



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

CE-SWF-RDE

25 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-2025-00213](#).

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 the state of 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).

- i. [W01, non-jurisdictional, not a Water of the U. S., not a TNW](#)

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)

REVIEW AREA. [The study area is 558 acres in Borden County, Texas; Coordinates: 32.77553, -101.54955318. The site is 1.1 miles westwardly from the intersection of US Highway 180 and Muleshoe Road intersection. The study area primarily consists of disturbed mesquite grassland, mixed brass prairie, rolling plains. The surrounding area consists of agricultural and grazing lands, and low intensity commercial activities. All soils on the site were listed as non-hydric per the NRCS database. The site is in the Holloway Canyon, USGS 7.5-minute Quad Map and the Sand Creek-Tobacco Creek Watershed \(12-1208000203\). There are no FEMA mapped areas on the site. According to the USACE-based Antecedent Precipitation Tool \(APT\), conditions were drier than normal \(APT score of 8\) during the March 3-5, 2025, site visit. The APT indicated that all site visits took place during a timeframe designated as the "dry season". The NWI database does not show a feature at the location of W01. This AJD is only addressing one feature on the eastern side of the study area. There has not been any previous JDs.](#)

3. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. [Colorado River, a portion of which is defined by the State of Texas as a TNW \(at least 300 miles to the South East.\)](#)

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4. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS [Overland flow only, isolated feature surrounded by uplands.](#)
5. 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 [N/A](#)
6. 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](#)
 - 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](#)

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): [N/A](#)

7. 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. [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 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

⁷ 51 FR 41217, November 13, 1986.

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

The delineation report included lands that are not in the existing proposed project boundary. Per field investigations one small emergent wetland feature (W01) was found in the area of the existing project boundary. The feature is questionable as being a wetland and photos did not provide adequate support with area of bare ground and evidence of heavy trampling by livestock. In addition, this feature is isolated and is not connected to any Relatively Permanent Water (RPW) feature and is surrounded by rangeland with upland vegetation such as mesquite and prairie grasses and forbs. Therefore, this feature is not a jurisdictional water of the United States.

Feature Name	Type	Width (LF)	Length (LF)	Area (AC)	Notes
W01	Emergent Wetland	NA	NA	0.115	No CSC to RPW, Appears to be an isolated cattle wallow. Not jurisdictional.

8. 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. Consultant site visit date: March 2025. Office Evaluation date: May 21, 2025.
- b. Regulatory Viewer, topography, NWI, NHD, FEMA, Hillshade and Aerial layers, accessed May 21, 2025
- c. Google Earth Images, May 21, 2025
- d. Delineation Report, Juno Data Center, Borden County, Texas, April 30, 2025, Prepared by Stantec Consulting Services Inc.

9. OTHER SUPPORTING INFORMATION. [N/A](#)

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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



32.77553, -101.54955318



Show search results for 32.77553, -10...



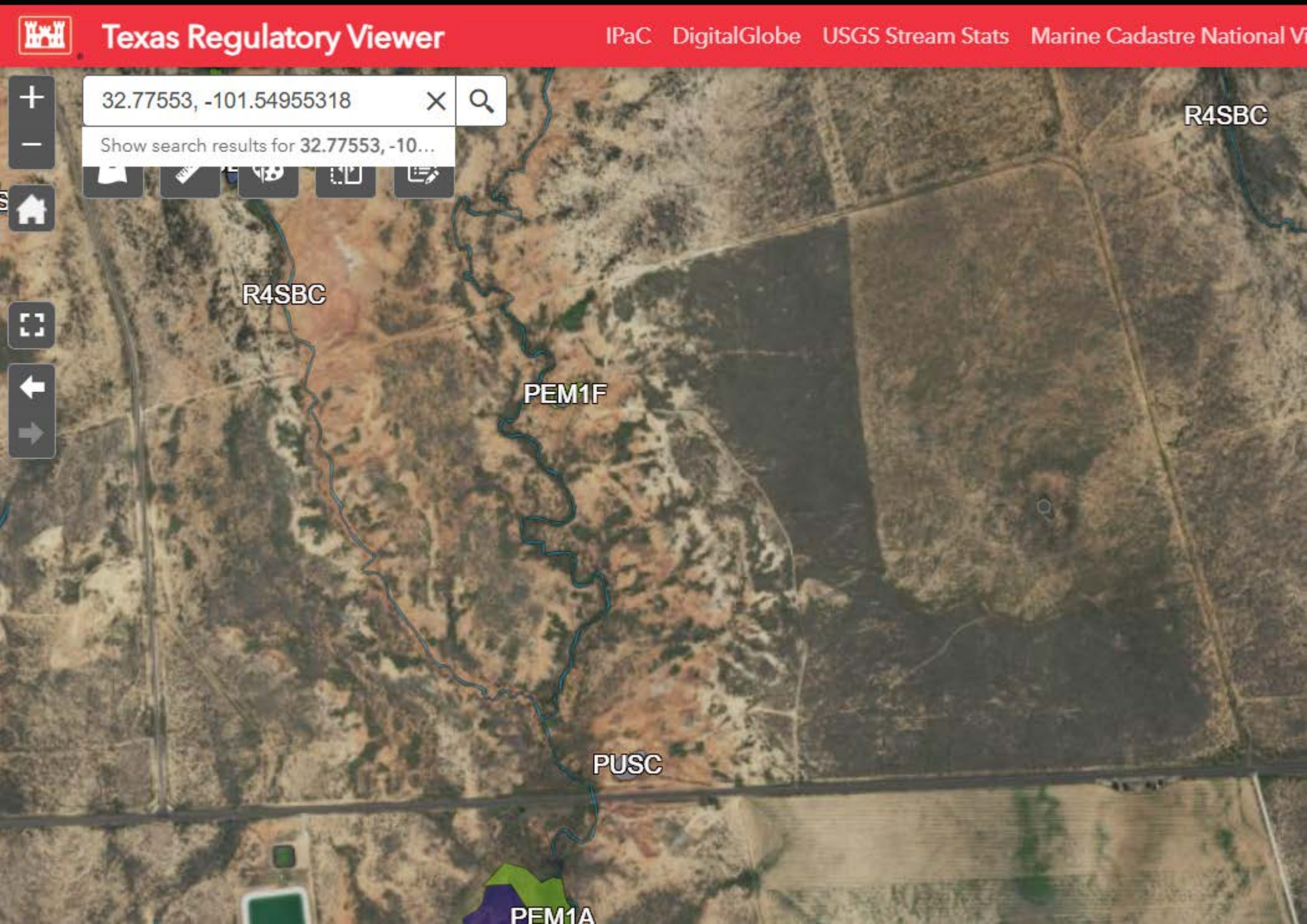
R4SBC


R4SBC

PEM1F



PUSC

PEM1A





 Project Location



WDP Type

-  Upland
-  Wetland

Delineated Streams

-  Ephemeral
-  Intermittent

Delineated Wetlands

-  Emergent
-  Open Water

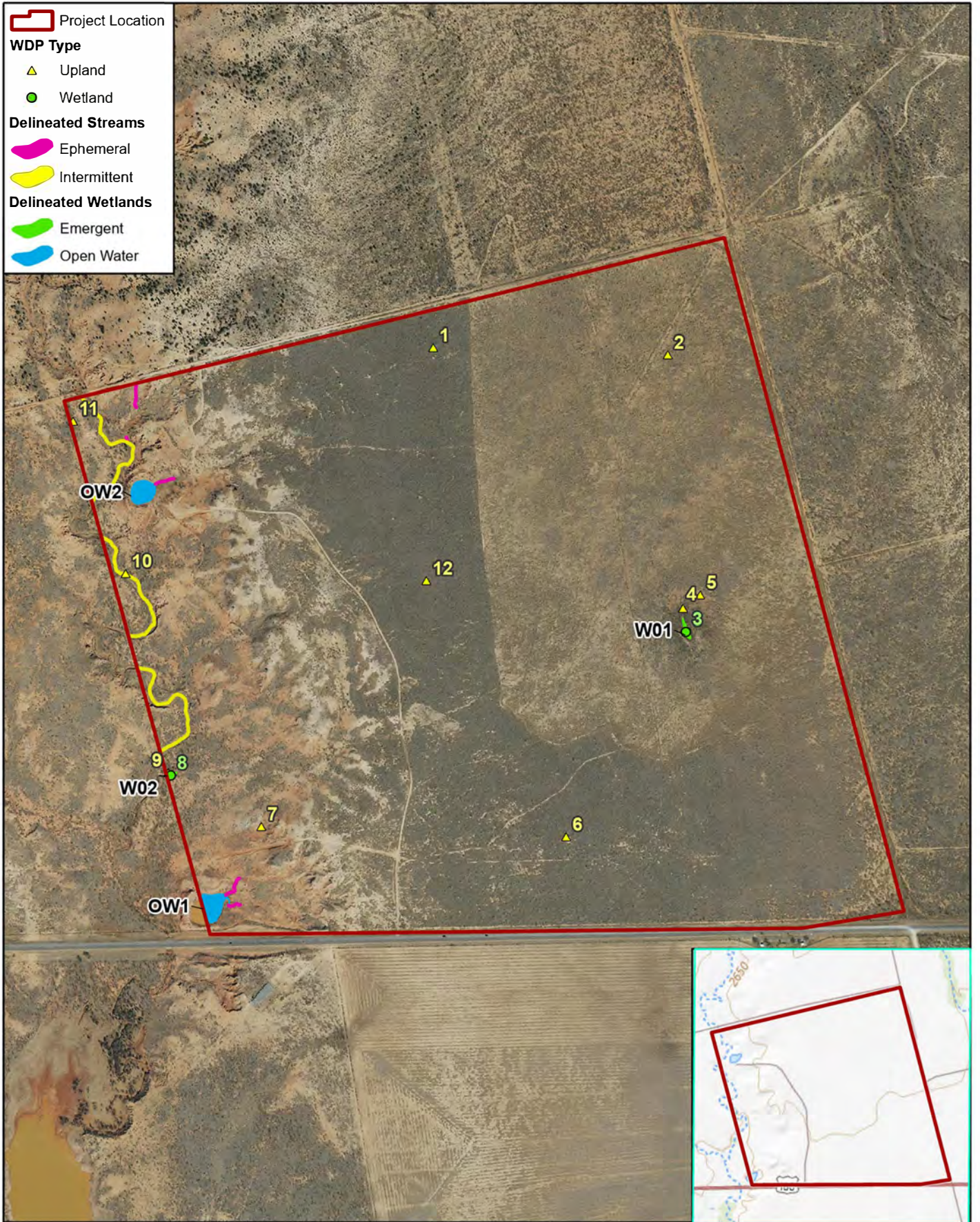


Figure 6a
Delineated Aquatic Features

Juno Data Center

Data Sources: Stantec (2025)
 Aerial Source: TNRIS (2023)

0 300 Feet
 100 Meters

1 in = 1,000 feet
 Scale: 1:12,000
 Date: 3/14/2025

 Project Location

WDP Type

-  Upland
-  Wetland

Delineated Wetlands

-  Emergent

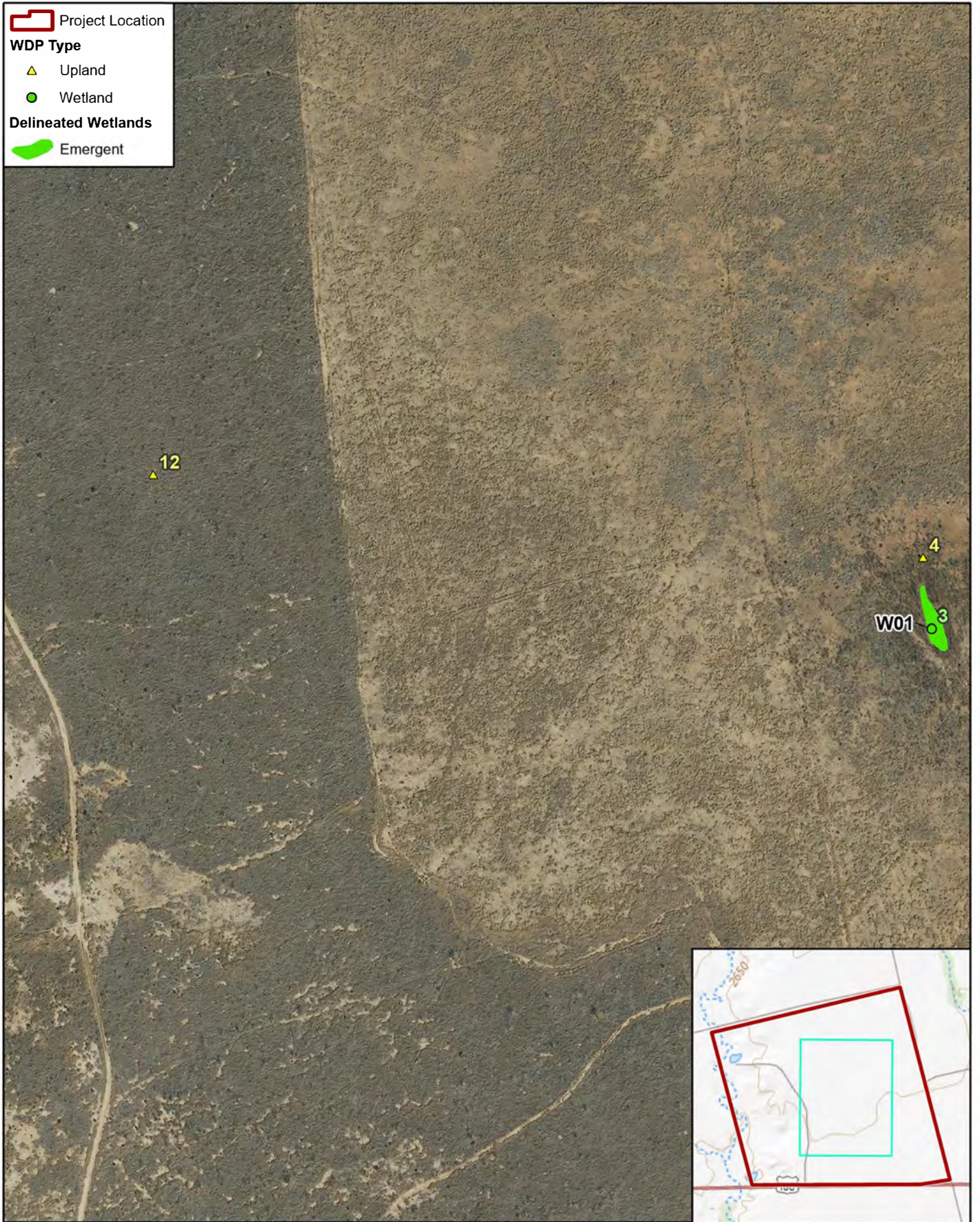




Figure 6f
Delineated Aquatic Features

Juno Data Center

Data Sources: Stantec (2025)
 Aerial Source: TNRIS (2023)

0 300 Feet 1 in = 333 feet
 0 100 Meters Scale: 1:4,000
 Date: 3/14/2025

Borden County

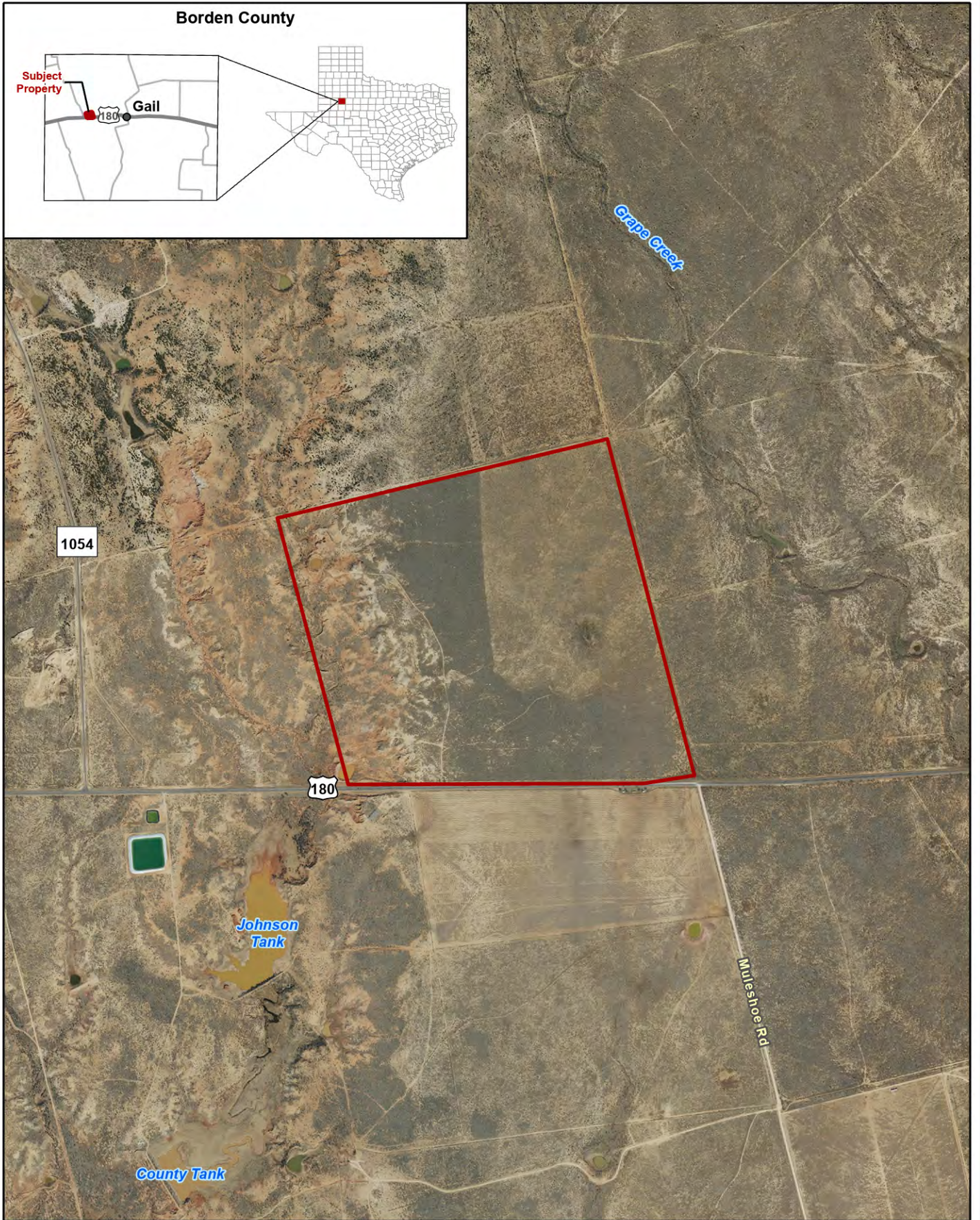
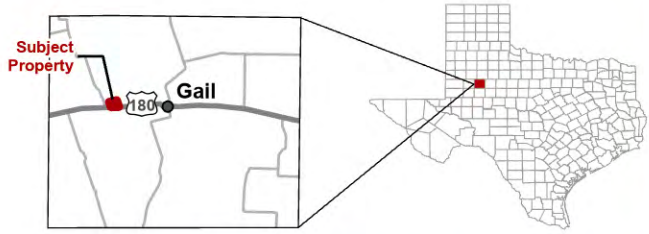



Figure 1.
Subject Property (Aerial Base)

 Subject Property

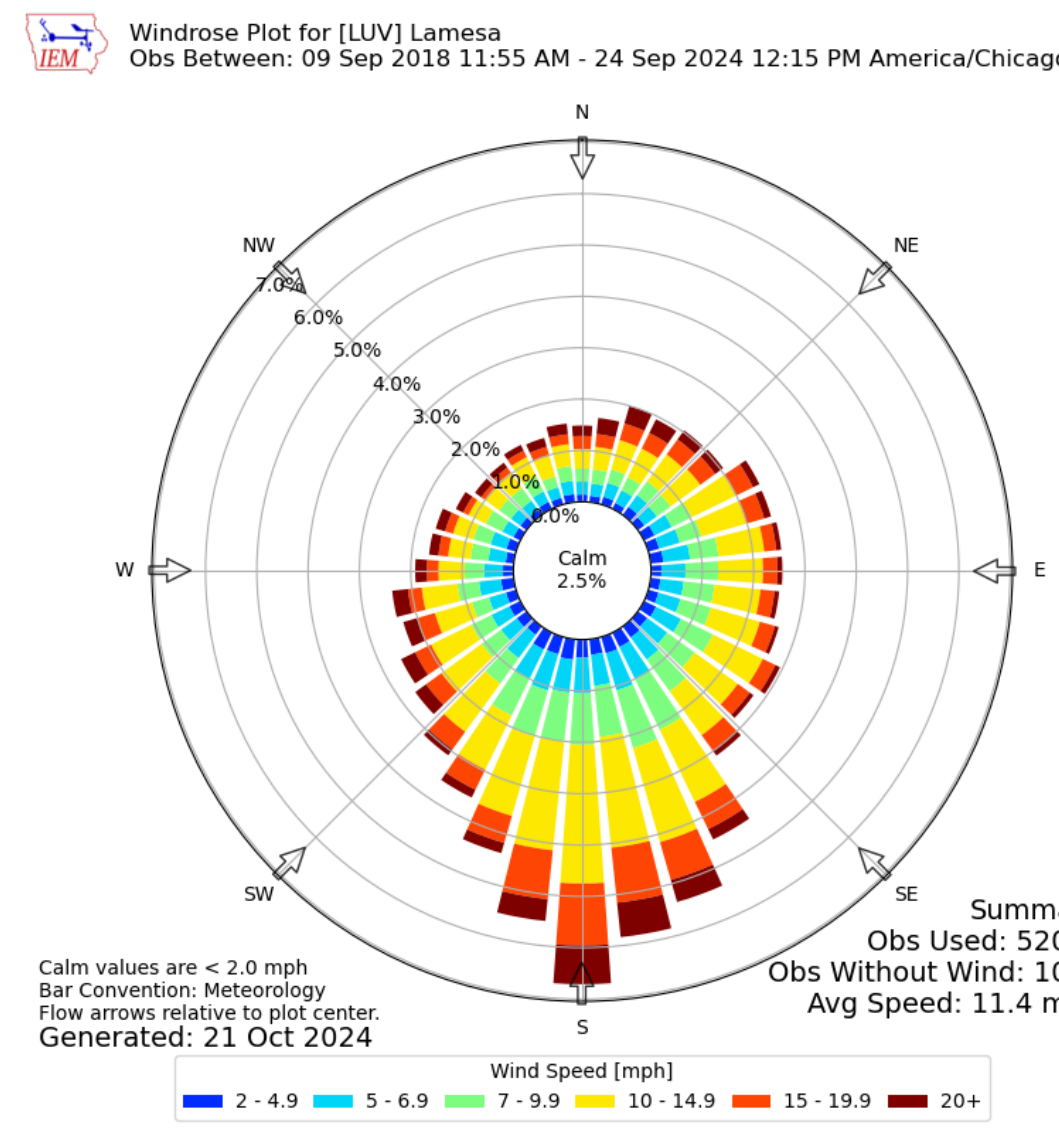


 Stantec

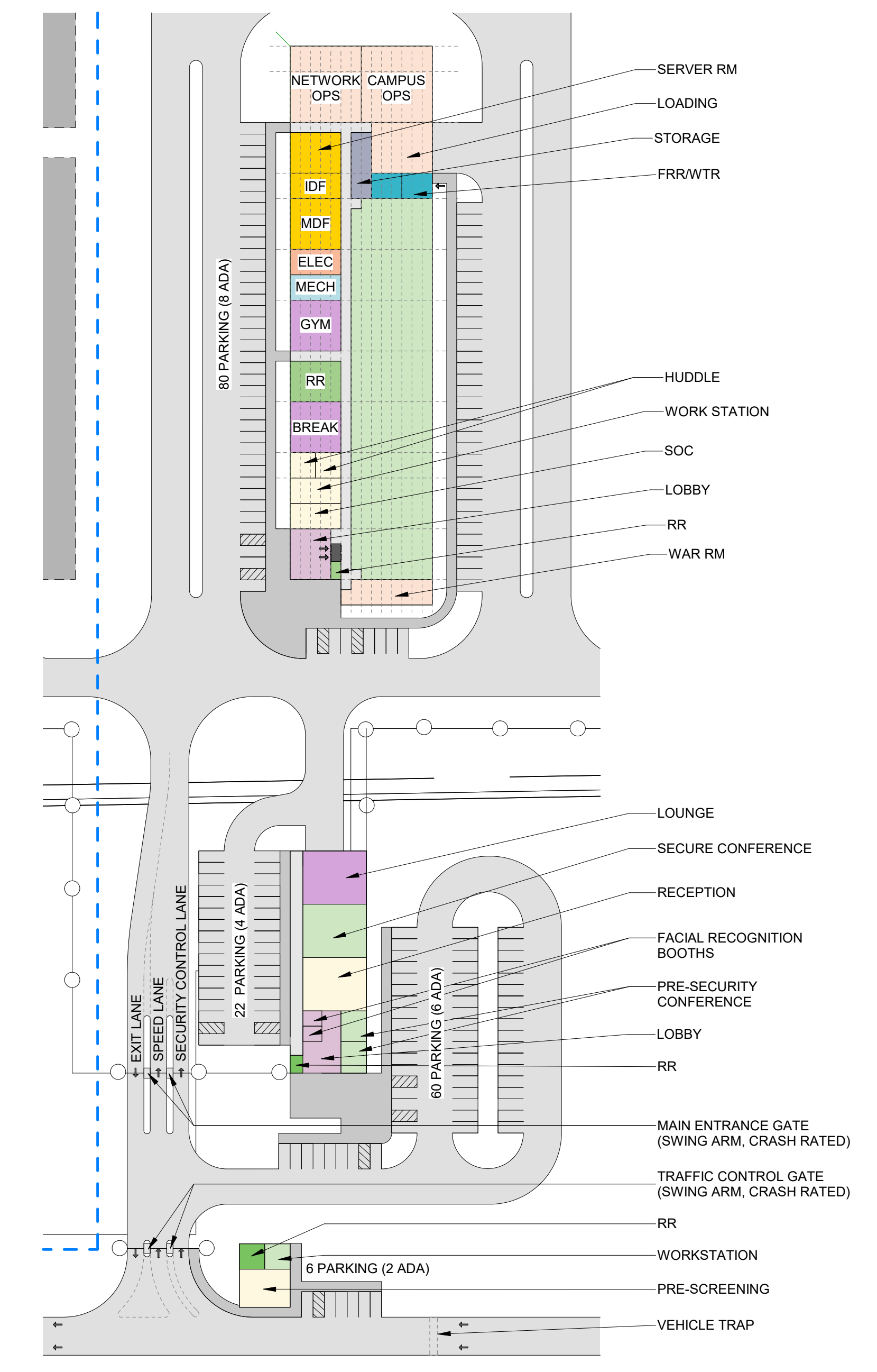
0	2,000 Feet	1 in = 2,000 feet
0	600 Meters	Scale: 1:24,000
		Date: 3/14/2025

Juno Data Center

Aerial Source: TNIRIS (2024)



PROGRAMMING	
BUILDING:	~8,065,000SF
ROAD:	~1,360,000SF
YARD:	~1,840,200SF
RETENTION POND: (8,065,000+1,360,000+1,840,200*50%)*20% =~1,669,620SF	
PHASING DIAGRAM	
 	PHASE 1 - TURNOVER SCOPE
 	PHASE 1 - CONSTRUCTION SCOPE
 	PHASE 1.5



2 OPTION 1A - ENLARGED ADMIN BLDG.
1" = 80'-0"

W01, Isolated PEM Wetland - 0.115 acre

- FENCE K4 BARRIER AT A MINIMUM ALONG HIGHWAY
- ADMIN BLDG. 48,480 SQFT.
- PRE-SECURITY VISITOR AREA 10,440 SQFT.
- GUARD BOOTH 2,000 SQFT.

1.284 GW CAMPUS JUNO DATA CENTER - SITE PLAN OPT 1A

SCALE: 1" = 200'-0"
06/16/2025

