



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

CESPK-RDC-N

13 March 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the “Revised Definition of ‘Waters of the United States’”; (88 FR 3004 (January 18, 2023) as amended by the “Revised Definition of ‘Waters of the United States’; Conforming” (8 September 2023),¹ SPK-2008-00818.

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

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army (“the agencies”) published the “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”). On September 8, 2023, the agencies published the “Revised Definition of ‘Waters of the United States’; Conforming”, which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) (“*Sackett*”).

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. **SUMMARY OF CONCLUSIONS.** The following is 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).

¹ While the Revised Definition of “Waters of the United States”; Conforming 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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Waters Name	Cowardin Code	Acreage/Linear Feet	Waters of the U.S.	Navigable Waters of the U.S.
OW01	R6	0.08-acre	No	No
WF01	PEM	0.01-acre	No	No

2. REFERENCES:

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule").

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR No. 173 (September 8, 2023).

c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023).

3. REVIEW AREA: The review area is the approximate 19.65-acre survey area located at Latitude 40.59376°, Longitude -122.32201°, within the City of Redding, Shasta County, California (Enclosure 1). The property is within the United States Geological Survey (USGS) Enterprise Quadrangle, Township 32N, Range 4W, Section 28.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED: The nearest downstream TNW is the Sacramento River (Enclosure 2-4). The Sacramento River is a navigable water of the U.S. pursuant to the Rivers and Harbors Act and 33 CFR Part 329 from the Suisun Bay, an arm of the San Francisco Bay, to the Keswick Dam, at river mile 301.6.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER: The stream OW01 receives seasonal flow from rainfall events and surface runoff from surrounding developed land. The stream OW01 flows south through the survey area and southwest out of the survey area for approximately 0.11-mile until it reaches the stream OW02, a stream that begins within the preliminary jurisdictional determination (PJD) review area (Enclosure 2-6). The stream OW02 flows southwest beyond the survey area for 1.58 miles to an impounded pond. Flow escapes from this pond and in approximately 0.48 mile reaches Churn Creek. Churn Creek flows for approximately 9.76-miles before reaching the Sacramento River, a TNW.

The Vernal Pool WF01 is a non-adjacent wetland because it lacks a continuous surface connection to an (a)(1) or relatively permanent (a)(2) or (a)(3) water as seen from the LiDAR imagery and aerial imagery (Enclosure 7-8). The Vernal pool WF01 is approximately 0.1 mile away from OW01 and another stream to the east of the survey area. WF01 is approximately 0.2 mile away from OW02, a stream in the PJD review area. The area between WF01 and the surrounding streams is an upland lawn and no discrete features

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between WF01, and the streams are present to connect the features. The pool is filled during seasonal rain events and water from this wetland does not flow outside of the review area. As a result, this wetland does not have a continuous surface connection to a jurisdictional feature.

6. SECTION 10 JURISDICTIONAL WATERS⁵: 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. N/A.

7. SECTION 404 JURISDICTIONAL WATERS: Aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.
- b. The Territorial Seas (a)(1)(ii): N/A.
- c. Interstate Waters (a)(1)(iii): N/A.
- d. Impoundments (a)(2): N/A.
- e. Tributaries (a)(3): N/A.
- f. Adjacent Wetlands (a)(4): N/A.
- g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. The stream OW01 is a non-jurisdictional feature because it is a non-relatively permanent water. OW01 is approximately 0.30-mile in length. The stream receives water from seasonal rain events and runoff from the surrounding developed and irrigated land. During the consultant's January 25, 2022, site visit, flowing water was not observed in OW01 and only small pools of water were observed in certain spots of the aquatic resource. The stream OW01 is not present on the 2012 or 2023 topographic maps. The stream OW01 is not present in the National Wetland Inventory (NWI) database but in the National Hydrology Database (NHD) as an ephemeral stream, supporting the determination that it is not a relatively permanent water. In the April 17, 2018, Digital Globe imagery water is present in small areas (less than 5% of the total length of the reach), which is consistent

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.

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with the observations of [REDACTED] of no connecting water (Enclosure 9). In the April 29, 2023, Google Earth imagery approximately 15% of the reach is observed to have water (Enclosure 5). Both images, along with the consultant's observations demonstrate that the OW01 is a non-relatively permanent stream and as a result a non-jurisdictional water.

b. The wetland WF01 is a non-jurisdictional feature because it not adjacent to a jurisdictional (a)(1), (a)(2), or (a)(3) water. The wetland WF01 is approximately 0.01-acre and consists of vernal pool habitat. The wetland WF01 is not present on the 2012 or 2023 topographic maps. The wetland WF01 does not have a discrete surface connection to another aquatic resource, which can be observed from the LiDAR imagery of the feature and the surrounding area. Water can be seen in WF01 in the imagery from Digital Globe dated February 23, 2017, February 20, 2019, and April 13, 2019, however, a flow path out of the wetland is not present. The closest aquatic resources to WF01 are the stream OW01 and another stream feature visible on LiDAR imagery to the east of the review area. The area between the wetland WF01, the stream OW01, and the unnamed aquatic feature to the east of the survey area is an upland lawn area and a discrete feature is not present between the aquatic resources to connect them. The wetland WF01 does not have a continuous surface connection to a jurisdictional water and as a result is non-jurisdictional.

9. DATA SOURCES: Data/information used in making determination.

- a. U.S. Army Corps of Engineers. January 2-11, 2024. Office Evaluation.
- b. [REDACTED]. March 2022. Draft Delineation of Aquatic Resources, Anderson, California, Redding School of the Arts Expanded Area, Redding, Shasta County CA.
- c. U.S. Fish and Wildlife Service. (n.d.). National Wetland Inventory. Project area: Redding School of Arts NWI. Source imagery date: 1983. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved December 29, 2023, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.
- d. Natural Resources Conservation Service. (2023, August 28). Custom Soil Resource Shasta County Area, 2008-00818 Redding School of Arts. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved January 3, 2024, from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.
- e. Federal Emergency Management Agency. (n.d). FEMA Flood Map Service Center. FEMA Firm Map: 06089C1552G and 06089C1554G, Effective on March 17, 2011. FEMA, Dept. of Homeland Security. Retrieved October 25, 2023, from <https://msc.fema.gov/portal/home>.
- f. U.S. Geological Survey. (2012). USGS 1:24000-scale Quadrangle for Enterprise, CA: U.S. Geological Survey.

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g. U.S. Geological Survey. (2023). USGS 1:24000-scale Quadrangle for Enterprise, CA: U.S. Geological Survey.

h. Digital Globe: February 23, 2017, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

i. Digital Globe: February 3, 2018, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

j. Digital Globe: February 16, 2018, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

k. Digital Globe: April 17, 2018, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

l. Digital Globe: February 20, 2019, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

m. Digital Globe: April 13, 2019, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

n. Digital Globe: May 24, 2021, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

o. Digital Globe: May 13, 2023, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

p. Digital Globe: September 8, 2023, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 4, 2024. Using ArcGIS Pro.

q. Google Earth: OW01 and OW02 Reach April 29, 2023, Imagery [map]. 1:3,000. Generated by Army Corps of Engineers, January 9, 2024. Using Google Earth.

r. Google Earth: OW01 Reach April 29, 2023, Imagery [map]. 1:500. Generated by Army Corps of Engineers, January 9, 2024. Using Google Earth.

s. LiDAR: Redding School of Arts LiDAR [map]. 1:400. Generated by Army Corps of Engineers, January 9, 2024. Using ArcGIS Pro.

t. LiDAR: Redding School of Arts WF01 LiDAR [map]. 1:160. Generated by Army Corps of Engineers, January 9, 2024. Using ArcGIS Pro.

u. LiDAR: Redding School of Arts WF01 LiDAR Wider View [map]. 1:250. Generated by Army Corps of Engineers, January 11, 2024. Using ArcGIS Pro.

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- v. NHD Flowline (USGS 2023): NHD Flowpath (1 of 3) [map]. 1:5,000. Generated by Army Corps of Engineers, January 11, 2024. Using ArcGIS Pro.
- w. NHD Flowline (USGS 2023): NHD Flowpath (2 of 3) [map]. 1:5,000. Generated by Army Corps of Engineers, January 11, 2024. Using ArcGIS Pro.
- x. NHD Flowline (USGS 2023): NHD Flowpath (3 of 3) [map]. 1:5,000. Generated by Army Corps of Engineers, January 11, 2024. Using ArcGIS Pro.

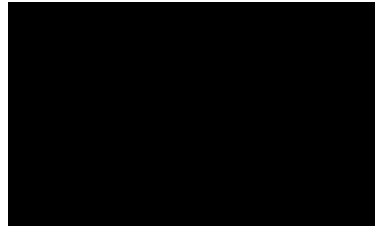
10. OTHER SUPPORTING INFORMATION: There are no jurisdictional waters within the 19.65-acre review area. The stream OW01 and the wetland WF01 are not Waters of the United States. The stream OW01 is not a relatively permanent water because less than half of the reach holds water on a relatively permanent basis, as a result OW01 is not an (a)(3) water. The wetland WF01 is not adjacent to a jurisdictional water because it does not share a continuous surface connection with an (a)(1), (a)(2), or (a)(3) water.

The wetland WF01 is not an adjacent wetland pursuant to (a)(4) because it lacks a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water. Lack of a connection to an (a)(1), (a)(2), and (a)(3) water can be seen on the LiDAR imagery. The May 24, 2021, May 13, 2023, and September 8, 2023, Digital Globe photos were not helpful or relevant in evaluating the jurisdiction of the aquatic resources because the images were taken during the dry season, when we would not expect to see a surface connection in aerial imagery. The Corps' Antecedent Precipitation Tool (APT) shows that the February 23, 2017, imagery was acquired in wetter than normal conditions, during the wet season, and with an extreme wetness drought index. The Corps' Antecedent Precipitation Tool (APT) shows that the April 17, 2018, imagery was acquired in normal conditions, during the wet season, and with mild drought index. The APT shows that the February 2, 2018, imagery was acquired in normal conditions during the wet season, and with severe drought index. The APT shows that the February 16, 2018, imagery was acquired in drier than normal conditions during the wet season, and severe drought index. The APT shows that the April 13, 2019, imagery was acquired in wetter than normal conditions, during the wet season, and moderate wetness drought index. The APT shows that the February 20, 2019, imagery was acquired during wetter than normal conditions, during the wet season, and moderate wetness drought index. The APT shows that the May 24, 2021, imagery was acquired during drier than normal conditions, during the dry season, and extreme drought index. The APT shows that the May 13, 2023, imagery was acquired in wetter than normal conditions, during the dry season, and moderate wetness drought index. The APT shows that the September 8, 2023, imagery was acquired during wetter than normal conditions, during the dry season, and mild wetness drought index. The APT shows that the January 25, 2022, consultants site visit occurred during drier than normal conditions, during the wet season, and severe drought index. The APT shows that the April 29, 2023, Google Earth imagery was acquired during normal conditions, during the wet season, and moderate wetness drought index.

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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.



Enclosures

1. Redding School of Arts Expanded Area Draft Delineation of Aquatic Resources Figure 4
2. NHD Flowpath (1 of 3)
3. NHD Flowpath (2 of 3)
4. NHD Flowpath (3 of 3)
5. OW01 Reach April 29, 2023
6. OW01 and OW02 Reach April 29, 2023
7. Redding School of Arts WF01 LiDAR
8. Redding School of Arts WF01 LiDAR Wider View
9. April 17, 2018, Imagery
10. Redding School of Arts LiDAR

Draft Delineation of Aquatic Resources

Wetland Features

Label	Cowardin	Description	Location (Lat, Long)	Width +	Length (ft)	Area (sq ft)	Acres
WF01	PEM	Vernal Pool	40.593258 -122.320244	N/A	N/A	531.24	0.01
Wetland Features Totals =						531.24	0.01

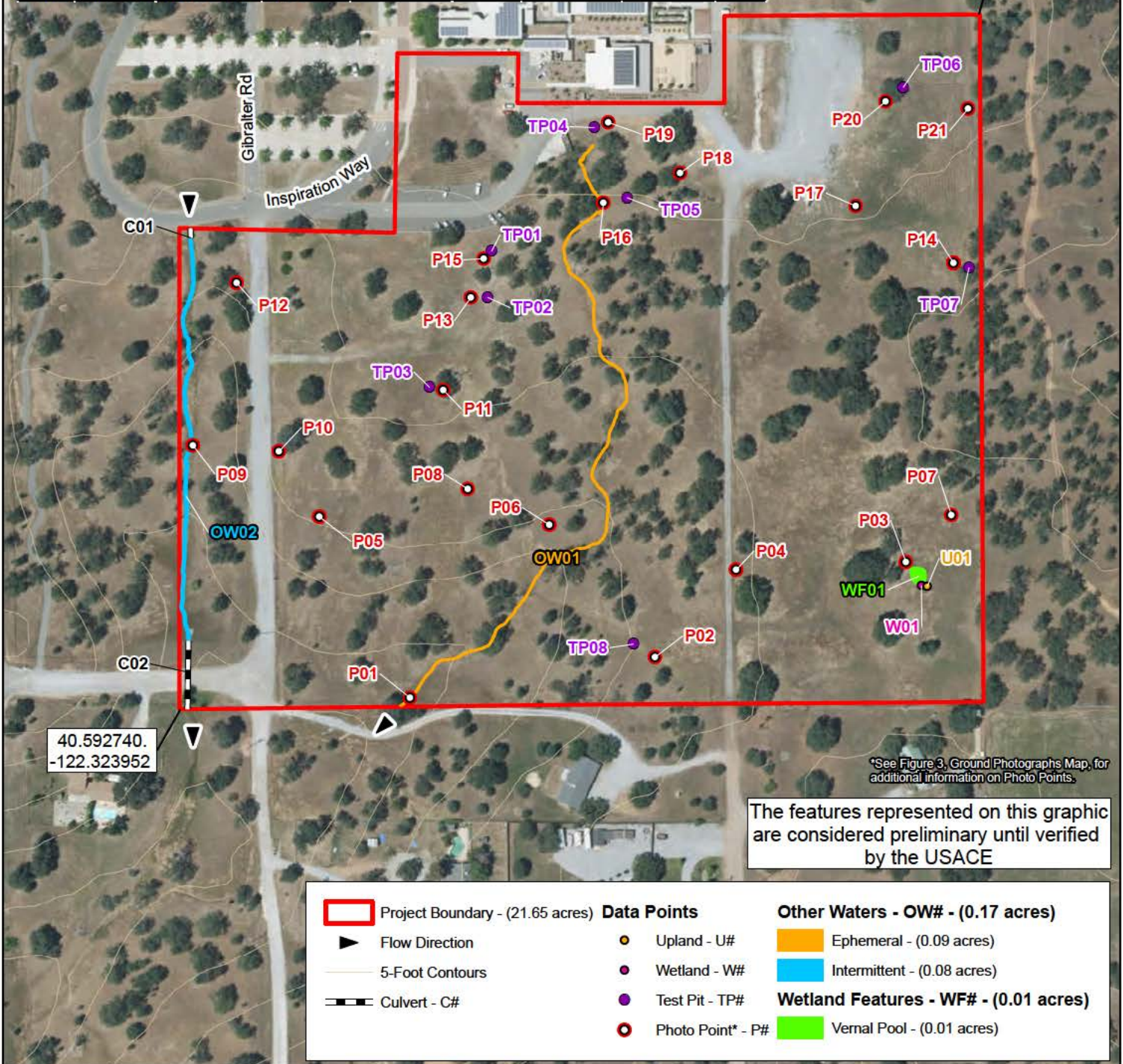
Other Waters

Label	Cowardin	Description	Location (Lat, Long)	Width +	Length (ft)	Area (sq ft)	Acres
OW01	R6	Ephemeral	40.593768 -122.322049	4	1041.30	4154.49	0.09
OW02	R4	Intermittent	40.593775 -122.323924	6	571.40	3454.18	0.08
Other Waters Totals =					1612.70	7608.67	0.17

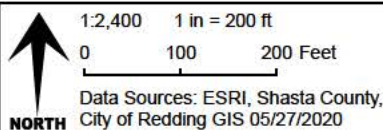
Aquatic Resources Totals = 1612.70 8139.91 0.18

+ Widths are represented as averages

40.595402,
-122.319947



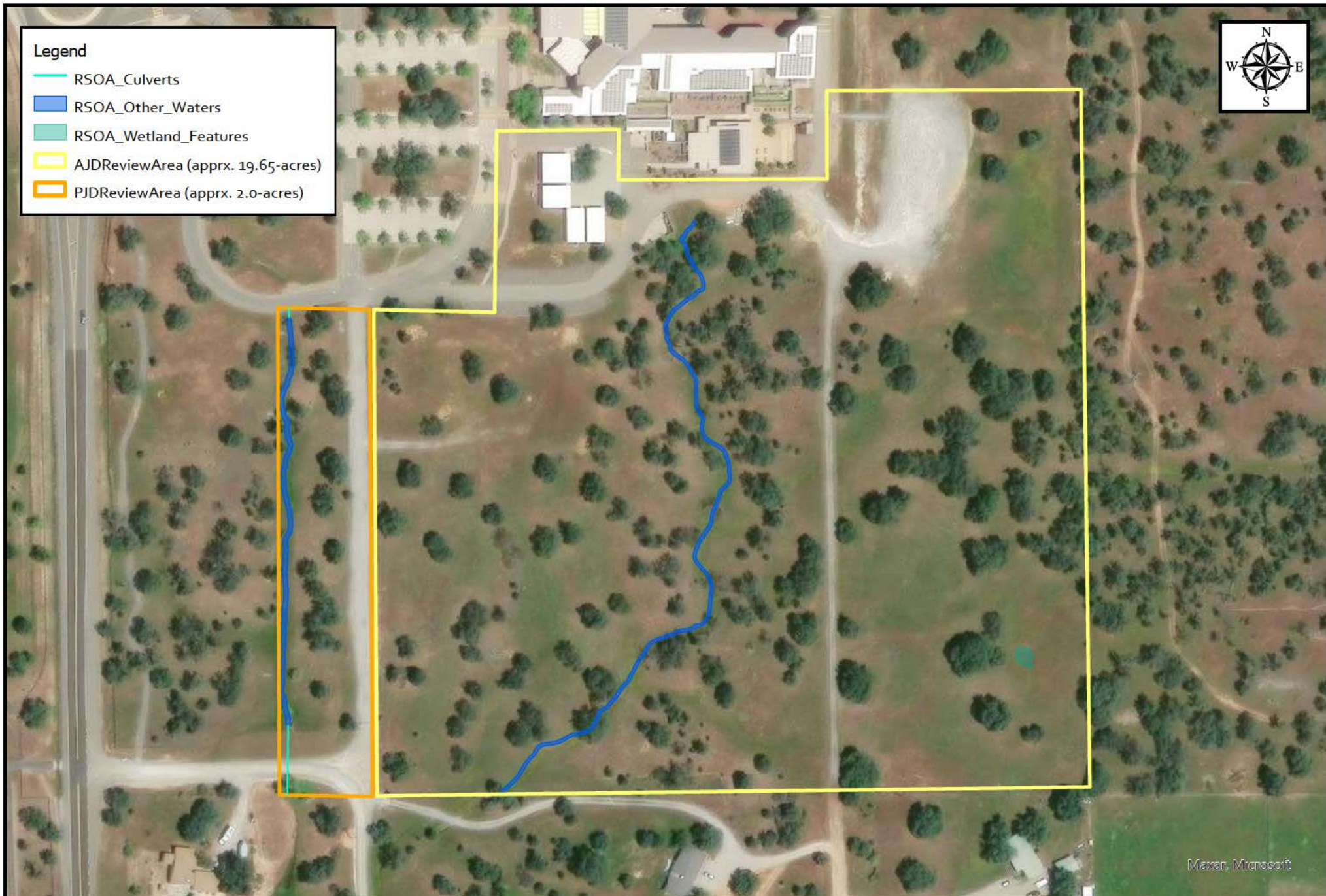
The features represented on this graphic are considered preliminary until verified by the USACE



Redding School of Arts Expanded Area
Draft Delineation of Aquatic Resources
Figure 4

Legend

- RSOA_Culverts
- RSOA_Other_Waters
- RSOA_Wetland_Features
- AJDReviewArea (apprx. 19.65-acres)
- PJDReviewArea (apprx. 2.0-acres)



Maxar, Microsoft



Map Title/Description
Aquatic Resources within the Review Area



Map Center: 122.32204°W 40.594035°N

Author Name



Date: 3/13/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere