



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

CESPK-RDC-D

19 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-2024-00693

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,

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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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) Seasonal Wetland (SW-1), 0.053 acre, non-jurisdictional under Section 404 of the CWA.

(2) Ditch (Ice House ditch), 0.220 acre, jurisdictional under Section 404 of the CWA.

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 (September 8, 2023))

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

3. REVIEW AREA. The approximately 7.3-acre Review Area is located at 1976 Edgewater Road near Southgate Drive and Canterbury Road, with an approximate center point at Latitude 38.601923°, Longitude -121.458269°, Sacramento County, California. There are no previous jurisdictional determinations identified within the Review Area. Enclosure 1 is a vicinity map titled *Figure 1 Site and Vicinity* prepared by Madrone Ecological Consulting (Madrone) with the review area portrayed as "Study Area." Enclosure 2 includes aquatic resources delineation map titled *Figure 3 Aquatic Resources* prepared by Madrone.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the American River, to which Ice House ditch is connected to approximately 1 mile south of the Review Area.⁵

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water flows through the Review Area by way of Ice House ditch. Ice House ditch (RPW) receives surface flows, as well as discharge from the City storm drain system, and exists the review area by way of an approximately 120 foot (ft) culvert south for approximately 0.3 mile towards the City's Sump 151 (1st order stream). Sump 151 is a storm drainage facility consisting of an enclosed vault and pipes that penetrate the American River levee, and discharge to the American River flood channel (2nd order stream) (RPW) where it eventually discharges approximately 0.7 mile south into the American River (TNW).

6. SECTION 10 JURISDICTIONAL WATERS⁶: There are no 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 1899.⁷

7. SECTION 404 JURISDICTIONAL WATERS: The following aquatic resource within the review area was 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): Ice House ditch – approximately 0.22 acre (670 linear feet [LF]) occur within the Review Area. The ditch is a relatively permanent tributary with seasonal flows to the American River flood channel which flows into the American River (TNW). The relevant reach of Ice House ditch evaluated in this MFR is a first-order stream which originates approximately 0.2 mile (980 LF) to the north of the Review Area where it then flows north to south through the Review Area and then south through a number of earthen and concrete lined ditches offsite, eventually arriving at the City Sump 151.

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.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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Sump 151 is a storm drainage facility consisting of an enclosed vault and pipes that penetrate the American River levee, and discharge to the American River flood channel. The American River flood channel then flows east for approximately 0.4 mile and then south for approximately 0.3 mile before discharging into the American River (Enclosure 2).

Ice House ditch is an incised, unlined feature, that exhibits an ordinary high-water mark (OHWM), exposed roots, shifts in vegetation, and water staining. Although referred to as an ephemeral stream in the National Hydrology Dataset (NHD) and by Madrone biologist, review of aerials of the ditch combined with Antecedent Precipitation Tool (APT) of corresponding dates provides evidence that Ice House ditch meets the relatively permanent standard and is therefore considered a paragraph (a)(3) tributary under the Waters Rule, as amended. Additionally, the ditch was inundated during the site visits by Madrone Biologist in August 2024.

Table 2 indicates that Ice House ditches meets the definition of a relatively permanent a(3) water under the Waters Rule, as amended.

Table 1. Digital Globe Aerials and APT for Ice House ditch 1st order stream			
Date	Dry of Wet Season	APT Condition	Visible standing or flowing water?
2024 MAY 09	DRY	Normal Conditions - 12	Yes
2023 AUG 14	DRY	Normal Conditions 11	Yes
2023 JAN 22	WET	Wetter than Normal - 17	Yes
2022 OCT 22	DRY	Normal Conditions - 11	Yes
2022 MAY 07	DRY	Drier than Normal - 9	Yes
2021 AUG 11	DRY	Normal Conditions - 11	Yes
2020 DEC 29	WET	Drier than Normal - 6	Yes
2020 JUN 06	DRY	Normal Conditions - 11	Yes
2019 JUN 04	DRY	Normal Conditions - 13	Yes

The flow path between Sump 151 and the American River is considered a intermittet feature on topographic maps, NWI, and NHD, and was verified through aerial imagery.

f. Adjacent Wetlands (a)(4): N/A.

g. Additional Waters (a)(5): N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

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a. No aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5).

b. The following aquatic resource within the review area was determined to be non-jurisdictional because it does not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). Seasonal Wetland 1, (SW-1), does not meet the definition of Waters of the U.S. Although the wetland meets the Corps definition of a wetland as defined in 33 CFR §328.3(c)(16), this wetland does not exhibit a continuous surface connection with a paragraph (a)(1) water, relatively permanent (a)(2) impoundment, or (a)(3) tributary that meets the relatively permanent standard.

Hydrology indicators such as biotic crust (in the form of algal matting) and oxidized rhizospheres along live roots were observed during site visits conducted by Madrone biologist Bonnie Peterson on August 8, 2023. Visual ponding was observed within this feature throughout the 2023-2024 rainy season with surface water present from early January to early March. However, no continuous surface connection was noted during multiple site visits conducted by Madrone biologists during the time of maximum inundation for this feature. Review of aeriels, as well as LiDAR, did not provide evidence of a discrete feature or physical conveyance within the 60-foot distance between SW-1 and Ice House ditch, a relatively permanent paragraph a(3) water. Therefore, SW-1, is not jurisdictional as this seasonal wetland does not meet the definition of an (a)(4) wetland under the 2023 rule, as amended.

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. Office evaluation conducted on November 18-21, 2024.
- b. Aquatic Resources Delineation Report *1976 Edgewater Road, Sacramento, CA August 2024*, prepared by Madrone, dated August 2024. The corps concurs with the delineation report.
- c. Environmental Protection Agency (EPA) Upstream Downstream Search Service tool for reach 18020111000384. Accessed on November 2024.
- d. Digital Globe, 2024. Aerial Imagery (Dates: 09MAY24, 14AUG24, 22JAN23, 22OCT22, 07MAY22, 11AUG21, 12DEC20, 06JUN20, 06JUN19) (Enclosure 3).

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- e. National Wetland Inventory – National Layer in the National Regulatory Viewer from the South Pacific Division. Retrieved November 20, 2024.
- f. National Hydrography Dataset – National Layer in the National Regulatory Viewer from the South Pacific Division. Retrieved November 20, 2024.
- g. LiDAR - National Layer in the National Regulatory Viewer from the South Pacific Division. Retrieved November 20, 2024.
- h. U.S. Army Corps of Engineers ERDC Antecedent Precipitation Tool, Lat/Long: 38.60205, -121.4585, Dates: 09MAY24, 14AUG24, 22JAN23, 22OCT22, 07MAY22, 11AUG21, 12DEC20, 06JUN20, 06JUN19. (Enclosure 3)

10. OTHER SUPPORTING INFORMATION. The delineation was performed in accordance with the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987), the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) (USACE 2008a), A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States (USACE 2008b), and the Sacramento District's Minimum Standards for Acceptance of Preliminary Wetlands Delineations (USACE 2016b). U.S. Army Corps of Engineers (USACE) regulations (33 CFR 328) were used to determine the presence of Waters of the United States other than wetlands. The most recent National Wetland Plant List (USACE 2020) was used to determine the wetland indicator status of plants observed in the Study Area. The Jepson eFlora (Jepson Flora Project 2024) was used for plant nomenclature, except where it conflicted with the nomenclature in the National Wetland Plant List, which was given priority on the data sheets.

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.



Encls

- 1. Site Vicinity Map
- 2. Aquatic Resource Delineation Map
- 3. Map of Offsite Flow Path to TNW

KELLEY C. HERBEL
PROJECT MANAGER
CA DELTA SECTION

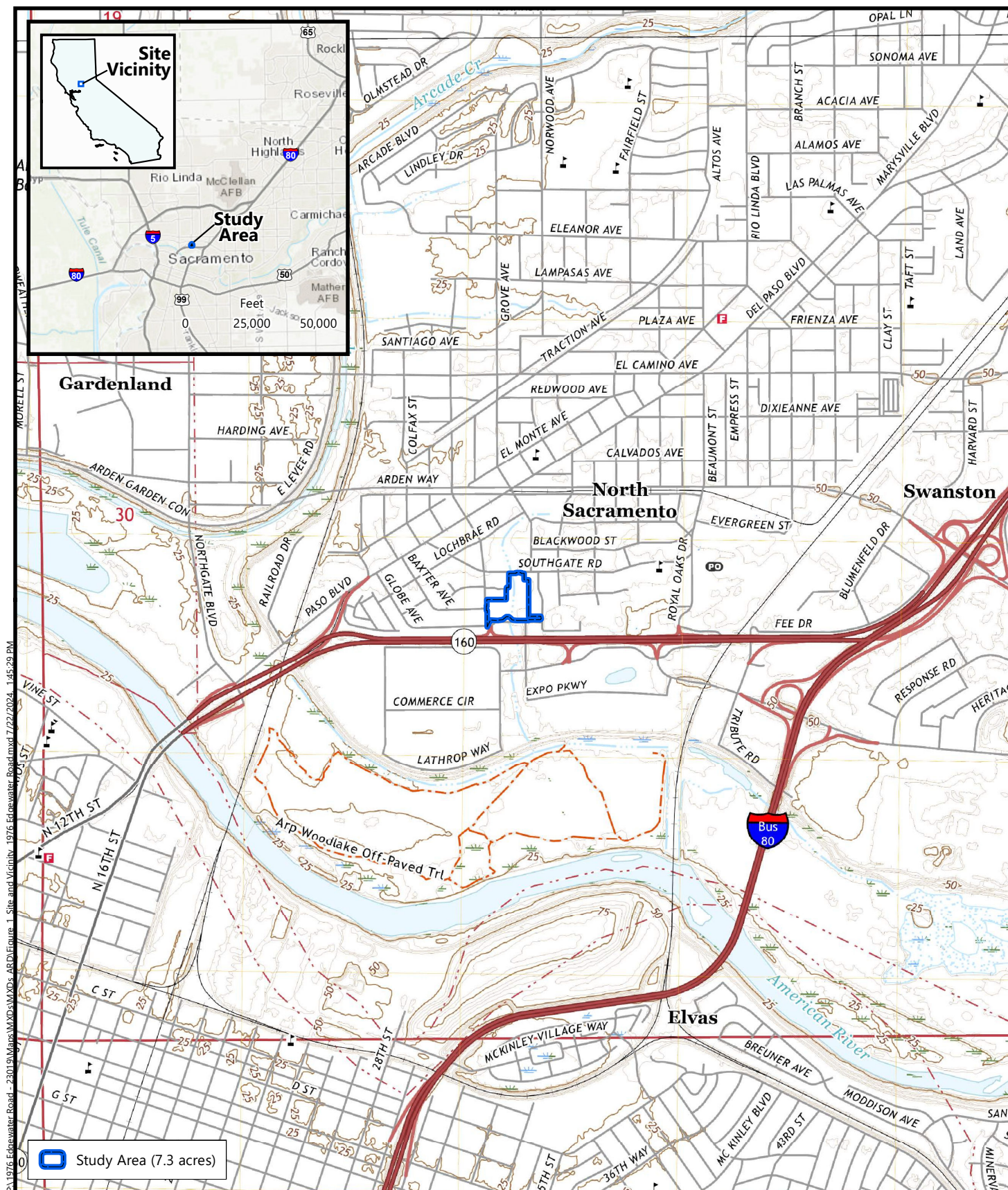
MFR Enclosures

MFR Enclosure 1 – Vicinity Map titled Figure 3 Aquatic Resources

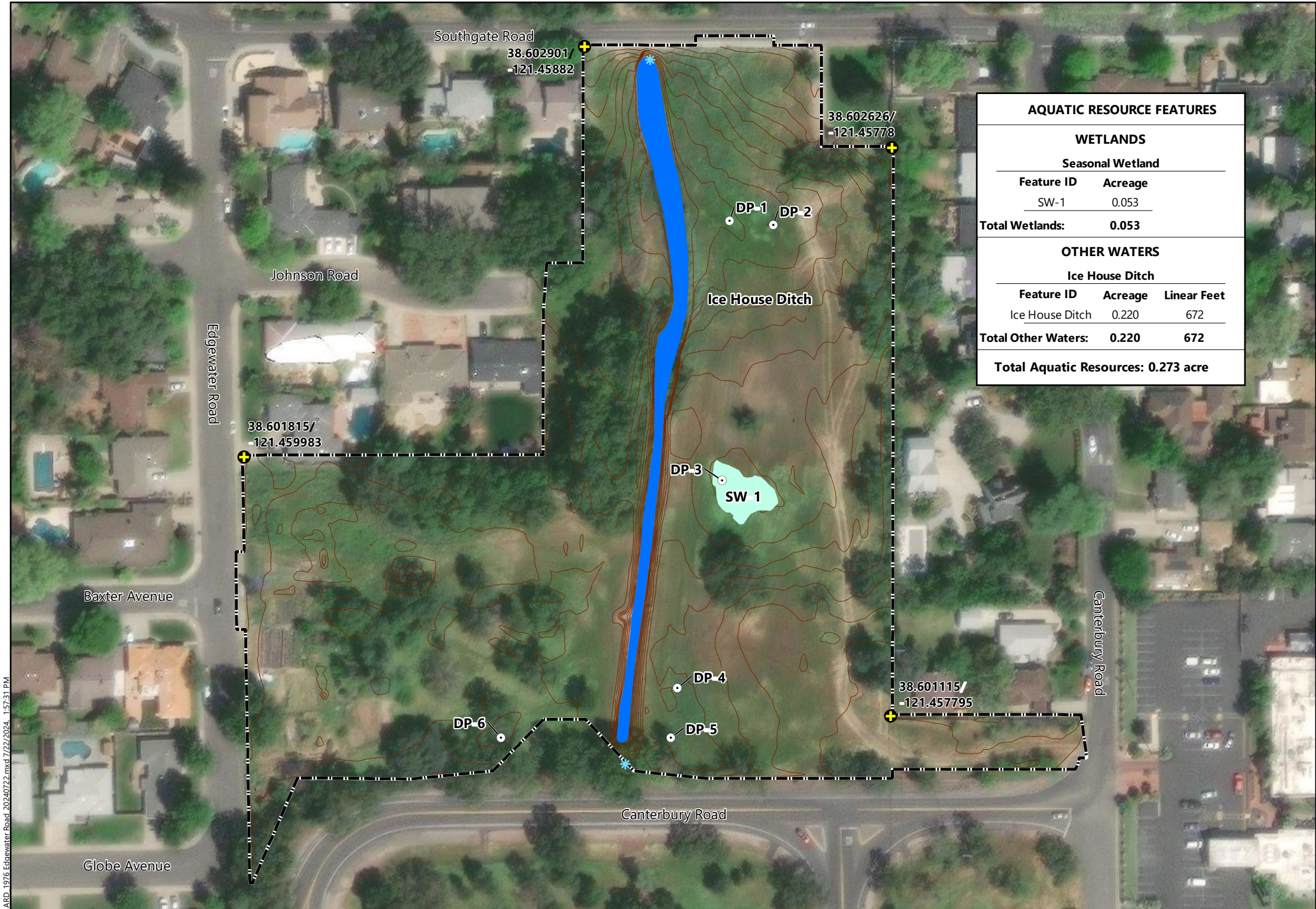
MFR Enclosure 2 – Delineation of Wetlands and Other Waters of the U.S.

MFR Enclosure 3 – Flowpath Map titled Off-site Flowpath to TNWs; SPK-2024-00693

MFR Enclosure 1 – Vicinity Map titled *Figure 1 Site and Vicinity*



MFR Enclosure 2 – Delineation of Wetlands and Other Waters of the U.S.
map titled *Aquatic Resources Delineation 1976 Edgewater Road*



AQUATIC RESOURCE FEATURES		
WETLANDS		
Seasonal Wetland		
Feature ID	Acreage	
SW-1	0.053	
Total Wetlands:	0.053	
OTHER WATERS		
Ice House Ditch		
Feature ID	Acreage	Linear Feet
Ice House Ditch	0.220	672
Total Other Waters:	0.220	672
Total Aquatic Resources: 0.273 acre		

Notes:
Map Scale: 1 inch = 110 feet
Coordinate System: NAD 1983 State Plane California II
Projection: Lambert Conformal Conic
Vertical Data: NAVD88
Aerial Source: Maxar, 12 April 2022
Topographic Contours: Burrell Consulting Group, Inc.
Delineation Performed by: B. Peterson
Date Map Prepared: 22 July 2024
Map Prepared by: N. Bente
Note: Small errors may occur due to rounding
Definitions:
NAD = North American Datum
NAVD = North American Vertical Datum

Prepared For:
Redwood Residential
c/o Maya Theuer
PO Box 641651
San Francisco, California 94164

N
Feet
0 55 110

- Study Area (7.3 acres)
- Reference Point
- DataPoints
- Culvert
- Ground Surface Elevation, 1-foot contour interval



Aquatic Resources (0.273 acre)
Wetlands (0.053 acre)
 Seasonal Wetland (0.053 acre)
Other Waters (0.220 acre)
 Ice House Ditch (0.220 acre)

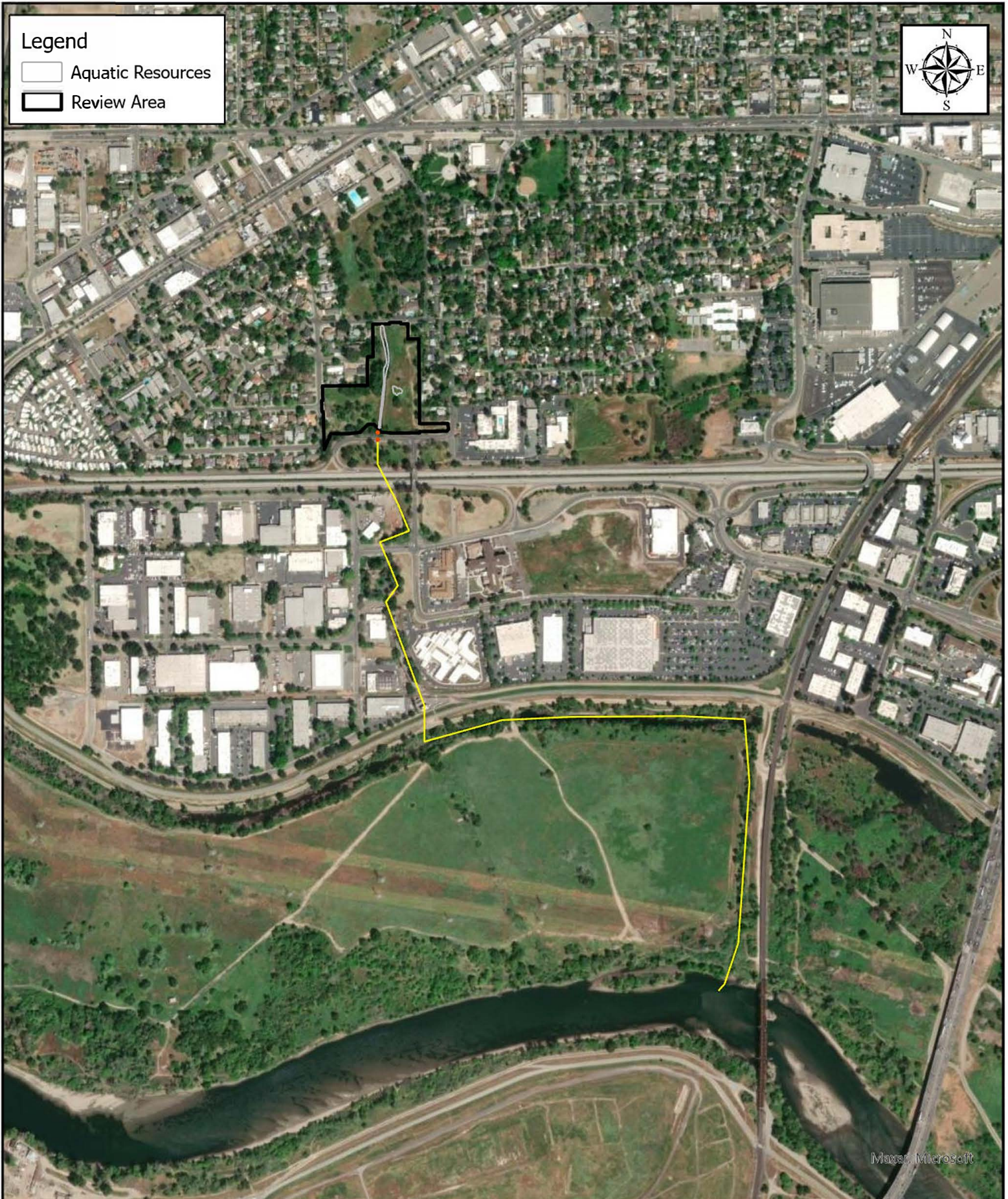
Aquatic Resources Delineation
1976 Edgewater Road
Sacramento County, California

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MFR Enclosure 3 – Flowpath Map titled *Off-Site Flowpath to TNW*; SPK-2024-00693

Legend

-  Aquatic Resources
-  Review Area



Maxar, Microsoft



**Off-Site Flowpath to
TNWs SPK-2024-00693**

0 395 790 1,580
Feet

Map Center: 121.455986°W 38.597908°N

Prepared by: Kelley Herbel

Date: 11/21/2024

Coordinate System: WGS 1984 UTM
Zone 10N