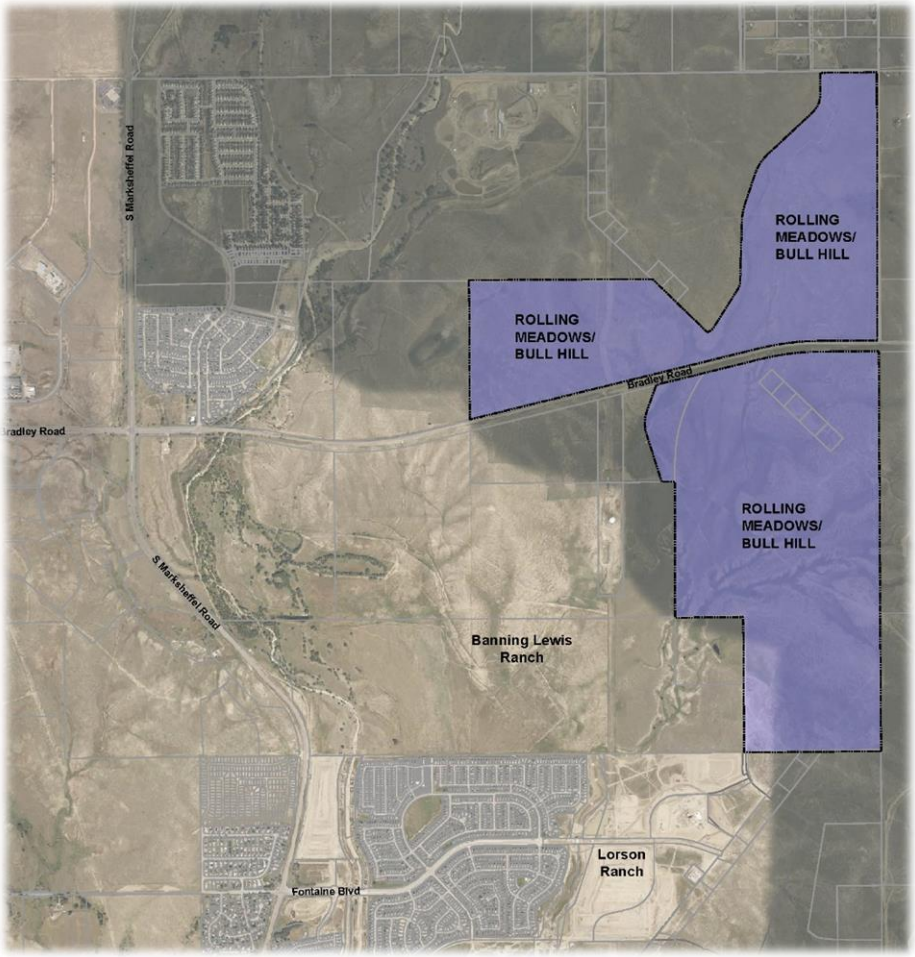
ROLLING MEADOWS/ BULL HILL
NATURAL FEATURES REPORT

June 26, 2024 (REV2)



PREPARED FOR:

Murray Fountain LLC et/ al
212 N. Wahsatch Ave., Suite 301
Colorado Springs, CO 80903

PREPARED BY:

Matrix Design Group
2435 Research Parkway, Suite 300
Colorado Springs, CO 80920

Site Location, Size, Zoning:
Matrix Design Group, on behalf of Murray Fountain LLC et al, is submitting a development application for a Sketch Plan for approximately 1,136.9 Acres. Rolling Meadows/ Bull Hill is located east of Marksheffel Road, north of the existing Lorson Ranch development, and along both the north and south sides of Bradley Road. The Rolling Meadows/ Bull Hill Sketch Plan area is currently zoned Concept PUD and shall seek site specific PUD zoning but with the possibility of straight zoning specific areas in the future if applicable. The Rolling Meadows/ Bull Hill sketch plan proposes Single-Family Residential, Multi-Family Residential, School Sites, an Electrical Substation, Parks & Open Space, Channel/Floodplain improvements, and potential future Commercial. The proposed application submittal includes a total of 5,440 dwelling units through a combination of 4,600 new single family detached units on 710.5 acres for density ranges of 2-5, 5-8 and 8-12 DU/ Acre and 840 new multi-family units on 54.1 acres for a density range of 12-24 DU/ Acre. Please refer to the Wildlife Memo dated November 10, 2023, -prepared by Matrix Design Group for additional detailed information regarding Endangered Species, Migratory Birds, State and Local Protections, and Project Impacts.

Topography
The topography of the project site is moderately sloped towards the channel/floodplain that runs north-south through the center of the property. There are grade changes of approximately 262' as the overall site slopes from north to south. The existing slopes are moderate with no portions of the proposed site possessing slopes that would prevent development. The site is suitable for development and is not impacted by the moderately sloped grades as current acceptable state and local best grading practices will be employed. Drainage will be collected into proposed facilities located throughout the development.

Hydrologic Features/ Flood Hazard/ Floodplain
There is a major hydrologic feature within the project site boundary. This property is located within a designated FEMA floodplain as determined by the flood insurance rate map, community map numbers '08041C0769G', '08041C0790G', and '08041C0976G' effective date 'December 7, 2018'.

Channel and Floodplain improvements are proposed as part of this overall development project under a separate file # CDR234. The development will drain into a proposed detention pond/water quality basin system located throughout the proposed project. Flows will then be conveyed to the Jimmy Camp Creek East Tributary and/ or offsite in a manner consistent with El Paso County and State requirements.

Wetlands
Per Jurisdictional Determination Letter (SPA-2005-00418) from the Army Corps of Engineers, the site contains non-jurisdictional isolated wetlands, other isolated waters, and an upland stock pond. The Letter & Maps have been attached to this report for reference (see below). Wetland features delineated for this site are associated with small, stormwater runoff fed depressional features which are not hydraulically connected to streamflow or groundwater. Site development is anticipated to sever the surface flow connection which supports these features, resulting in loss of wetland hydrology. As noted, these are not protected wetlands which do not require mitigation, however considerations for the development of wetlands has been incorporated into the proposed channel improvements.

Soils

A "Soils and Geology Study", Rolling Meadows Bradley Road, El Paso County, Colorado" (RMG- Rocky Mountain Group, August 5, 2022 and amended January 30, 2024) is included with the submittal

package. As part of this study, 70 exploratory test borings were completed. Geologic hazards (as described in section 8.0 of the report) were not found to be present at this site. Potential geologic constraints (also as described in section 8.0 of the report) were found on site to include: expansive soils and bedrock, compressible soils, shallow ground water tables, floodplain/floodway, faults and seismicity, radon, and proposed grading, erosion control, cuts and masses of fill. Where avoidance is not readily achievable, the existing geologic and engineering conditions can be satisfactorily mitigated through proper engineering, design, and construction practices. Exterior, perimeter foundation drains should be installed around below-grade habitable or storage spaces. Surface water should be efficiently removed from the building area to prevent ponding and infiltration into the subsurface soil.

Scenic Resources & Unique Natural Areas

The natural mountain backdrop of the Rampart Range is perhaps the best natural feature of Rolling Meadows/ Bull Hill with sweeping views in nearly all directions. The scenic view shed is impaired somewhat by intervening development; however, the panoramic views remain quite spectacular. There are no unique natural features on the project site.

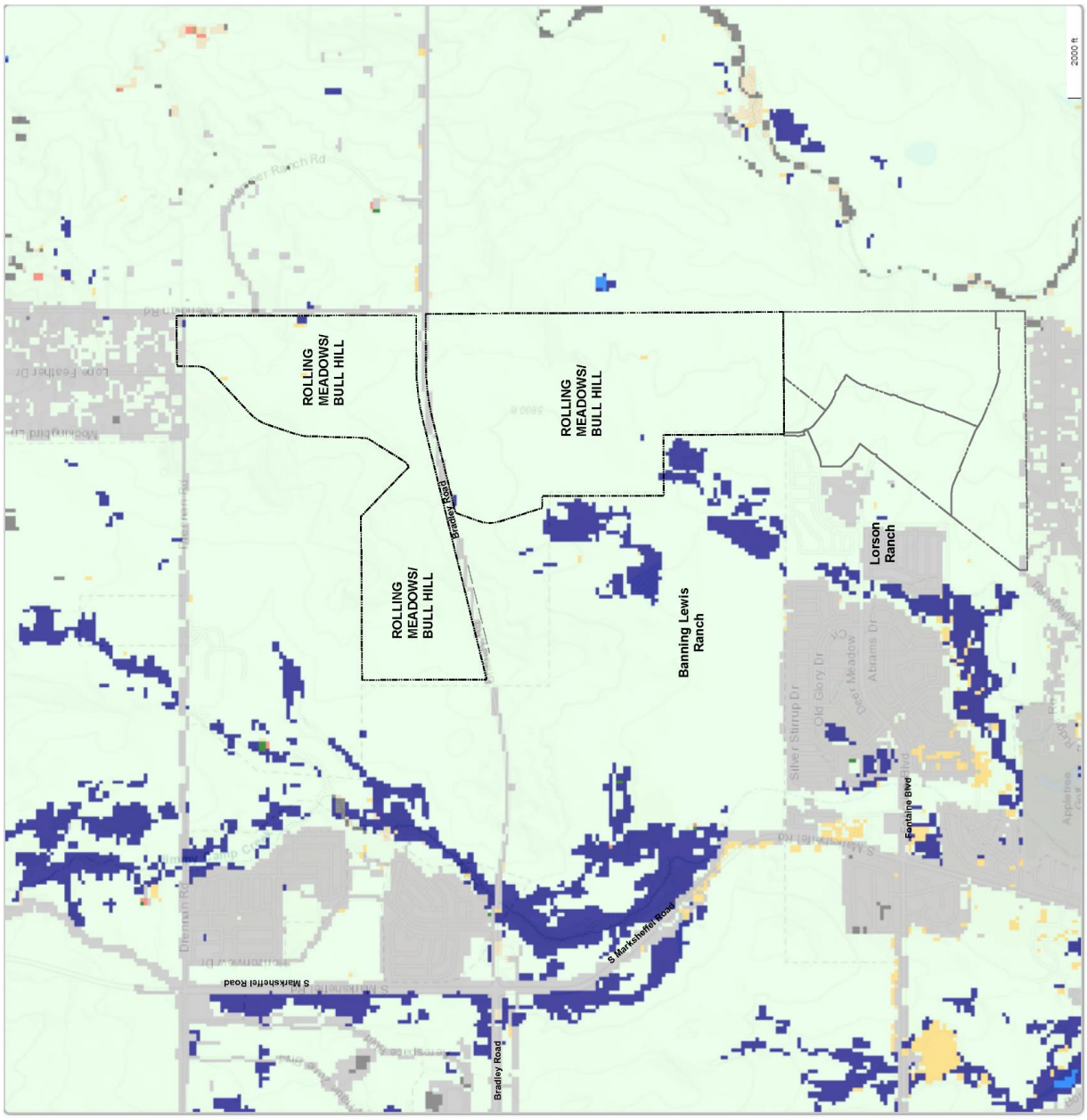
Landscaping

Proposed landscaping will include low-water use plant material, and where possible, the plant material will be native to the Colorado Springs region.

Wildlife and Migratory Birds

Please refer to the Wildlife Memo dated November 10, 2023, -prepared by Matrix Design Group for additional detailed information regarding Endangered Species, Migratory Birds, State and Local Protections, and Project Impacts.

Vegetation Map



Legend

https://co-pub.c

Vegetation

- Agriculture
- Grassland
- Lodgepole Pine
- Mixed Conifer
- Oak Shrubland
- Open Water
- Pinyon-Juniper
- Ponderosa Pine
- Riparian
- Shrubland
- Spruce-Fir
- Developed
- Sparsely Vegetated
- Hardwood
- Conifer-Hardwood
- Conifer
- Barren

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
201 WEST 8TH STREET, SUITE 350
PUEBLO, CO 81003

March 17, 2023

Regulatory Division

SUBJECT: Jurisdictional Determination (SPA-2005-00418)

Murray Fountain, LLC
Attn: Jeff Mark
212 North Wahsatch, Suite 301
Colorado Springs, CO 80903
jmark@landhuisco.com

Dear Mr. Mark:

This letter responds to your request for a jurisdictional determination (JD) for the Rolling Meadows property located at approximately latitude 38.7633, longitude -104.6198, in El Paso County, Colorado. We have assigned Action No. SPA-2005-00418 to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we have determined that the review area (enclosure 1) does not contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The enclosed JD form describes the area that was evaluated and determined to contain no waters of the United States. If you intend to conduct work that could result in a discharge of dredged or fill material into waters of the United States, please contact this office for a determination of Department of the Army permit requirements and refer to Action No. SPA-2005-00418.

The basis for this approved JD (enclosure 2) is that the project site contains isolated wetlands (i.e., Wetland-1, Wetland-2, Wetland-3, Wetland-4, Wetland-5, Wetland-6, Wetland-7, Wetland-8, Wetland-9, Wetland-10, Wetland-11, Wetland-12, Wetland-13, Wetland- 14, Wetland-15, Wetland-16, Wetland-18, Wetland-19, Wetland-20, Wetland-21, Wetland-22, Wetland-23, Wetland-24, and Wetland-25), other isolated waters of the United States (Drainage-6), and an upland stock pond (Wetland-17). 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. If you elect to appeal this approved JD, you must complete Section II of the form (enclosure 3) and return it to the Army Engineer Division, South Pacific, CESPD-PDS-O, Attn: Travis Morse, 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.

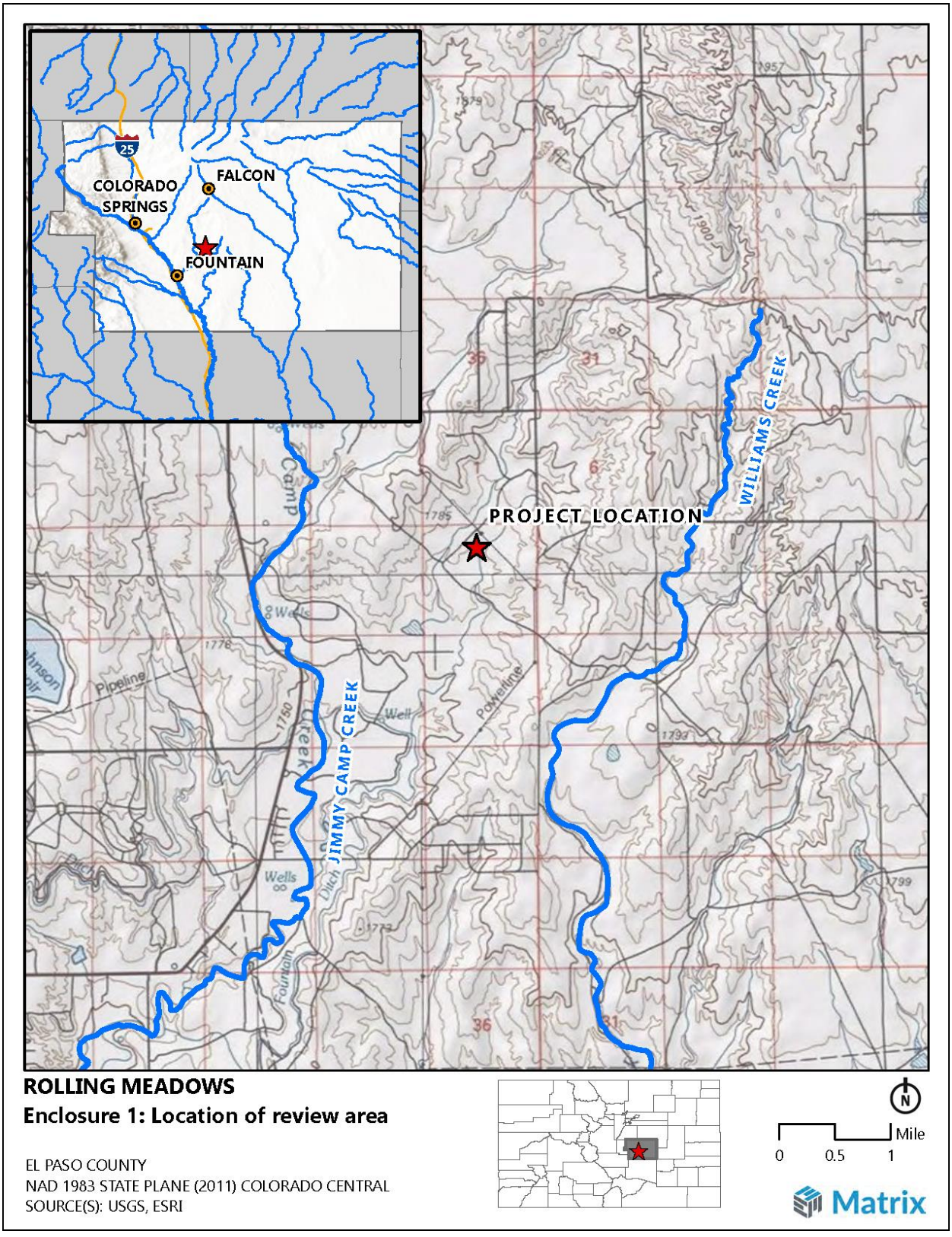
Please refer to identification number SPA-2005-00418 in any correspondence concerning this project. If you have any questions, please contact me by email at Daniel.i.Delgado@usace.army.mil, or telephone at (719) 543-9459.

Sincerely,

Kara Hellige

Kara Hellige
Chief, Southern Colorado Branch

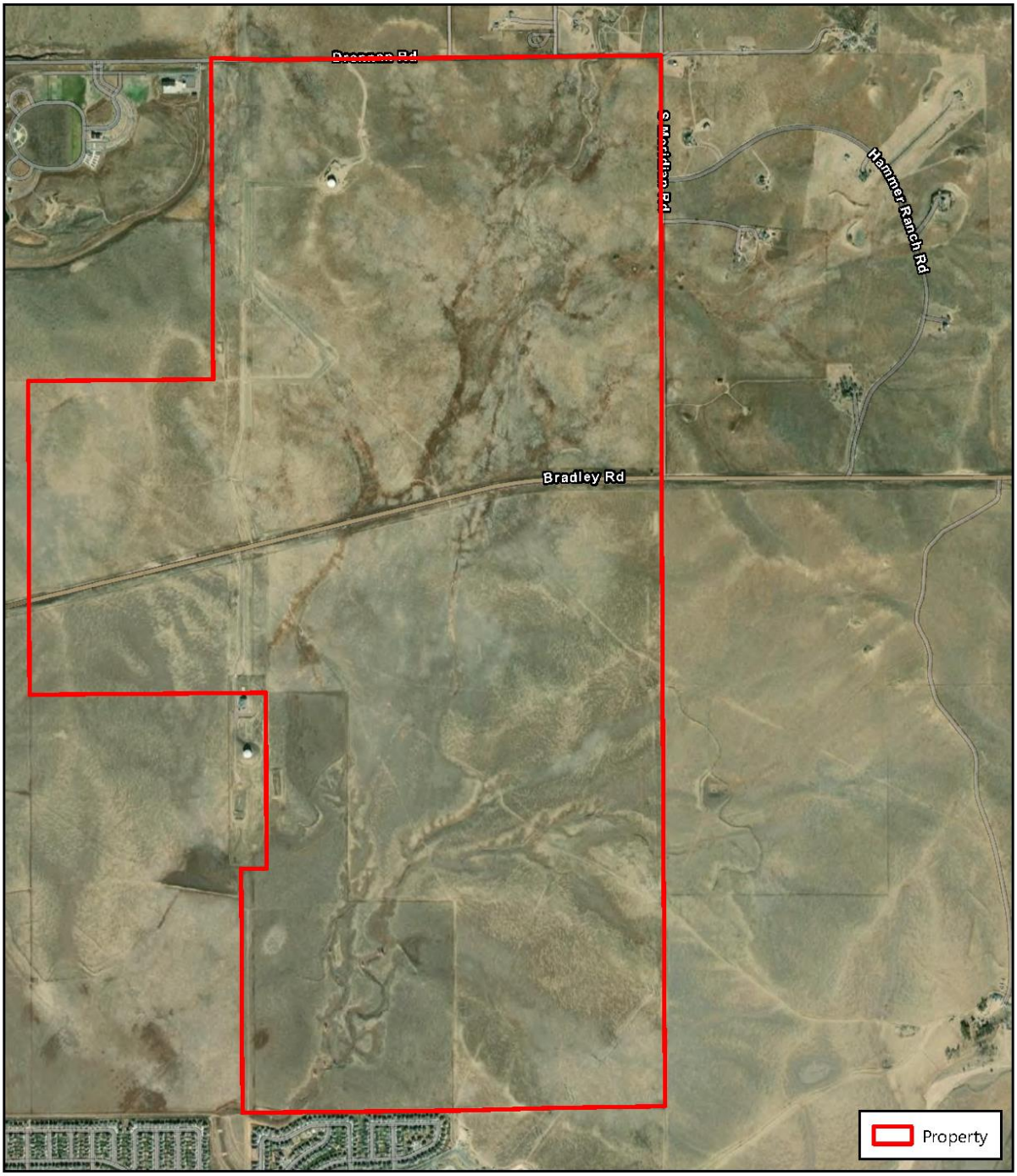
Enclosures



ROLLING MEADOWS

Enclosure 1: Location of review area

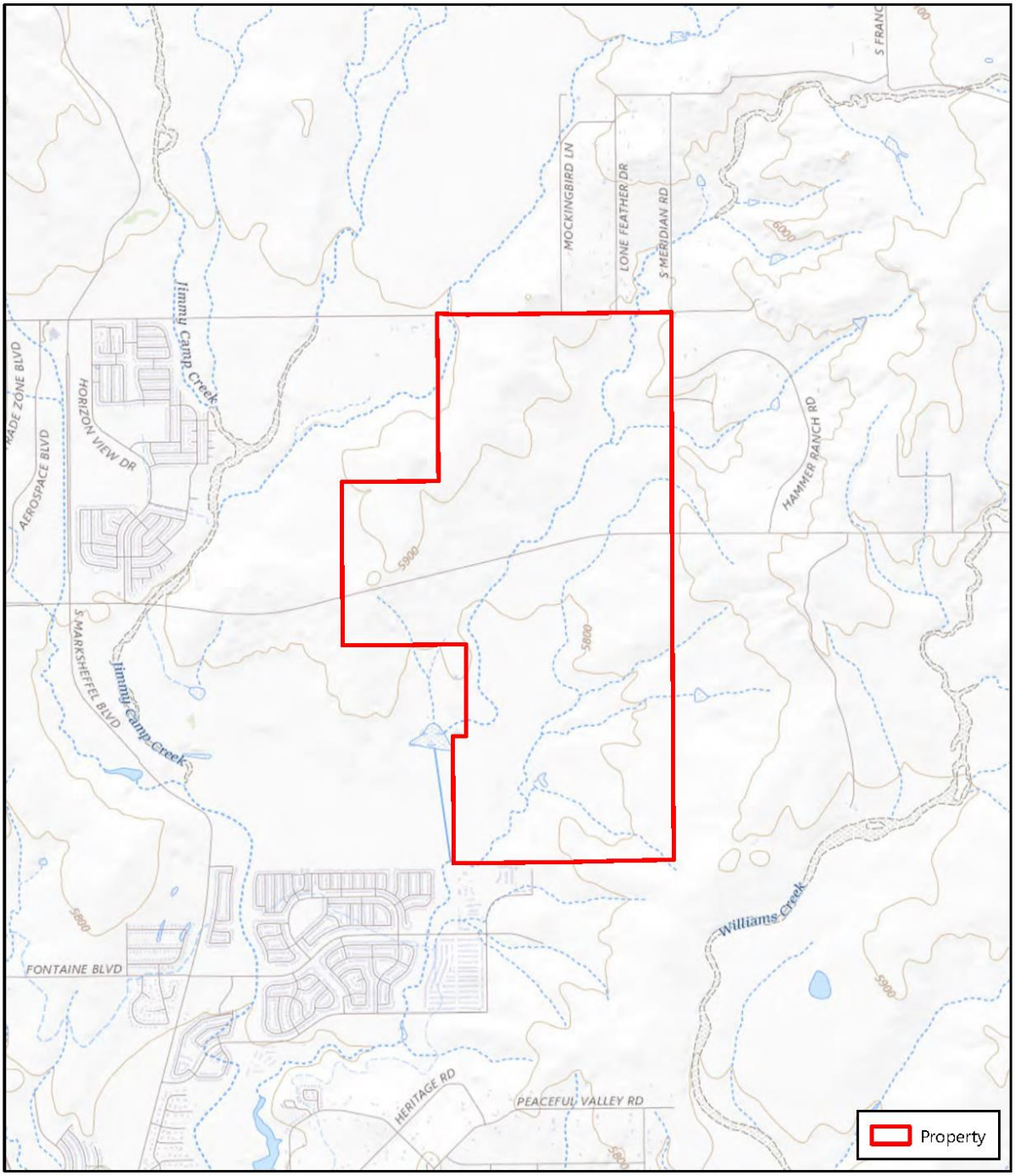
EL PASO COUNTY
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): USGS, ESRI



ROLLING MEADOWS
Enclosure 1: Review Area
EL PASO COUNTY
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): ESRI

N
Feet
0 500 1,000

Matrix



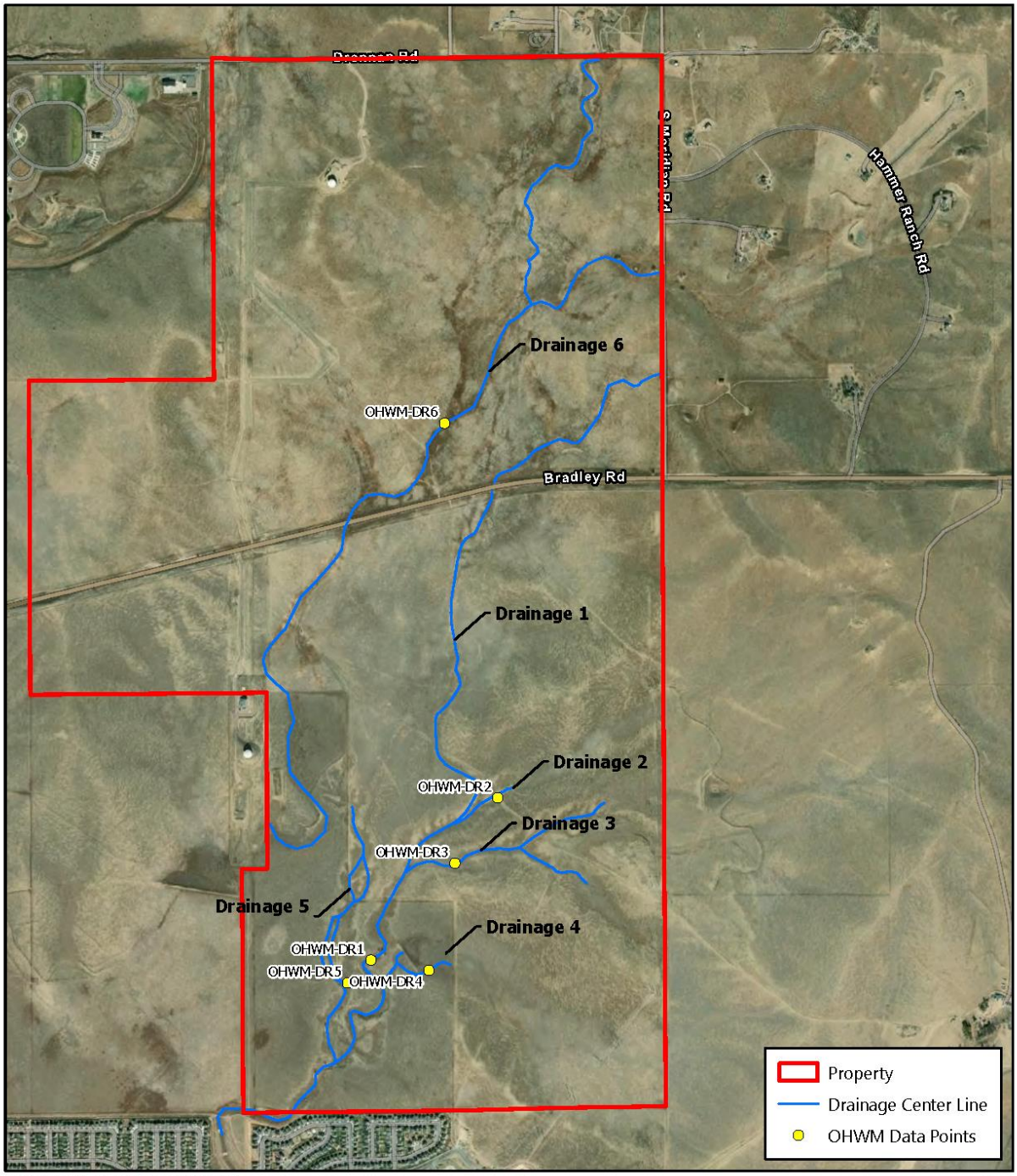
ROLLING MEADOWS
Enclosure 1: Review Area

EL PASO COUNTY
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): ESRI, USGS

N

Feet
0 1,500 3,000

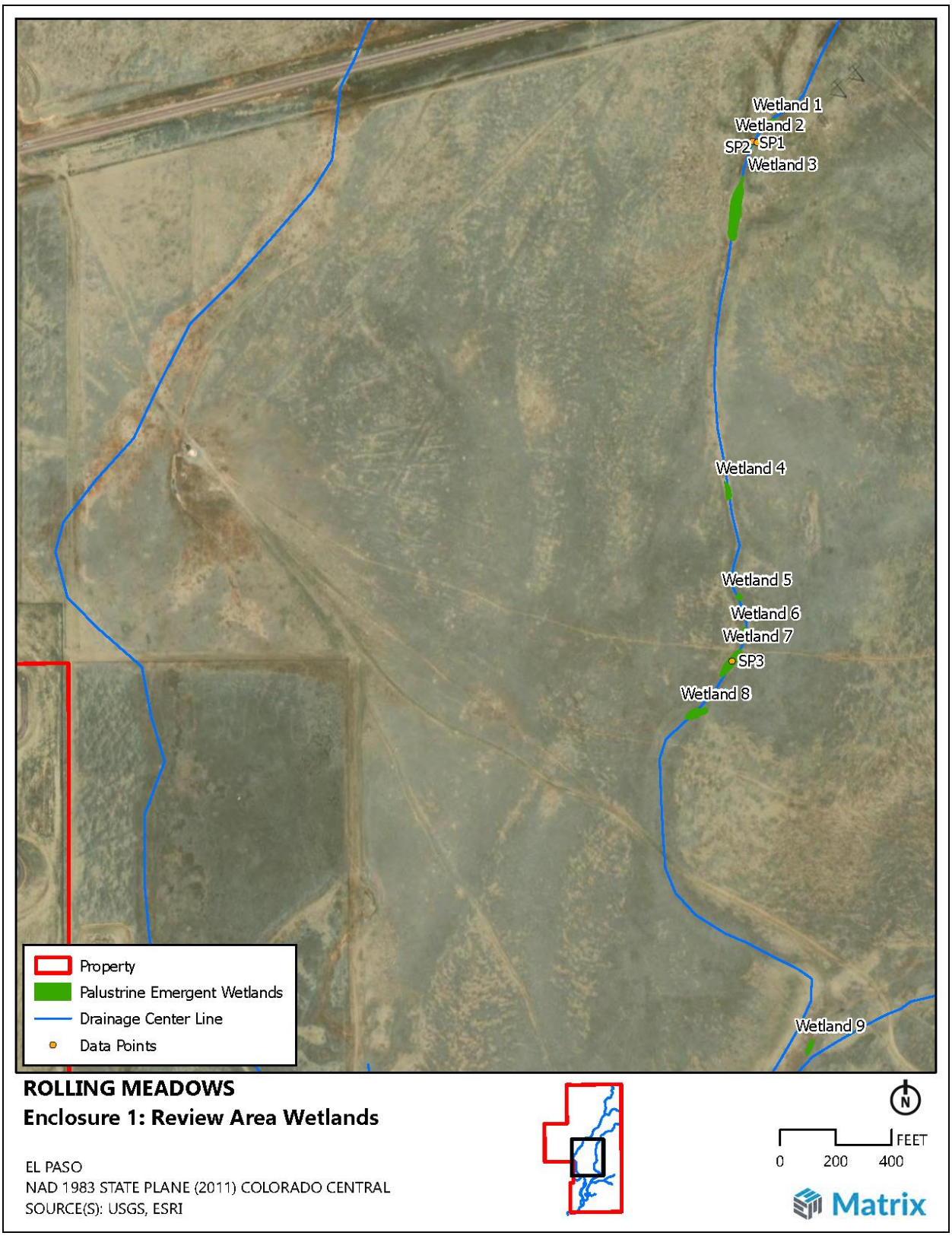
Matrix



ROLLING MEADOWS
Enclosure 1: Review Area Features

EL PASO COUNTY
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): ESRI

Matrix


Wetland 1
Wetland 2
SP2
SP1
Wetland 3
Wetland 4
Wetland 5
Wetland 6
Wetland 7
SP3
Wetland 8
Wetland 9
Property
Palustrine Emergent Wetlands
Drainage Center Line
Data Points
ROLLING MEADOWS
Enclosure 1: Review Area Wetlands
EL PASO
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): USGS, ESRI
N
FEET
0
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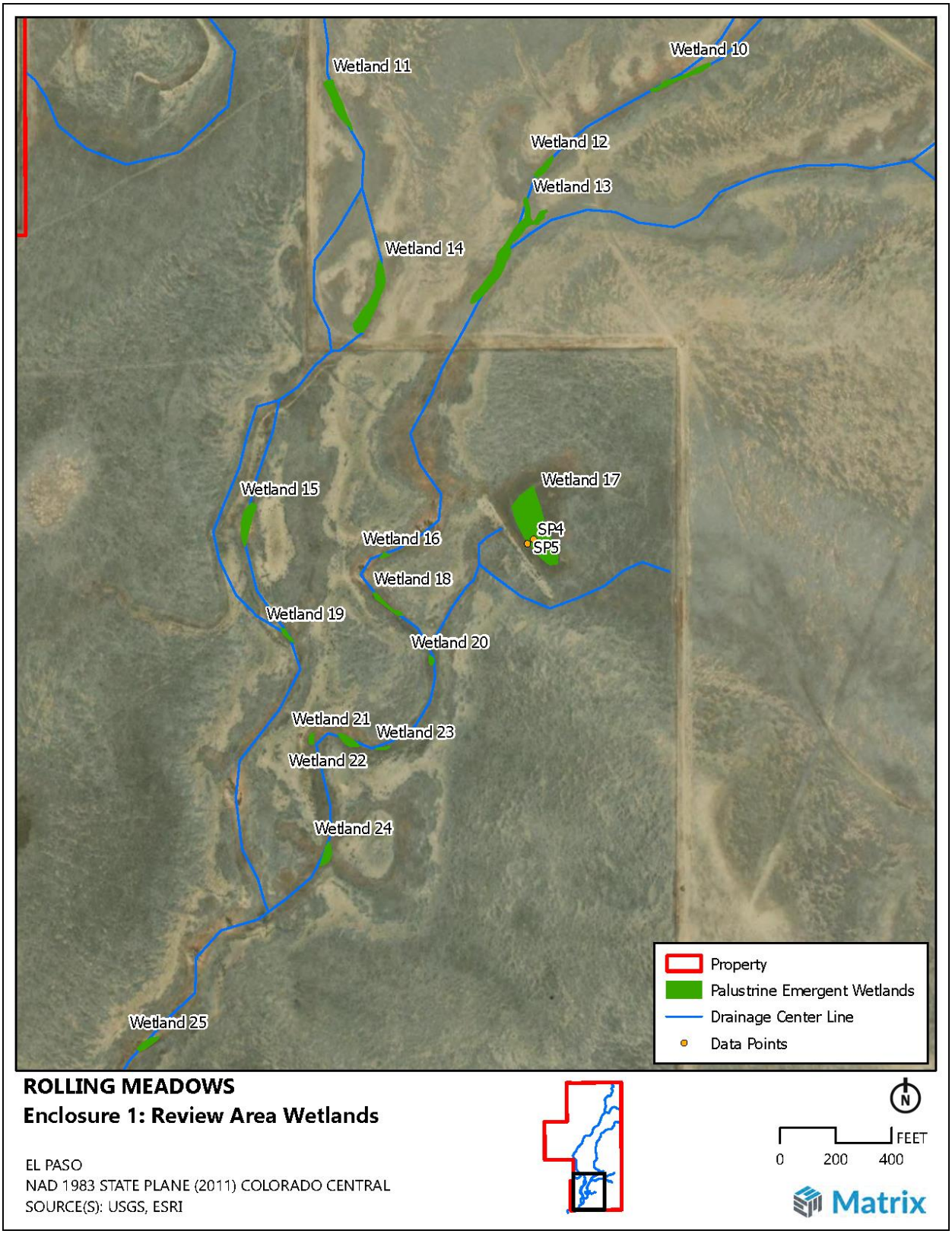
400
Matrix


Wetland 10
Wetland 11
Wetland 12
Wetland 13
Wetland 14
Wetland 15
Wetland 16
Wetland 17
Wetland 18
Wetland 19
Wetland 20
Wetland 21
Wetland 22
Wetland 23
Wetland 24
Wetland 25
SP4
SP5
Property
Palustrine Emergent Wetlands
Drainage Center Line
Data Points
ROLLING MEADOWS
Enclosure 1: Review Area Wetlands
EL PASO
NAD 1983 STATE PLANE (2011) COLORADO CENTRAL
SOURCE(S): USGS, ESRI
N
FEET
0
200
400
Matrix

Enclosure 2 AJD Form

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

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): 17 March 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Albuquerque District, ROLLING HILLS RANCH DEVELOPMENT-NORRIS , SPA-2005-00418-SCO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: **Colorado** County/parish/borough: **El Paso County** City: **Fountain**
Center coordinates of site (lat/long in degree decimal format): Lat. **38.7633508362061°**, Long. **-104.619855468774°**
Universal Transverse Mercator: **13 533026.8 4290584.5**
Name of nearest waterbody: **Jimmy Camp Creek**
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **N/A**
Name of watershed or Hydrologic Unit Code (HUC): **10 Digit HUC-Middle Fountain Creek, 1102000303**
☒ 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: **February XX, 2023**
☒ Field Determination. Date(s): **February 3, 2023**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Pick List** *"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 waters[2] (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, Wetland-2, Wetland-3 , Wetland-4, Wetland-5 , Wetland-6, Wetland-7 , Wetland-8 , Wetland-9 , Wetland-10 , Wetland-11 , Wetland-12 , Wetland-13, Wetland- 14, Wetland-15, Wetland-16 , Wetland-18 , Wetland-19, Wetland-20, Wetland-21, Wetland-22, Wetland-23, Wetland-24, and Wetland-25 are isolated depressional wetlands lacking a discrete connection between wetlands within the same drainage and a discrete connection to a downstream RPW. Drainage-6 is an isolated water exhibiting an OHWM only within a 2,099-linear feet reach at the northern boundary of the review area, which then transitions to a vegetated swale past this point with no discrete**

[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.

connection to a downstream RPW. Wetland-17 is located within a stock pond constructed in uplands and receiving flows from uplands with no discrete downstream connection to an RPW. See Section IV B. below.

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 waterbody[4] 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**
Drainage area: **Pick List**
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:

[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 TNW[5]:
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):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ 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):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☐ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☐ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by: ☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects ☐ survey to available datum;
☐ fine shell or debris deposits (foreshore) ☐ physical markings;
☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges
☐ 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.
[7] Ibid.

(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:

(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-RPWs[8] 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):

[8]See 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 jurisidictional. 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:
☐ 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.
☐ 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).

[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.***

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
☒ Other: (explain, if not covered above): **Isolated depressional wetlands: Wetland-1 (0.02-acre), Wetland-2 (0.0007-acre), Wetland-3 (0.16-acre), Wetland-4 (0.02-acre), Wetland-5 (0.009-acre), Wetland-6 (0.01-acre), Wetland-7 (0.06-acre), Wetland-8 (0.04-acre), Wetland-9 (0.01-acre), Wetland-10 (0.07-acre), Wetland-11 (0.11-acre), Wetland-12 (0.03-acre), Wetland-13 (0.3-acre), Wetland- 14 (0.2-acre), Wetland-15 (0.09-acre) Wetland-16 (0.008-acre), Wetland-18 (0.03-acre), Wetland-19 (0.01-acre), Wetland-20 (0.01-acre), Wetland-21 (0.01-acre), Wetland-22 (0.03-acre), Wetland-23 (0.009-acre), Wetland-24 (0.04-acre), & Wetland-25 (0.03-acre). Isolated waters: Drainage-6 (2,099-linear feet). Stock pond: Wetland-17 (0.5-acre).**

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: 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: **Request for Approved Jurisdictional Determination for ROlling Meadows El Paso County, Colorado, dated December 13, 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:
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **U.S. Natural Resources Conservation Service. Soil Web Sruvey. Custom Soil Resource Report for El Paso County Area, Colorado.**
☐ National wetlands inventory map(s). Cite name:
☐ State/Local wetland inventory map(s):
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): **Digital Globe aerial imagery (see dates below).**
  or ☒ Other (Name & Date): **Applicant submitted photographs taken on 12 Oct. 2022 & Corps Photos taken 3 Feb. 2023.**
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): **U.S. Geological Service TNM – National Hydrography Dataset. Data Refreshed January, 2023. USGS The National Map: Orthoimagery. https://apps.nationalmap.gov/viewer/. Accessed 22 Jan. 2023. USACE Anticedent Precipitation Tool. USGS StreamStats Report.**

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The review area for this JD is equivalent to the 1,869-acre survey area depicted on the map set provided in the aquatic resource delineation report prepared by Matrix Design Group, Inc. (Matrix), dated December 13, 2022 (Attached).

Drainage 6:

Drainage-6 is mapped from the northern boundary of the review and terminating at a point within the southern half of the review area, near what appears to be a large above ground storage tank outside the western boundary of the review area. The U.S. Geological Service (USGS) National Hydrography Data (NHD) indicate flows from Drainage-6 have a potential or historically continued outside of the review area to a confluence at the southwestern corner of the review area. Aerial imagery of the review area

indicate flows that may originate within Drainage-6 are currently captured by an approximately 1,325-foot-long earthen berm near the above ground storage tank. Contributing flows to this drainage originate from within and outside of the review area.

The applicant's ordinary high-water mark (OHWM) datasheet indicates Drainage-6 exhibits no indicators of an OHWM and is fully vegetated with upland plant species such as Blue gramma (Bouteloua gracilis), Fetid marigold (Dyssodia papposa), and Russian thistle (Salsola kali) within its potential flow path at the study point north of Bradley Road (longitude 38.7684/ latitude -104.6182). Aerial imagery obtained from Digital Globe for the dates of September 7, 2022, August 19, 2022, July 31, 2022, July 7, 2022, and April 15, 2022, indicate the presence of approximately 2,099-linear feet of an OHWM at the northern most extent of the review area, approximately 1-mile north of Bradley Road. The aerial imagery and applicant's OHWM datasheet indicate the area of OHWM transitions to a vegetative swale throughout the majority of the mapped extent of Drainage-6 north of Bradley Road and south of Bradley Road. South of Bradley Road, Drainage-6 exhibits the presence of a marginal grassy swale within small reaches as evident by aerial imagery depicting vegetation that is greener than the surrounding vegetation. Aerial images for the date range above do not depict a defined flow path near the earthen berm nor do they suggest flows entering the berm area flow past the berm. The lack of a defined OHWM is likely a result of the topography within the review area, which is gently sloping throughout the entirety. An elevation profile of the review area obtained from the USGS National Map Viewer website, approximates an elevation change of approximately 140 feet along an approximately 2.6-mile path across the review area. Based on the information above, the area of Drainage-6 at the northern most extent of the review area exhibits an OHWM with the rest of the flow path to the earthen berm exhibiting patchy, at best, swale features. Considering a flow path is not present past the berm and the drainage is composed primarily of a vegetative swale, Drainage-6 throughout the entirety of the OHWM within the review area to the north is considered isolated and does not meet the criteria of a water of the U.S.

Drainage 5:
Drainage-5 is a shallow vegetated swale throughout its entirety. Aerial imagery indicates an earthen berm intersects the swale midway through its potential flow path. The applicant's site visit and site photos from October 12, 2022, confirm portions of the drainage do not exhibit indicators of an ordinary high-water mark. Four (4) depressional wetlands (Wetland-11 [0.11-acre], Wetland-14 [0.2-acre], Wetland-15 [0.09-acre], & Wetland-19 [0.01-acre]) are located within Drainage-5. The identified wetlands are likely a result of headcuts and scour which are ponding water and creating wetland conditions. Digital Globe aerial imagery does not indicate a discrete flow path between the wetlands. The lack of defined OHWM and flow paths between wetlands is likely a result of the topography within the review area, which is gently sloping throughout the entirety. An elevation profile of the review area obtained from the USGS National Map Viewer website, approximates an elevation change of approximately 140 feet along an approximately 2.6-mile path across the review area. The Natural Resources Conservation Service (NRCS) soil web survey indicates the dominate soil type in and around the wetlands is Sampson loam, 0 to 3 percent slope, which are typically found in depressions, are well drained, and are not rated as hydric. Digital Globe aerial imagery for the dates of 12 Dec 2022, 14 Oct. 2022, 7 Sept. 2022, 19 Aug. 2022, 31 July 22, 7 July 22, and 15 March 22, indicate the presence of surface water within the wetlands from the timeframe on or before 31 July 22, but not earlier than 7 July 22, to a date prior to 7 Sept. 2022. Based on the lack of a discrete connection between Wetlands 11, 14, 15, & 19, and lack of discrete connection to a downstream RPW, the Corps has determined Wetlands 11, Wetland-14, Wetland-15, and Wetland-19 are isolated and do not meet the criteria of a water of the U.S.

Drainage-1:
Drainage-1 is a shallow vegetated swale throughout the potential flow path. This is evident by the lack of an identifiable ordinary high-water mark (OHWM) throughout the extent of drainage and confirmed by applicant submitted photographs taken on October 12, 2022, and a Corps site visit conducted on February 3, 2023. Furthermore, Drainage-1 contains 20 depressional wetlands [i.e., Wetlands-1 (0.02-acre), 2 (0.0007-acre), 3 (0.16-acre), 4 (0.02-acre), 5 (0.009-acre), 6 (0.01-acre), 7 (0.06-acre), 8 (0.04-acre), 9 (0.01-acre), 10 (0.07-acre), 12 (0.03-acre), 13 (0.3-acre), 16 (0.008-acre), 18 (0.03-acre), 20 (0.01-acre), 21 (0.01-acre), 22 (0.03-acre), 23 (0.009-acre), 24 (0.04-acre), & 25 (0.03-acre)] along its potential flow path. Digital Globe aerial imagery, the applicant submitted photographs, and Corps site visit photos do not indicate a discrete flow path between the wetlands. The identified wetlands are likely a result of headcuts and scour which are ponding water and creating wetland conditions. The lack of defined a OHWM and flow paths between wetlands is likely a result of the topography within the review area, which is gently sloping throughout the entirety. An elevation profile of the review area obtained from the USGS National Map Viewer website, approximates an elevation change of approximately 140 feet along an approximately 2.6-mile path across the review area. The Natural Resources Conservation Service (NRCS) soil web survey indicate the dominate soil type in and around the wetlands is Sampson loam, 0 to 3 percent slope, which are typically found in depressions, are well drained, and are not rated as hydric. Digital Globe aerial imagery for the dates of 12 Dec 2022, 14 Oct. 2022, 7 Sept. 2022, 19 Aug. 2022, 31 July 22, 7 July 22, and 15 March 22, indicate the presence of surface water within the wetlands from the timeframe on or before 31 July 22, but not earlier than 7 July 22, to a date prior to 7 Sept. 2022. Based on the lack of a discrete connection between the wetlands, and lack of discrete connection to a downstream RPW, the Corps has determined Wetlands-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 16, 18, 20, 21, 22, 23, 24, & 25 are isolated and do not meet the criteria of a water of the U.S.

Wetland-17:

Wetland-17 (0.5-acre) is located within a stock pond adjacent to Drainage-4. Digital Globe aerial imagery does not indicate an aquatic resource containing an ordinary high-water mark up-stream of the stock pond. The applicant's submitted photographs taken on October 12, 2022, indicate the presence of a vegetated swale below the earthen dam with no indications of an OHWM. Wetland-17 is located within a stock pond that was constructed in uplands and capturing flow from the surrounding uplands, and is, therefore, considered part of the stock-pond. The 1986 preamble to 33 CFR Part 328.3, states that the Corps generally does not consider artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which is used

exclusively for such purposes as stock watering, irrigation, or settling basins to be waters of the U.S. Therefore, Wetland-17 is not a water of the U.S. as it is located within a stock pond.

Enclosure 3

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL		
Applicant: Jeff Mark; Murray Fountain, LLC	File No.: SPA-2005-00418	Date: March 17, 2023
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
X	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.

Encl 3

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: Daniel Delgado Senior Regulatory Project Manager USACE-Albuquerque District, Regulatory Division Southern Colorado Branch, Pueblo Field Office 201 West 8th Street, Suite 350 Pueblo, CO 81003 Phone: (719) 543-9459 Email: Daniel.i.Delgado@usace.army.mil	If you only have questions regarding the appeal process you may also contact: Travis Morse Administrative Appeal Review Officer U.S. Army Corps of Engineers South Pacific Division 450 Golden Gate Avenue, San Francisco, CA 941021455 Phone: (213) 452-3146 Email: Travis.W.Morse@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:

SPD version revised December17, 2010