



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

CESPK-RD-U

20 December 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ [SPK-2008-01326].

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 For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of "waters of the United States" found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 "Revised Definition of 'Waters of the United States,'" as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Utah due to litigation.

¹ While the Supreme Court's decision in *Sackett* 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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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) Wetland, non-jurisdictional.

2. REFERENCES.

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

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

3. REVIEW AREA. The approximately 7.3 acre review area is located northwest of the 1400 North and US-89 intersection, Latitude 40.186649°, Longitude -111.612730°, Utah County, Springville, Utah (AJD MFR Enclosure 1).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The wetland within this study area is not connected to a TNW, interstate water, or territorial sea. The closest TNW is Utah Lake. Utah Lake is located approximately 3 miles east of the study area.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. There is no flow path from the study area to a TNW. A berm on the northern property boundary and a road embankment on the western property boundary, as well as higher elevation uplands to the south and east restrict any water flow from leaving this wetland. There is a culvert directly abutting the wetland, but the City has verified that this culvert is not connected to the City's stormwater system. This culvert discharges water into the wetland from an unknown origin. Water does not exit through this culvert.

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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 10.⁶ 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 pre-2015 regulatory regime and 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 pre-2015 regulatory regime. 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. TNWs (a)(1): N/A.
- b. Interstate Waters (a)(2): N/A.
- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5): N/A.
- f. The territorial seas (a)(6): N/A.
- g. Adjacent wetlands (a)(7): 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.

⁶ 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.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁷ N/A.

b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. N/A.

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. N/A.

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). N/A.

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” N/A.

f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). The onsite wetland is 0.5 acre in size (AJD MFR Enclosure 2). It was determined to be non-jurisdictional because it does not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g. non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). This wetland is located on the northwest corner of the study area. There is a man-made berm neighboring the wetland to the north, and a road embankment to the west bordering the wetland. The wetland is located in a depressional area. The berm and road both restrict any possible surface water connections to other aquatic resources.

The aquatic resource report indicates that the main source of hydrology for the wetland within the study area is primarily groundwater and water discharge from a culvert. The report indicates that groundwater ponding increased after neighboring berm and road construction created barriers for the water to escape the study area. The culvert discharges water into the depressional area from an unknown origin. Provo City confirmed that there is no connection from the culvert to their stormwater system. Additional hydrology sources at the study area include a leaking water supply pipe, and an uncapped well. The leaking

⁷ 51 RF 41217, November 13, 1986.

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water supply line crosses the study area to the west side of the property, but it is not physically connected to the delineated wetland.

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. Aquatic Resources Delineation Report "Gateway Crossing Development, LC. Wetland Delineation, Utah County, Utah" prepared by INTERMOUNTAIN ECOSYSTEMS, LLC. Dated December 11, 2023. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of 1987 Wetland Delineation Manual.

b. LIDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved July 11, 2024 (AJD MFR Enclosure 3).

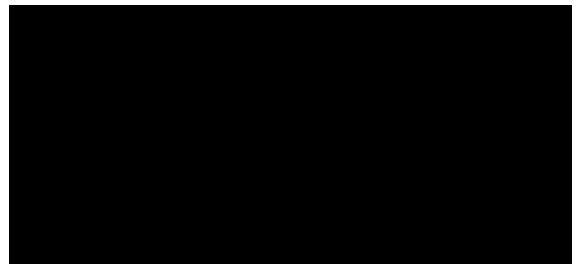
10. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

3 ENCL

Enclosure 1: Location Map

Enclosure 2: Delineation Map

Enclosure 3: LIDAR Map



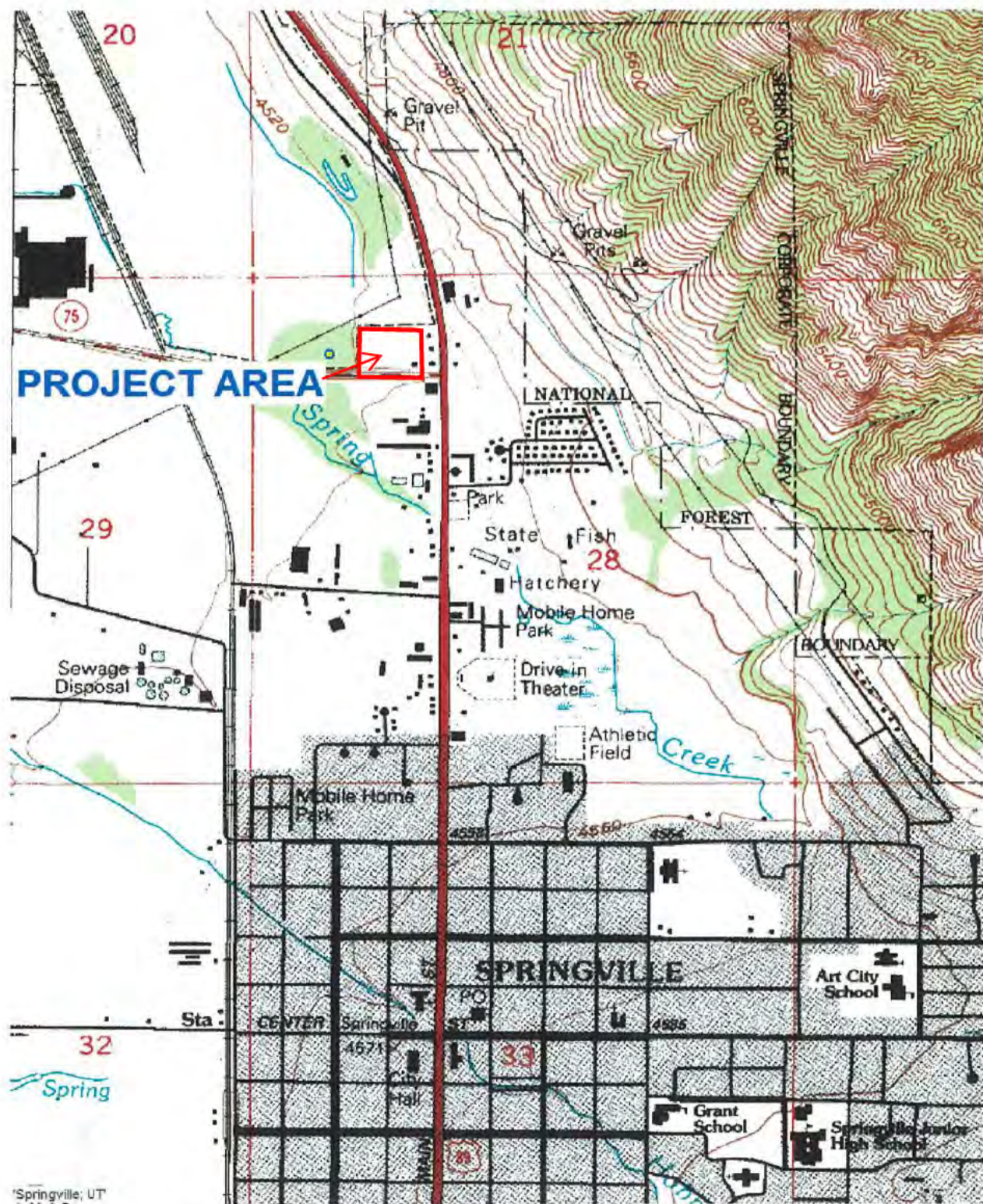


Fig. 1 Project Area Map (T7S, R3E, NW1/4, S.28)



Gateway Crossing Wetland Delineation 2023

T 7S R 3E S 28
Utah County, Utah

Legend

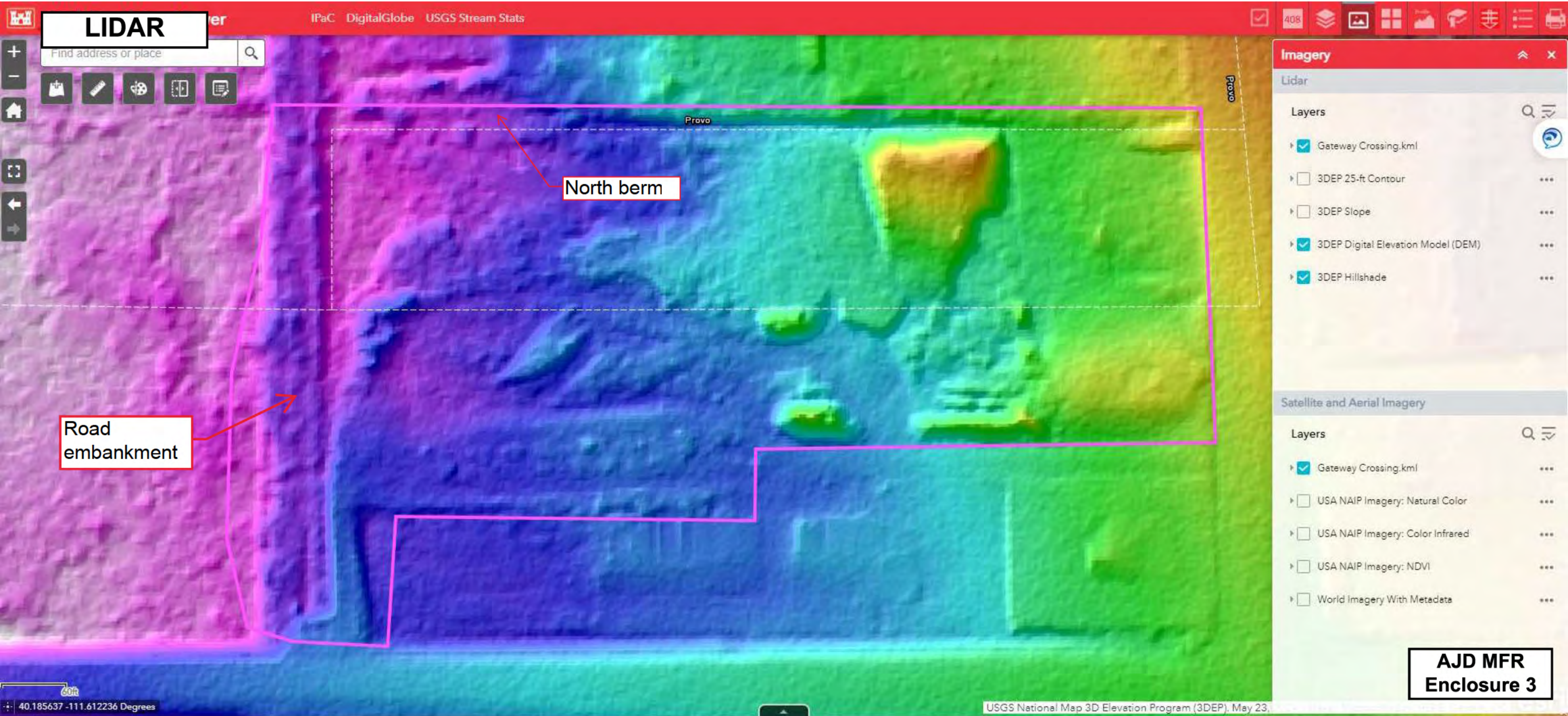
- Data Point
- Concrete Culvert Pipe
- ★ Uncapped Well
- Water Supply Line Pipe Leakage
- Groundwater
- Wetland (Total Area = 0.5 Acres)
- Boundary (Total Area = 7.27 Acres)



Intermountain Ecosystems

270 East 1230 North
Springville, UT 84606
(801) 4

**AJD MFR
Enclosure 2**



LIDAR

Find address or place



IPaC DigitalGlobe USGS Stream Stats



Imagery

Lidar

Layers

- ☒ Gateway Crossing.kml
- ☐ 3DEP 25-ft Contour
- ☐ 3DEP Slope
- ☒ 3DEP Digital Elevation Model (DEM)
- ☒ 3DEP Hillshade

Satellite and Aerial Imagery

Layers

- ☒ Gateway Crossing.kml
- ☐ USA NAIP Imagery: Natural Color
- ☐ USA NAIP Imagery: Color Infrared
- ☐ USA NAIP Imagery: NDVI
- ☐ World Imagery With Metadata

Road embankment

North berm

AJD MFR
Enclosure 3

60ft
40.185637 -111.612236 Degrees

USGS National Map 3D Elevation Program (3DEP), May 23,