



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

CESPK-RDC-N

20 December 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-2024-00344

1. 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

a. 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*").

b. 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 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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2. SUMMARY OF CONCLUSIONS. The following is list of each individual feature within the review area and the jurisdictional status of each one.

Waters Name	Cowardin Code	Acreage/Linear Feet	Waters of the U.S.	Navigable Waters of the U.S.
WS-1	PEM	0.06 acre	No	No

3. 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).

4. REVIEW AREA. The review area is the approximately 2.8-acre Study Area depicted in Enclosure 1, located at Latitude 38.82432°, Longitude -121.10974°, within Placer County, California.

5. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the American River (Enclosures 2 and 3). The Sacramento District identifies the American River as a navigable water of the United States pursuant to the Rivers and Harbors Act and 33 CFR Part 329 (i.e., a Section 10 Water) from its confluence with the Sacramento River, upriver to Bradshaw Road.⁵

6. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Topography of the review area indicates that water from the wetland within the review area (WS-1) flows southeast (Enclosures 1 - 4). The wetland is located on a swale that flows approximately 715 feet south into a stream that then flows approximately 530 feet into Folsom Lake. In total wetland is approximately 1,245 feet from Folsom Lake. Folsom Lake then flows into the American River.

⁵ See Rivers and Harbors Act Navigable Waters of the U.S. in Sacramento District at <https://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/Navigable-Waters-of-the-US/>.

7. SECTION 10 JURISDICTIONAL WATERS⁶: N/A.

8. SECTION 404 JURISDICTIONAL WATERS: N/A.

9. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES:

a. There is one non-jurisdictional aquatic resources within the review area (WS-1). The wetland (WS-1) is approximately 0.06-acre in size (Enclosure 1). The requester's Agent characterizes this as a Wetland Swale ([REDACTED]). The topographic position of WS-1 indicates that water from the wetland flows south towards Folsom Lake. From WS-1, water flows south through a swale. The delineated wetland (WS-1) extends to the southern boundary of the review area, however the area south the review area is not accessible or visible in aerial imagery due to heavy vegetation cover. LiDAR imagery demonstrates that the slope south of the review area becomes steeper. Additionally, in LiDAR imagery there is a topographic feature approximately 230 feet south of the review area that severs the swale. The topographic feature appears to be a rise in elevation that crosses the steep area where the swale is located. The swale south of the review area then coverages with another swale approximately 715 feet down stream (Enclosure 4). The unnamed stream has a bed and bank and flows approximately 530 feet south before reaching Folsom Lake. In total, the wetland is approximately 1,245 feet from Folsom Lake the closest downstream relatively permanent water and requisite water.

b. Topography, as observed through LiDAR imagery, of the review area, downstream swale, and unnamed stream, demonstrate that water from the wetland flows south and that discrete features are present in the area between the subject water and Folsom Lake. However, per *Memorandum on NWK-2024-00392*, *POH-2023-00187*, *LRB-2023-00451*, *Memorandum on NAP-2023-01223*, *Memorandum on NWK-2022-00809*, *Memorandum on SWG-2023-00284*, and *Memorandum on LRB-2021-01386* the distance between the subject wetland and Folsom Lake is considered a long distance.

c. On the Sacramento United States Geological Survey (USGS) Topographic Map from 1891 and the Pilot Hill USGS Topographic Map from 2018, an unnamed stream is demarcated in the area where WS-1 and the downstream unnamed stream are located. However, this feature is not shown on the Sacramento USGS Topographic Map from 1994 or the Pilot Hill USGS Topographic Map from 2012 or 2022.

⁶ 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.

d. The area surrounding the wetland and the features that connect it to Folsom Lake was challenging to view in the field due to heavy vegetation. An aerial imagery of the wetland and the wetland's connection to Folsom Lake is also hard to observe due to tree cover. However, the general flow path is demarcated in imagery through more robust vegetation. Because the wetland, swale, and unnamed stream are concealed by vegetation, water is not visible in any imagery available in Google Earth or Digital Globe.

e. The wetland within the review area (WS-1) is not present on either the National Wetland Inventory (NWI) or the National Hydrography Dataset (NHD).

f. The unnamed stream along the flow path of WS-1 is non-relatively permanent tributary. This is a first order stream that starts where the swale leaving WS-1 enters another swale approaching from the west (at approximately 38.82173, -121.10895), and ends where it enters Folsom Lake (at approximately 38.82027° -121.10778°). This stream is not visible in aerial imagery; however, the stream is shown as ephemeral on the NHD. This stream is also not present on the NWI.

10. DATA SOURCES. Sources of data/information used in making determination.

- a. [REDACTED] November 29, 2023. Site Visit.
- b. U.S. Army Corps of Engineers. May 30, 2024. Site Visit.
- c. [REDACTED]. 2023. Aquatic Resource Delineation for the ±2.8-Acre [REDACTED] Residence Study Area Loomis, Placer County, California.
- d. U.S. Fish and Wildlife Service. 1987. National Wetland Inventory. Project area: Lawson Property (SPK-2024-00344). Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved May 13, 2024, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.
- e. Natural Resources Conservation Service. 2021. Custom Soil Resource Report for Placer County, California, Western Part SPK-2024-00344 ([REDACTED]). Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved May 13, 2024, from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.
- f. U.S. Geological Survey. 2012. USGS 1:24000-scale Quadrangle for Pilot Hill, CA: U.S. Geological Survey.
- g. U.S. Geological Survey. 2018. USGS 1:24000-scale Quadrangle for Pilot Hill, CA: U.S. Geological Survey.

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h. U.S. Geological Survey. 2022. USGS 1:24000-scale Quadrangle for Pilot Hill, CA: U.S. Geological Survey.

i. U.S. Geological Survey. 1891. USGS 1:250000-scale Quadrangle for Sacramento, CA: U.S. Geological Survey.

j. U.S. Geological Survey. 1994. USGS 1:250000-scale Quadrangle for Sacramento, CA: U.S. Geological Survey.

k. U.S. Geological Survey. 2023. The National Map. National Geospatial Program, USGS National Hydrography Dataset Best Resolution (NHD). Retrieved October 9, 2024, from <https://apps.nationalmap.gov/downloader/#/>.

l. Digital Globe: *DG April 20, 2022, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

m. Digital Globe: *DG Feb 11, 2024, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

n. Digital Globe: *DG Feb 13, 2023, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

o. Digital Globe: *DG Feb 8, 2018, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

p. Digital Globe: *DG Jan 29, 2022, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

q. Digital Globe: *DG Jan 31, 2019, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

r. Digital Globe: *DG Jan 29, 2022, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

s. Digital Globe: *DG March 12, 2021, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

t. Digital Globe: *DG Sept 23, 2023, Map (SPK-2024-00344)* [map]. 1:240. Generated by Army Corps of Engineers, June 11, 2024. Using ArcGIS Pro.

u. 3DEP Elevation: *3DEP Elevation (SPK-2024-00344)* [map]. 1:600. Generated by Army Corps of Engineers, June 3, 2024. Using ArcGIS Pro.

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v. 3DEP Elevation: 3DEP Elevation Closeup (SPK-2024-00344) [map]. 1:240. Generated by Army Corps of Engineers, June 3, 2024. Using ArcGIS Pro.

w. Flow Path (SPK-2024-00344) [map]. 1:12,000. Generated by Army Corps of Engineers, October 10, 2024. Using ArcGIS Pro.

x. Flow Path Closeup (SPK-2024-00344) [map]. 1:5500. Generated by Army Corps of Engineers, October 10, 2024. Using ArcGIS Pro.

11. OTHER SUPPORTING INFORMATION.

a. There is one non-jurisdictional water within the 2.8-acre review area. The wetland within the review area (WS-1) does not qualify as an (a)(4) water the length of connection here between this wetland and the requisite covered water is not physically close enough to meet the continuous surface connection requirement. Additionally, a topographic feature severs the flow path below the review area. The total length of the connection between each of the wetlands and the downstream relatively permanent water (Lake Folsom) is approximately 1,245 feet.

b. Digital Globe imagery was not able to provide aerial imagery that would help determine flow duration, as the aquatic resources are not visible due to heavy vegetation. However, during images from the wet season, the general drainage patterns can be interpreted from vegetation types and color in the images. In particular, the Corps' Antecedent Precipitation Tool (APT) shows that the Digital Globe images acquired on 11 February 2024, 13 February 2023, 5 February 2021, 8 February 2018, 29 January 2022, 31 January 2019, and 12 March 2021, were acquired in the wet season. The 20 April 2022, 23 September 2023, and 19 November 2023, Digital Globe images were not relevant in evaluating the jurisdiction of the aquatic resources because the images were taken during the dry season. The APT shows that the Corps 30 May 2024, site visit was conducted during the dry season during normal conditions.

c. The following memorandums were used to inform this review:

Memorandum on NWK-2024-00392. November 21, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

Memorandum on POH-2023-00187. November 20, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

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Memorandum on LRB-2023-00451. September 3, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

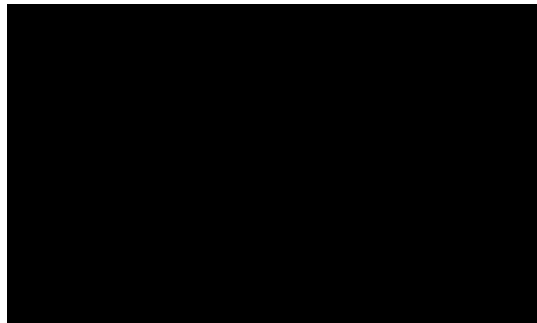
Memorandum on NAP-2023-01223. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

Memorandum on NWK-2022-00809. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

Memorandum on SWG-2023-00284. June 25, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

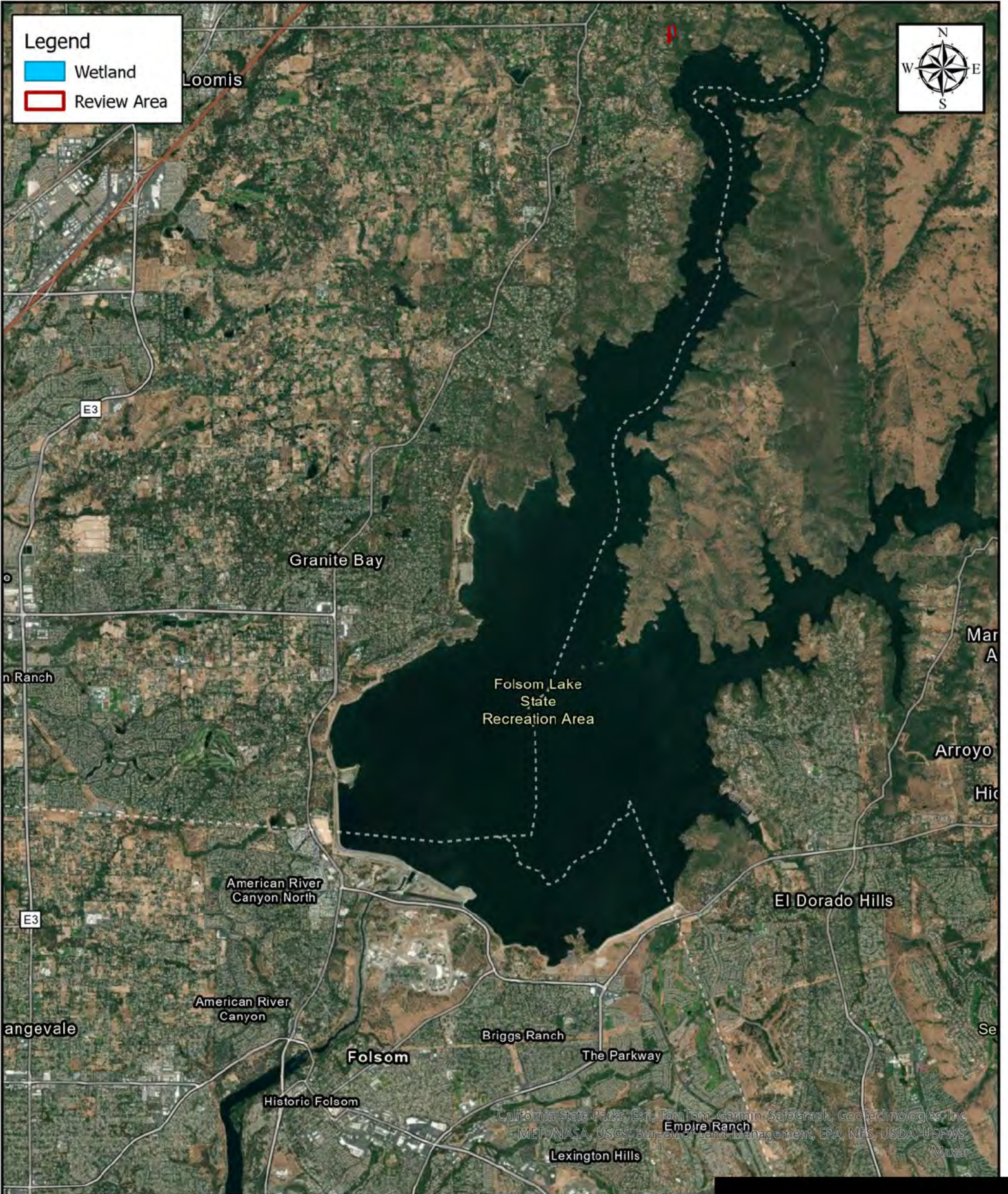
Memorandum on LRB-2021-01386. February 16, 2024. U.S. Environmental Protection Agency and Office of the Assistant Secretary of the Army (Civil Works) U.S. Department of the Army.

12. 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.



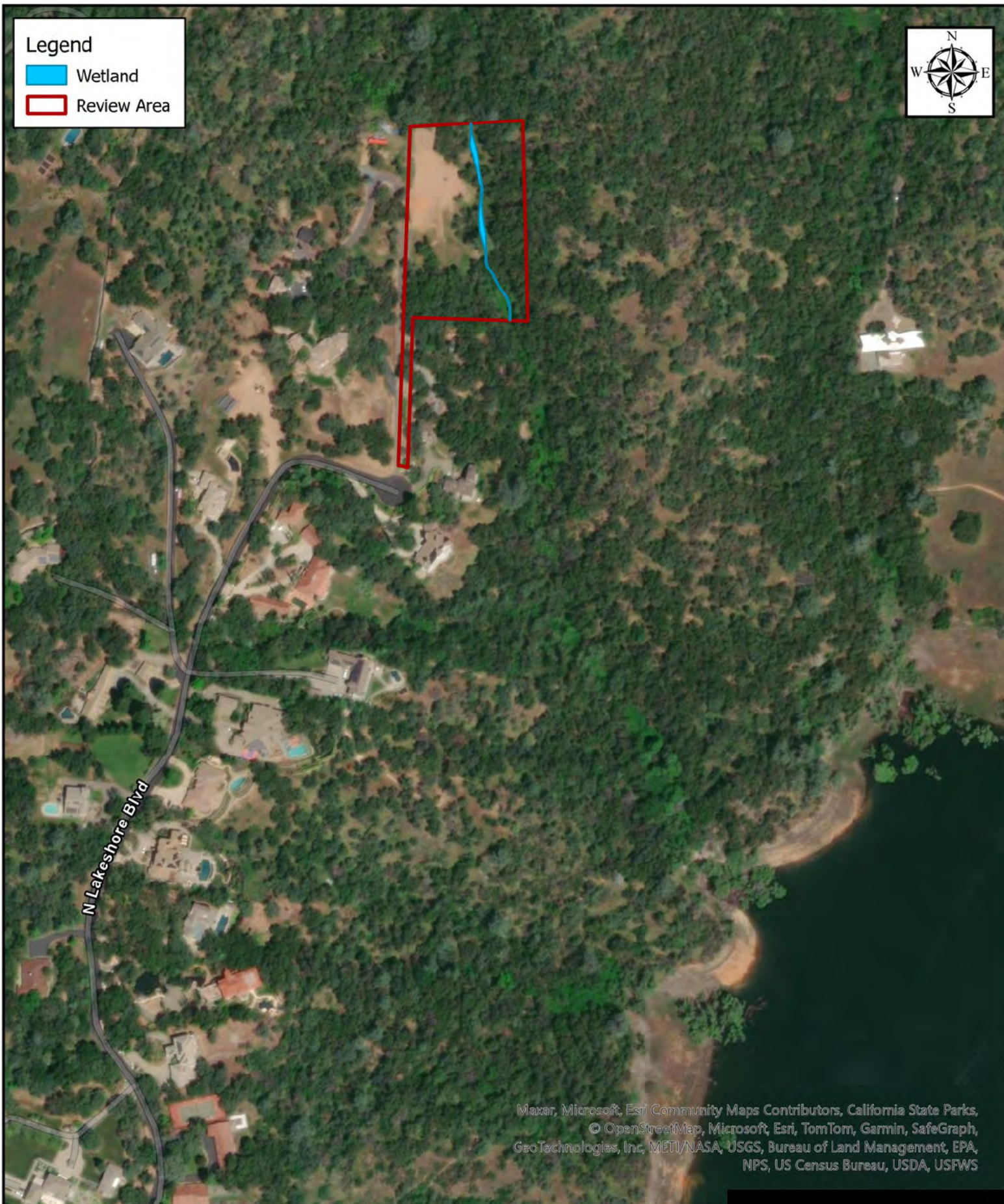
Encls:

1. Aquatic Resources Delineation
2. Flow Path Closeup (SPK-2024-00344)
3. Flow Path (SPK-2024-00344)
4. Flow Path Closeup (SPK-2024-00344) CSC Evaluation



Legend

-  Wetland
-  Review Area



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GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA,
NPS, US Census Bureau, USDA, USFWS



Map Title/Description
Flow Path Closeup
(SPK-2024-00344)

0 137.5 275 550
Feet

Map Center: 121.109386°W 38.821926°N



Enclosure 4