



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

Corpus Christi Field Office

September 30, 2024

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 SWG-2023-00539

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 Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

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.

Corpus Christi Field Office

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2023-00539

- 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).

Table 1: Features and type within Review Area				
Feature Name	Latitude/ Longitude	Length (LF)	Feature Type	Jurisdiction
Ramirez Creek	26.436653 N 99.056986 W	2,306	Non-relatively permanent feature	Non-jurisdictional

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. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA.

The review area is approximately 68 acres located approximately 3 miles northwest of Roma, Starr County, Texas.

Coordinates: 26.436653° North; 99.056986° West

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

N/A

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

N/A

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

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
- 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

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.

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.

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

⁷ 51 FR 41217, November 13, 1986.

- 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).

Ramirez Creek: LiDAR, topo, review of several years of aerial imagery, review of NHD data, Antecedent Precipitation Tool, and site visit photos were utilized as part of the desktop and field analysis to identify that Ramirez Creek is a non-relatively permanent water feature that flows only after a localized precipitation event, does not extend the OHWM of, or provide a continuous surface connection to any RPW or TNW. This non-relatively permanent water feature does not meet the definition of *relatively permanent* as defined in the pre-2015 regime post *Sackett* guidance and is not a water of the United States. Relatively permanent waters do not include tributaries "whose flow is coming and going at intervals...broken, fitful"; therefore, relatively permanent waters do not include ephemeral tributaries which flow in response to precipitation and intermittent streams which do not typically flow year-round or have continuous flow at least seasonally. No water was observed during the time of the site visit.

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. Google Earth Aerials dated: 1995, 2005, 2012, 2016, 2019, 2020, 2022, 2023.
 - b. US Geological Survey (USGS) Topographic Map/Scale: Roma-Los Saenz West, TX, TAM 2022.
 - c. US Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Soil Survey: Soil Survey Hydric Rating Map: Star County, Texas; NRCS website accessed February 13, 2024.
 - d. US Fish and Wildlife Service (FWS) National Wetland Inventory (NWI): Web Mapper accessed February 13, 2024.
 - e. USGS National Hydrography Dataset (NHD) Mapper accessed February 13, 2024.

Corpus Christi Field Office

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2023-00539

f. Site visit conducted on December 12, 2023.

10. OTHER SUPPORTING INFORMATION.

N/A

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.



Legend



Project Location

Review Area - 68 acres

Latitude: 26.436653

Longitude: -99.056986

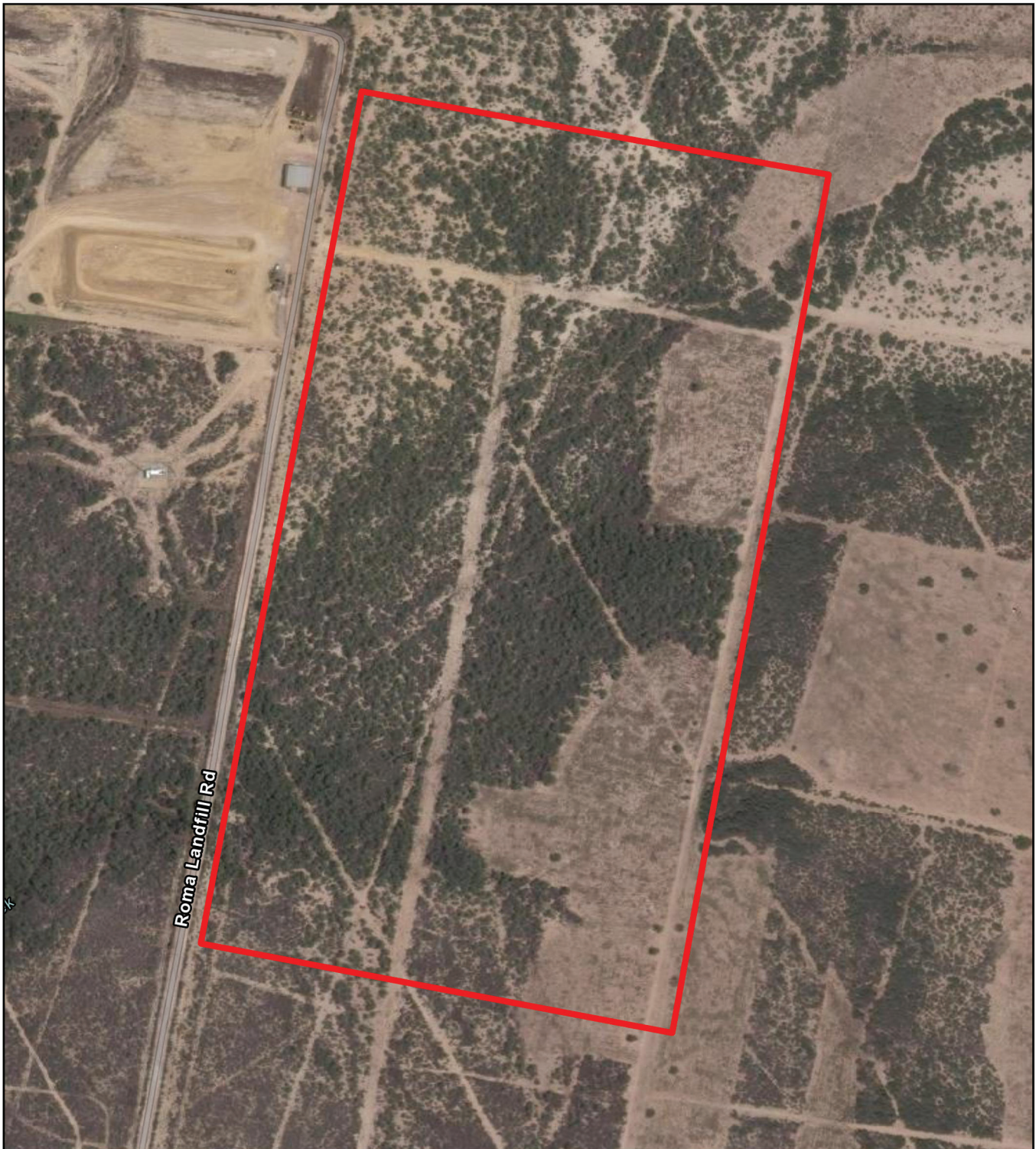
SWG-2023-00539
Project Location
AJD Roma Industrial Park
Roma,
Star County, Texas

Sheet 1

N



0 0.5 1 2 Miles



Legend

Review Area
Review Area - 68 acres

Latitude: 26.436653
Longitude: -99.056986

SWG-2023-00539
Aerial Map
AJD Roma Industrial Park
Roma,
Star County, Texas

Sheet 2

N



0 275 550 Feet



Legend


 Review Area

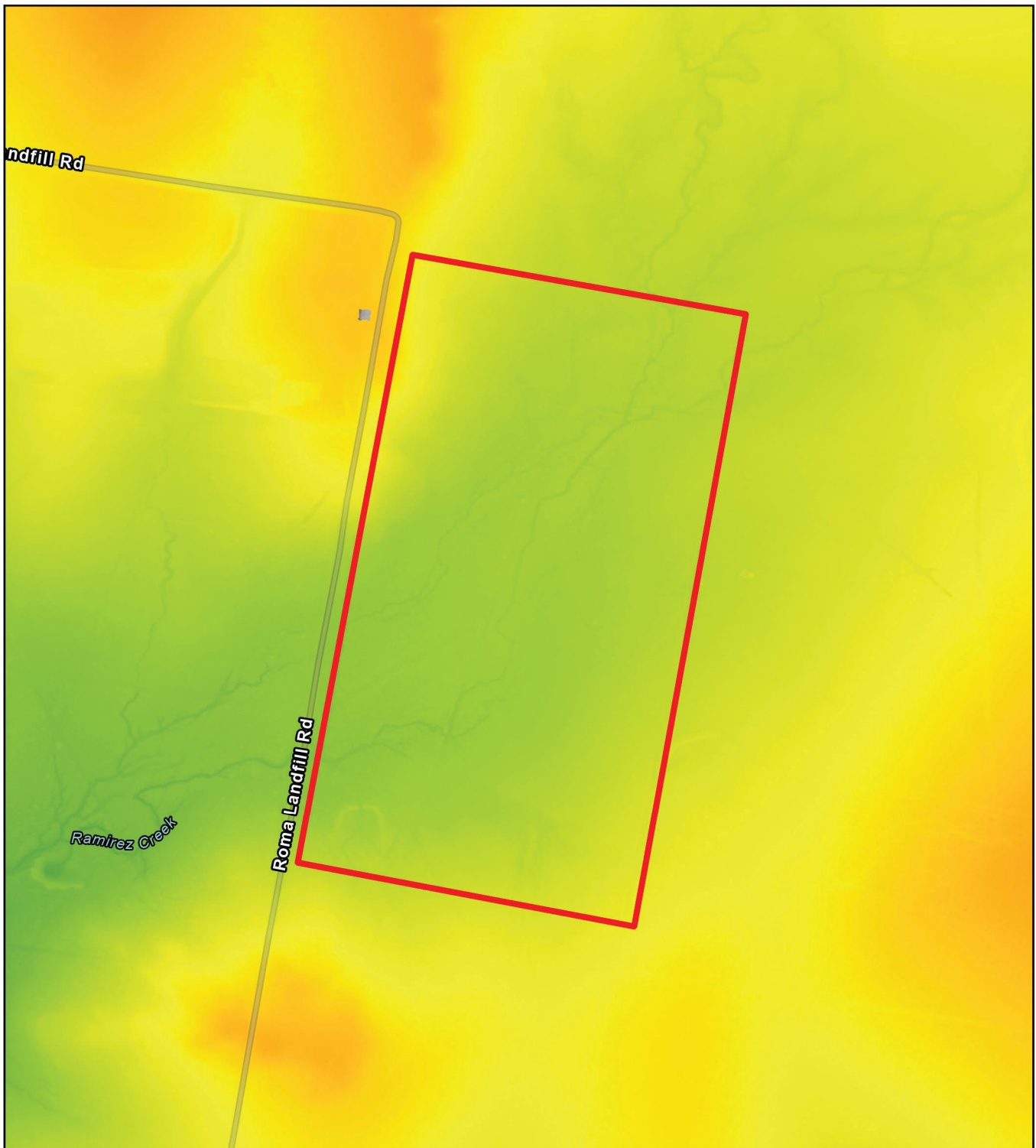
SWG-2023-00539
Topographic Map
AJD Roma Industrial Park
Roma,
Star County, Texas

Sheet 3



0 425 850 1,700 Feet

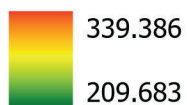




Legend

Review Area

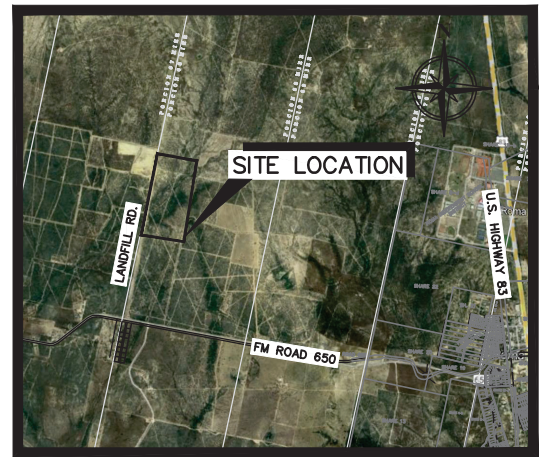
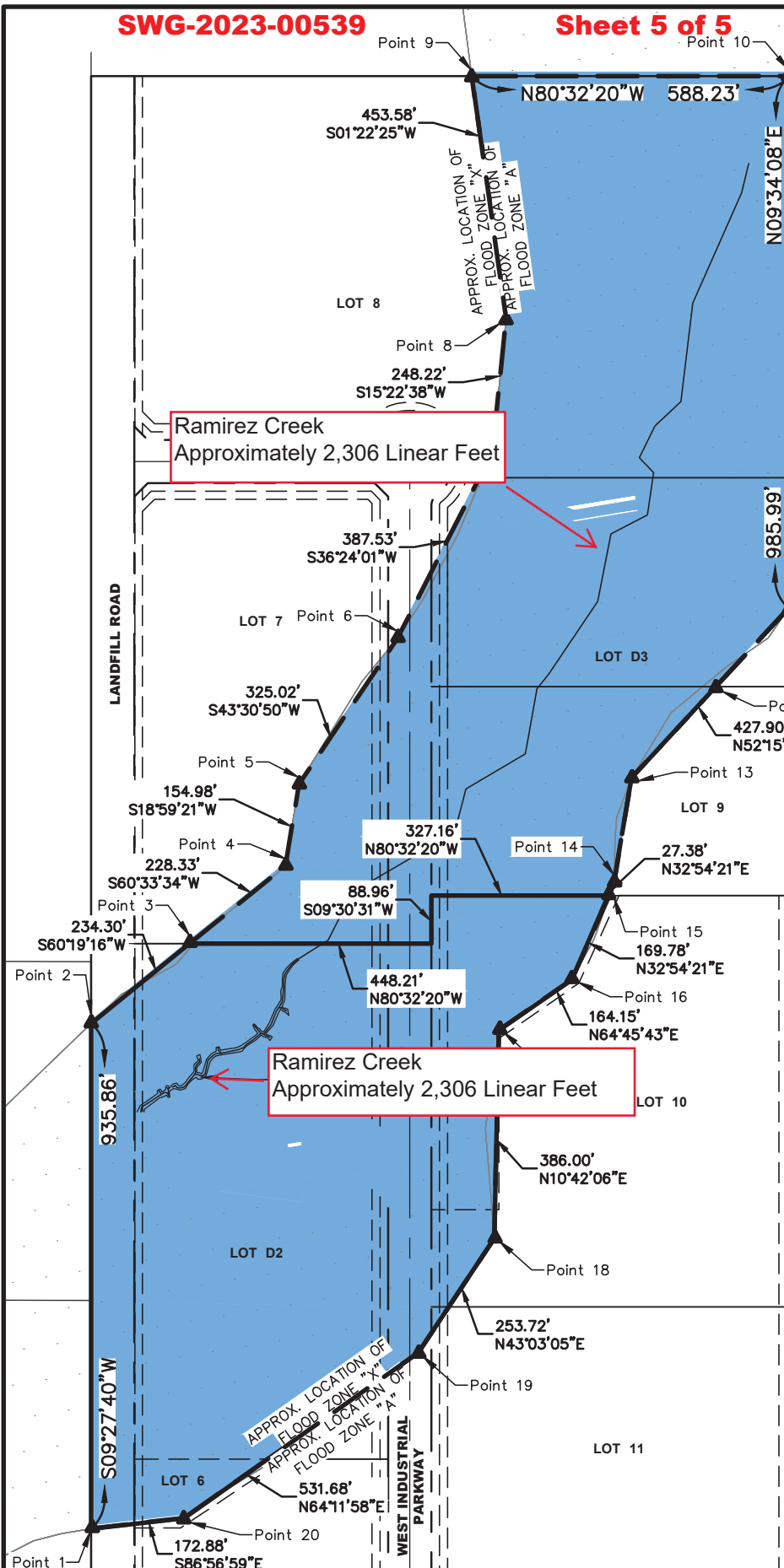
Value



SWG-2023-00539
LiDAR
AJD Roma Industrial Park
Roma,
Star County, Texas

Sheet 4





LOCATION MAP
SCALE: NTS



SCALE: 1"=300'

SWG-2023-00539
Water Location Map
AJD Roma Industrial Park
Roma,
Star County, Texas

Sheet 5

Point Table				
Point #	Northing	Latitude	Easting	Longitude
1	16683526.1791	N026.434091	801193.4734	W099.059407
2	16684449.3113	N026.436633	801347.3072	W099.058949
3	16684565.3213	N026.436954	801550.8676	W099.058329
4	16684677.5495	N026.437265	801749.7123	W099.057722
5	16684824.0996	N026.437669	801800.1425	W099.057570
6	16685059.8097	N026.438320	802023.9322	W099.056890
7	16685371.7291	N026.439181	802253.9020	W099.056191
8	16685611.0597	N026.439841	802319.7222	W099.055993
9	16686064.5048	N026.441088	802330.5953	W099.055966
10	16685967.8122	N026.440829	802910.8200	W099.054191
11	16684995.5438	N026.438152	802746.9133	W099.054679
12	16684874.5725	N026.437818	802590.6468	W099.055155
13	16684733.6090	N026.437428	802408.5522	W099.055710
14	16684548.5993	N026.436918	802345.2620	W099.055901
15	16684525.6079	N026.436854	802330.3850	W099.055946
16	16684383.0691	N026.436461	802238.1522	W099.056226
17	16684313.0796	N026.436267	802089.6722	W099.056679
18	16683933.7892	N026.435222	802017.9922	W099.056893
19	16683748.3894	N026.434710	801844.7921	W099.057419
20	16683516.9796	N026.434068	801366.1123	W099.058879

LAS AMERICAS
ROMA LOGISTIC & INDUSTRIAL PARK

JURISDICTIONAL DETERMINATION
REQUEST
PROJECT LOCATION EXHIBIT

PRINCIPAL CONTACTS:

NAME
ROMA ECONOMIC DEVELOPMENT
CORPORATION
OWNER: ALEX BARRERA - CITY MANAGER

ADDRESS
77 COVENT AVENUE
EMAIL: ABARRERA@CITYOFROMA.NET

CITY & ZIP
ROMA, TEXAS 78594

PHONE
(956) 849-1411



200 S. 10TH STREET, SUITE 1500 TEL: (956) 702-8880
MCALLEN, TEXAS 78501 FAX: (956) 702-8883

SURVEY FIRM REG. No. 101416-00
| MCALLEN TX. | HARLINGEN TX. | SANTA FE NM. | LOS ALAMOS NM. |