406

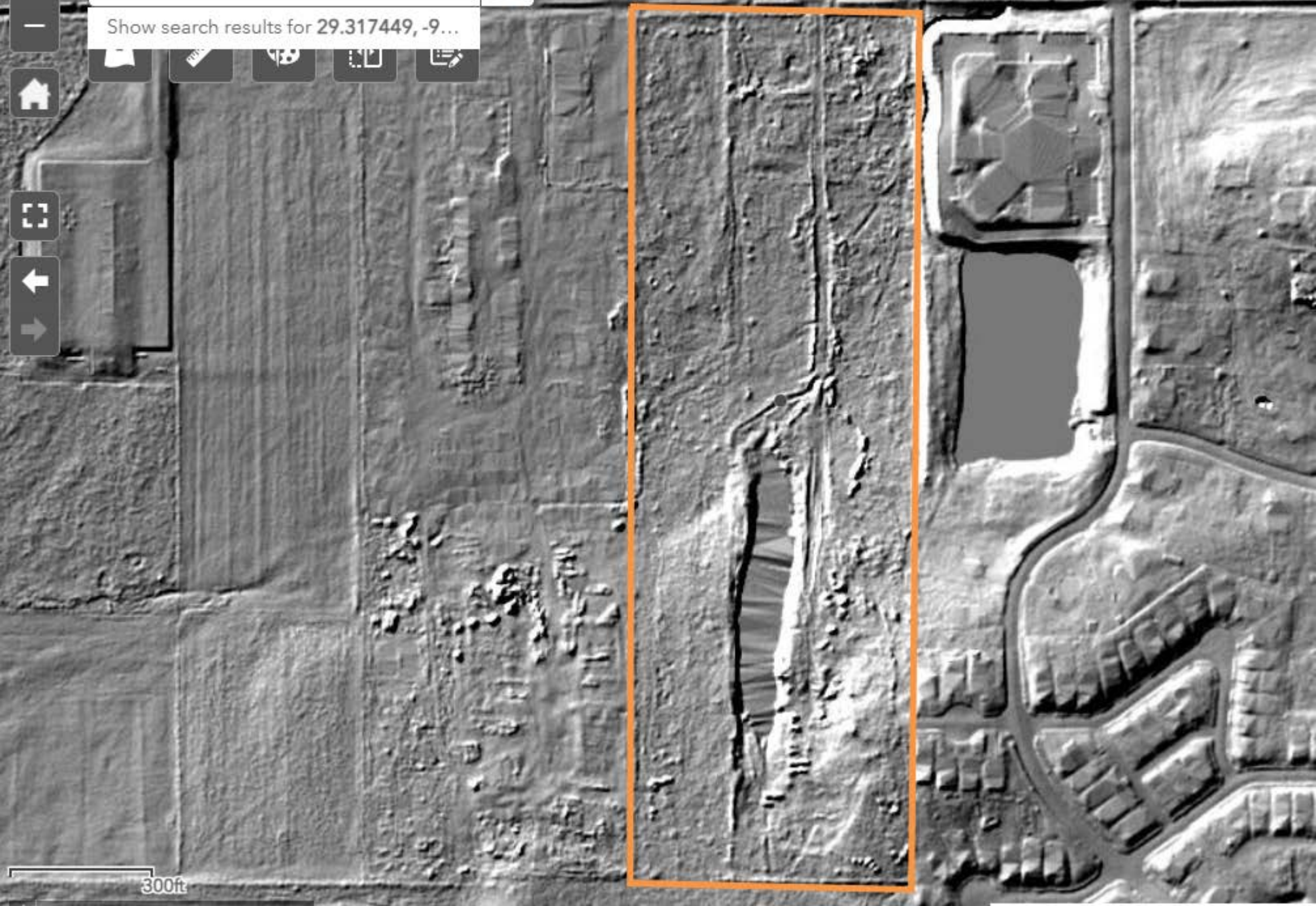
PUSCx

300ft



29.317449, -98.545284 ✕ 🔍

Show search results for 29.317449, -9...



300ft

I-410 Access Rd

I-410 Access Rd

410

Connally Loop

410

Connally Loop

410

Access Rd SW Loop 410 I-410 Access Rd SW Loop 410 I-410 Access Rd

29.319353, -98.544807



Hunters Pond

Hunters Pond

Hunters Pond

Black Bass

Black

Bigmouth Hook

Bigmo

Bigmouth Rod

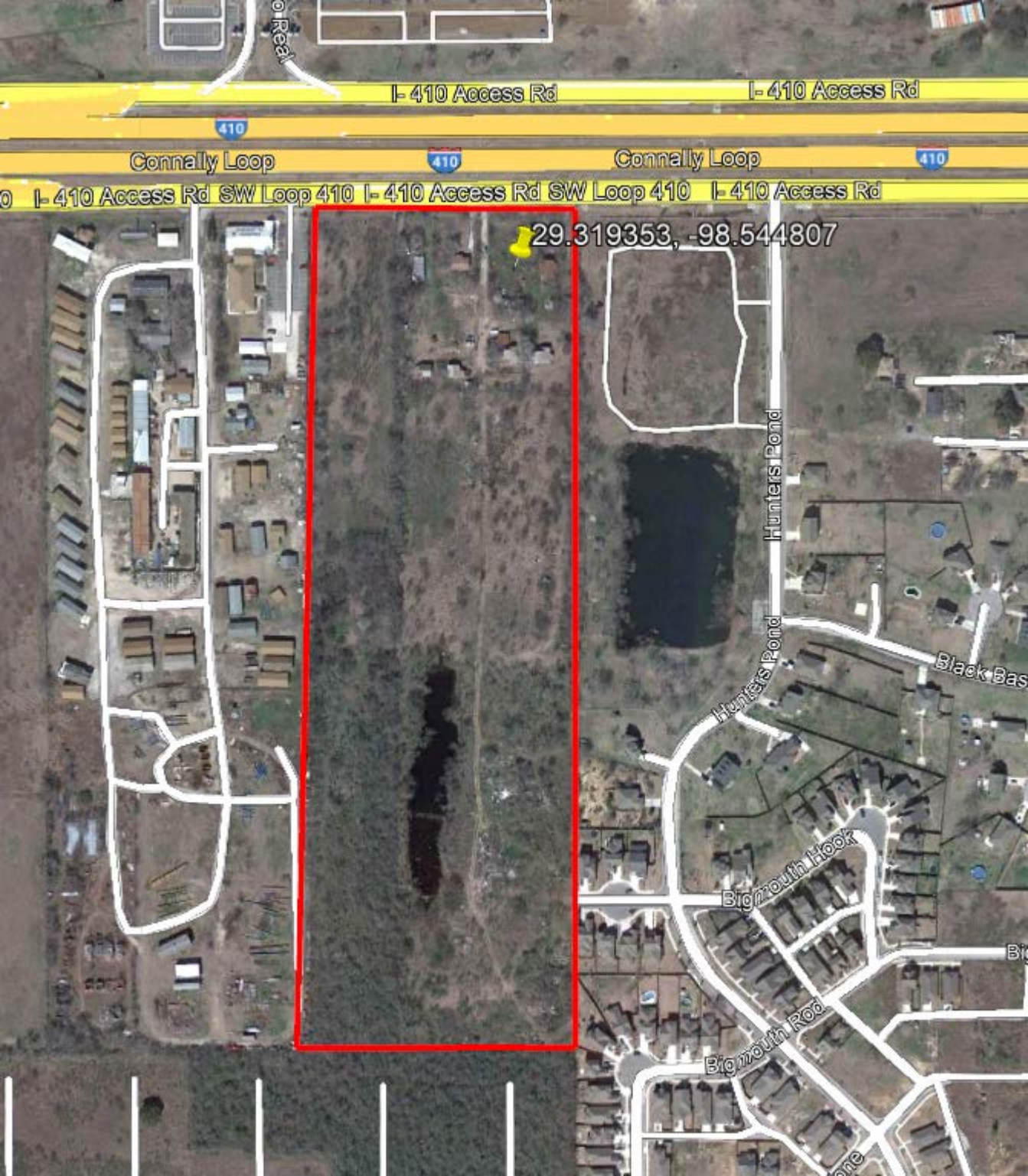
Bigmouth Rod

Fi

Image © 2025 Maxar Technologies

Crone

Crone



o Real

I-410 Access Rd

I-410 Access Rd

410

Connally Loop

410

Connally Loop

410

I-410 Access Rd SW Loop 410 I-410 Access Rd SW Loop 410 I-410 Access Rd

29.319353, -98.544807

Hunters Pond

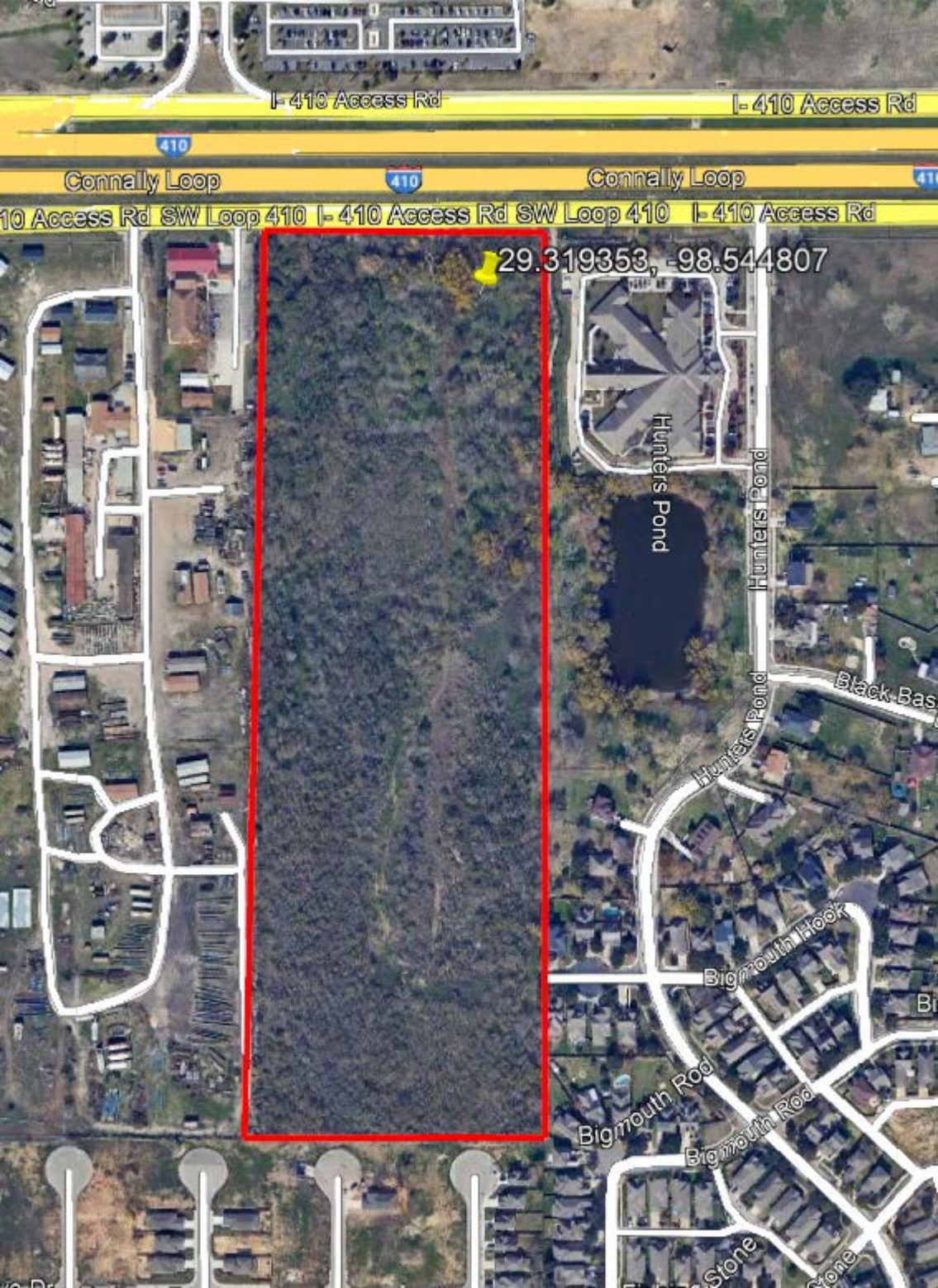
Hunters Pond

Black Bas

Bigmouth Hook

Bigmouth Road

lane



I-410 Access Rd

I-410 Access Rd

410

Connally Loop

410

Connally Loop

410

10 Access Rd SW Loop 410 I-410 Access Rd SW Loop 410 I-410 Access Rd

29.319353, -98.544807

Hunters Pond

Hunters Pond

Hunters Pond

Black Bas

Bigmouth Rod

Bigmouth Rod

Bigmouth Rod

Stone

Stone