



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

CESPK-RDC-D (SPK-2022-00080)

9 April 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-2022-00080.

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.

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).

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.

Name of Aquatic Resource	Cowardin	Description	Waters of the U.S.	Navigable Waters of the U.S.
SW-3	PEM	Nonadjacent Wetland	No	No
SW-4	PEM	Nonadjacent Wetland	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 61964 (September 8, 2023))

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

3. REVIEW AREA. The approximately 87-acre review area is located southeast of the City of Stockton in an unnumbered Section, Township 1 North, Range 7 East, MDB&M at Latitude 37.92043°, Longitude -121.21136° in unincorporated San Joaquin County, California. *Enclosure 1* is a figure prepared by [REDACTED] titled *Aquatic Resources Mariposa Industrial Park San Joaquin County CA* and dated December 13, 2023.

a. A PJD was originally verified for the site on January 30, 2023. Subsequently, the project boundary was expanded and the original verification was superseded by a second PJD verification on June 14, 2023; *Enclosure 2* is this verification letter and *Enclosure 3* is the verified aquatic resources delineation map. The current review area is comprised of only 87 acres in the southeast corner of the original approximately 212 acre project site verified in the June 14, 2023, letter.

b. A PCN was submitted to the Corps on July 31, 2023, and the project was verified under a Nationwide Permit 43 *Stormwater Management Facilities* (NWP 43) on August 3, 2023, (*Enclosure 4*). This authorized the discharge of fill material into approximately 0.47 acre of waters of the U.S. subject to Section 404 of the Clean Water Act, consisting of 0.22 acre of intermittent tributary and 0.25 acre of seasonal wetlands (*Enclosure 5*).

c. Based on information provided by the applicant's biologist including as-built GIS data collected in the field, intermittent channel IC-2, seasonal wetland SW-5, and an 8452 sq. ft. (0.19 acre) portion of SW-4 within the review area were filled in accordance with their verified NWP 43. The only aquatic resources currently remaining in the review area are two remnant sections of seasonal wetland SW-4 totaling 11614 sq. ft./ 0.27 ac. and seasonal wetland SW-3 (2862 sq. ft./0.07 ac.). SW-4 and SW-3 do not qualify as WOUS since they lack a continuous surface connect to an (a)(1) water, or a relatively permanent (a)(2) or (a)(3) water.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. SW-3 and SW-4 are approximately 20,800 aerial feet east of French Camp Slough, a tidally influenced TNW.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. SW-3 is approximately 350 aerial feet from an intermittent reach of North Littlejohns Creek (RPW), while the two remnants of SW-4 are 420 and 600 aerial feet, respectively from this feature. North Littlejohns Creek flows westward approximately 23,820 linear feet before merging with French Camp Slough (TNW). *Enclosure 6* is a figure prepared by the Corps titled *Flowpath to TNW (French Camp Slough) SPK-2022-00080*, which displays the flowpath to a TNW.

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. 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 2023 Rule as amended, 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 2023 Rule as amended. 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. 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

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.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES.

a. SW-3: This seasonal wetland lacks a continuous surface connection to an (a)(1) water or relatively permanent (a)(2) or (a)(3) water, the closest of which is North Littlejohns Creek, an (a)(3) water, located approximately 350' to the south. There is no discrete physical feature such as a pipe, culvert, ditch, or swale connecting this wetland to Littlejohns Creek. The intervening area between the wetland and Littlejohns Creek was graded and compacted to accommodate the construction a large detention basin and an outflow pipe. This involved the excavation of approximately 250,000 cubic yards of dirt from an approximately 8 acre area, with a maximum depth of approximately 35 feet. The Corps is currently reviewing a 408 LOP permission as well as a 404 permit for an outfall structure that will connect the detention basin to North Littlejohns Creek.

b. SW-4: The two remnants of this seasonal wetland lack a continuous surface connection to an (a)(1) water or relatively permanent (a)(2) or (a)(3) water, the closest of which is North Littlejohns Creek, an (a)(3) water. The two remnants of SW-4 are 420 and 600 aerial feet, respectively, north of the creek. There is no discrete physical feature such as a pipe, culvert, ditch, or swale connecting this wetland to Littlejohns Creek. The intervening area between the wetland and Littlejohns Creek was graded and compacted to accommodate the construction a large detention basin and an outflow pipe. This involved the excavation of approximately 250,000 cubic yards of dirt from an approximately 8 acre area, with a maximum depth of approximately 35 feet. The Corps is currently reviewing a 408 LOP permission as well as a 404 permit for an outfall structure that will connect the detention basin to North Littlejohns Creek.

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. A site visit was conducted May 27, 2022, [REDACTED]

b. *Routine Wetland Delineation 206+/- Acre "Mariposa Industrial Park" San Joaquin County, California*, dated December 2021 and [REDACTED]

10. OTHER SUPPORTING INFORMATION. In a telephone conversation with [REDACTED] on February 9, 2024, [REDACTED] stated that [REDACTED] has been required to perform multiple site visits during both the wet- and dry-season to satisfy other commitments. These included other biological surveys during various times of the year. [REDACTED] stated that on numerous occasions, [REDACTED] observed water in IC-2 and concurrently noted a lack of water in SW-3 and SW-4. IC-2 was the intermittent unnamed tributary to North Littlejohns Creek that was filled as part of the aforementioned NWP 43. [REDACTED] also noted a lack of water in IC-2 while the seasonal wetlands were fully inundated. This would infer a lack of subsurface connection between IC-2 which was much closer (about 100 feet) to SW-3 and SW-4 than North Littlejohns Creek as stated above.

CESPK-RDC-D (SPK-2022-00080)

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2022-00080]

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.

[REDACTED]

Seven (7) Enclosures

1. Aquatic Resources Mariposa Industrial Park San Joaquin County CA
2. June 14, 2023, PJD Verification Letter
3. Aquatic Resources Mariposa Industrial Park
4. August 3, 2023, NPW 43 Verification Letter
5. Site Map – Phase 1 & Phase 2 of North Littlejohns Creek [REDACTED]
6. Flowpath to TNW (French Camp Slough) SPK-2022-00080
7. Routine Wetland Delineation 206+/- Acre "Mariposa Industrial Park" San Joaquin County California.

37.925106, -121.213487



AQUATIC RESOURCES

Feature	Label	Area (sf)	Area (acre)
Seasonal Wetland	SW-3	2,861	0.07
	SW-4	11,614	0.27
	Total	14,475	0.34

E Mariposa Rd



37.914191, -121.20400



Data Disclaimer:
 The delineation has been done in accordance with the 1987 Wetlands Delineation Manual, US Army Corps of Engineers and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. The boundaries and jurisdictional status of all waters shown on this map are preliminary and subject to verification by the U.S. Army Corps of Engineers.

Aerial Image: Maxar (02/2022)

Project Area (±87 acres)

Aquatic Resources Filled in 2023 (SPK-2022-00080)

Culvert

3-Parameter Data Point



0 250 500

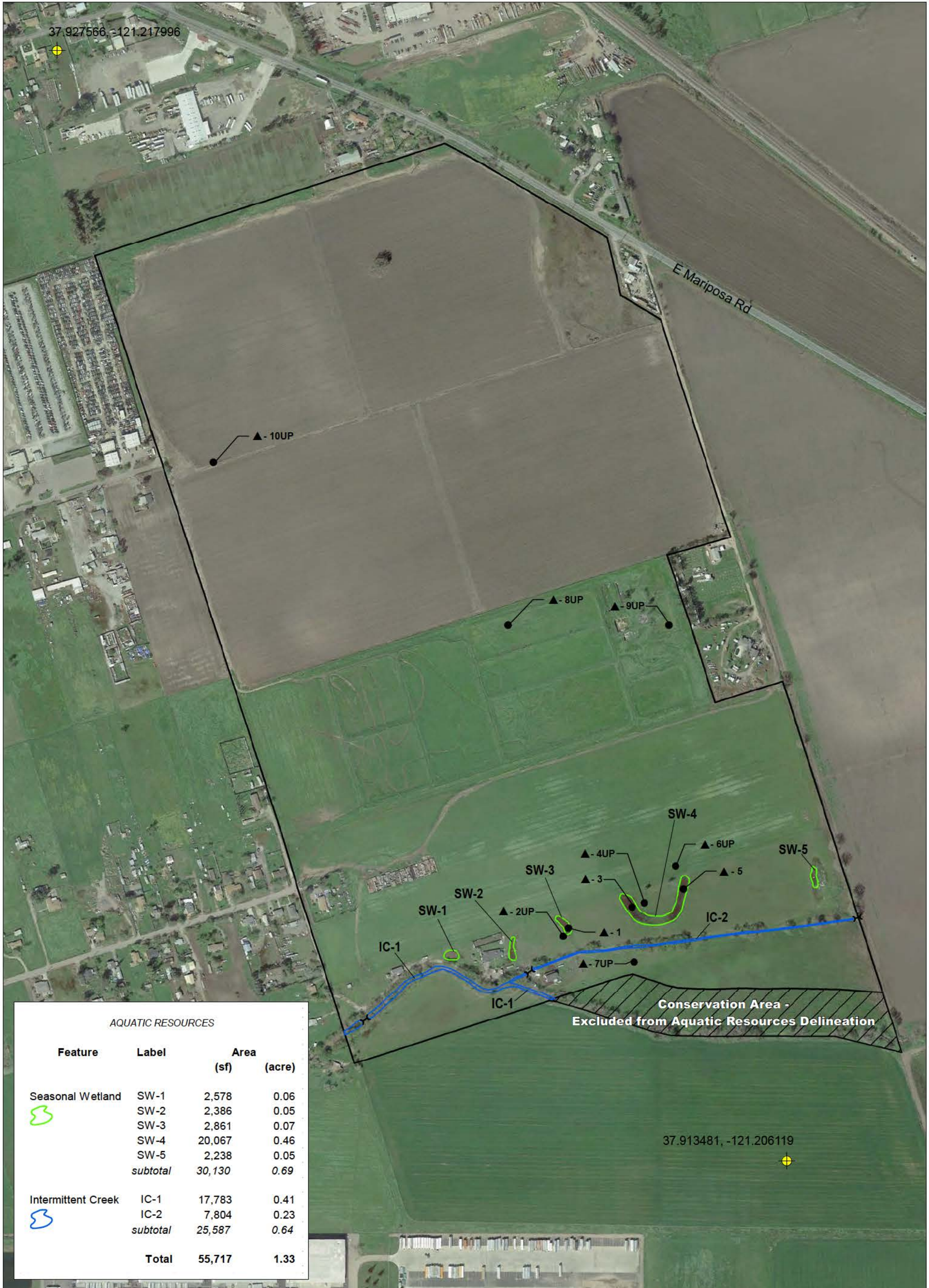
Map Date: 12/13/2023

Aquatic Resources

Mariposa Industrial Park

San Joaquin County, CA

37.927566, -121.217996



AQUATIC RESOURCES			
Feature	Label	Area (sf)	Area (acre)
Seasonal Wetland	SW-1	2,578	0.06
	SW-2	2,386	0.05
	SW-3	2,861	0.07
	SW-4	20,067	0.46
	SW-5	2,238	0.05
	<i>subtotal</i>	30,130	0.69
Intermittent Creek	IC-1	17,783	0.41
	IC-2	7,804	0.23
	<i>subtotal</i>	25,587	0.64
Total		55,717	1.33

Data Disclaimer:
 The delineation has been done in accordance with the 1987 Wetlands Delineation Manual, US Army Corps of Engineers and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. The boundaries and jurisdictional status of all waters shown on this map are preliminary and subject to verification by the U.S. Army Corps of Engineers.

Aerial Image: Google Earth (03/2016)

Project Area (±212 ac.)

Culvert

3-Parameter Data Point

Aquatic Resources

Mariposa Industrial Park

San Joaquin County, CA



0 250 500

Map Date: 07/21/2022