



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

CESPK-RDI-U

17 January 2025

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-2023-00619]

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 this state 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) Ditch 1, jurisdictional under Section 404 of the Clean Water Act

(2) Ditch 2, non-jurisdictional under Section 404 of the Clean Water Act

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 3-acre review area is a portion of a larger 28 acre parcel, 4647 North Woodenshoe Lane, Latitude 40.711075°, Longitude -111.341668°, Peoa, Summit County, 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 nearest TNW is the Great Salt Lake (GSL). The GSL is a "navigable water" for purposes of the Clean Water Act (CWA) and is considered as "traditional navigable waters" and therefore jurisdictional under 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1). Waters are traditional navigable waters if they meet one of the following criteria:

a. Are subject to section 9 or 10 of the Rivers and Harbors Appropriations Act of 1899;

b. Have been determined by a Federal court to be navigable-in-fact under Federal law;

c. Are waters currently being used for commercial navigation, including commercial waterborne recreation (for example, boat rentals, guided fishing trips, or water ski tournaments);

d. Have historically been used for commercial navigation, including commercial waterborne recreation; or

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e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The GSL meets Criteria b, above, having been found navigable-in-fact under Federal law in *Utah v. United States*, 403 U.S. 9 (1971). Thus, the GSL is a "traditional navigable water" and is regulated by the Corps under Section 404 of the CWA.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS.

Ditch 1 flows out of the study area and into the property to the west. Ditch 1 then flows to the north and is intercepted by several separate irrigation ditches and swales, some of which drain into the Weber River, based on aerial imagery and LiDAR data. The Weber River flows through Rockport and Echo Reservoirs before flowing through Weber Canyon and into the Great Salt Lake.

Historically, Ditch 2 received hydrology from Ditch 1, but that connection has been filled. As such, Ditch 2 no longer receives water. Based on a May 15th site visit, USACE confirmed that Ditch 2 terminates in uplands and does not discharge into a downstream regulated waterway. Headgates were observed along Ditch 2, which were historically opened in order to flood irrigate the property. No ditches, swales, or discrete conveyances were observed that would connect Ditch 2 to another downstream aquatic resource.

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

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.

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): None.
- b. Interstate Waters (a)(2): None.
- c. Other Waters (a)(3): None.
- d. Impoundments (a)(4): None.

e. Tributaries (a)(5): Ditch 1 is a relatively permanent water that flows into the Weber River, then into the Great Salt Lake. This waterway was flowing during the May 15, 2024, and can be seen flowing in many google earth aerial images. This feature acts as an irrigation ditch and flows at least seasonally. Ditch 1 receives its hydrology from a diversion off the Weber River located approximately 1.1 miles east of the review area.

- f. The territorial seas (a)(6): None.
- g. Adjacent wetlands (a)(7): None.

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 Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. Historically, Ditch 2 received hydrology from Ditch 1, but that connection has been filled. Therefore, Ditch 2 no longer receives water. Based on a May 15th site visit, USACE confirmed that Ditch 2 terminates in uplands. Headgates were observed along Ditch 2, which were historically opened in order to flood irrigate the property. No ditches, swales, or discrete conveyances were observed that would connect Ditch 2 to another aquatic resource. As such, Ditch 2 is excavated wholly in and drains only uplands and does not carry a relatively permanent flow of water as described in the preamble to 33 CFR 328.3. (AJD MFR Enclosure 2).

⁷ 51 FR 41217, November 13, 1986.

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b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the 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. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. 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.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. 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.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. 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). N/A.

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 “3-Undeveloped Acres Wooden Shoe Lane Peoa, Summit County, Utah” prepared by [REDACTED], dated September 5, 2023. The consultant prepared the wetland delineation report in accordance with the U.S. Army Corps of 1987 Wetland Delineation Manual and the USACE Regional Supplement for the Western Mountains, Valleys, and Coast Region. The Corps did not agree with the July 5, 2023 delineation map titled “[REDACTED] Homesite Aquatic Resources Delineation Map” as it incorrectly mapped a connection between Ditch 4 and Ditch 5 outside of the review area. A May 15, 2024 Corps site visit confirmed this lack of connection, which is documented in the mapped photo log in the administrative record. The revised map did not demarcate Ditch 2, so it was amended by the Corps to include this feature.

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b. Photographs: Corps photolog collected May 15, 2024 and aerial images dated (August 2020, October 2022, and July 2023). Summit County, Latitude 40.710173°, Longitude -111.342995°. Retrieved 15 January 2025, from <http://www.earth.google.com> (AJD MFR Enclosure 3)

c. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 7 January 2024 (AJD MFR Enclosure 4)

10. OTHER SUPPORTING INFORMATION. N/A

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.

4 ENCL

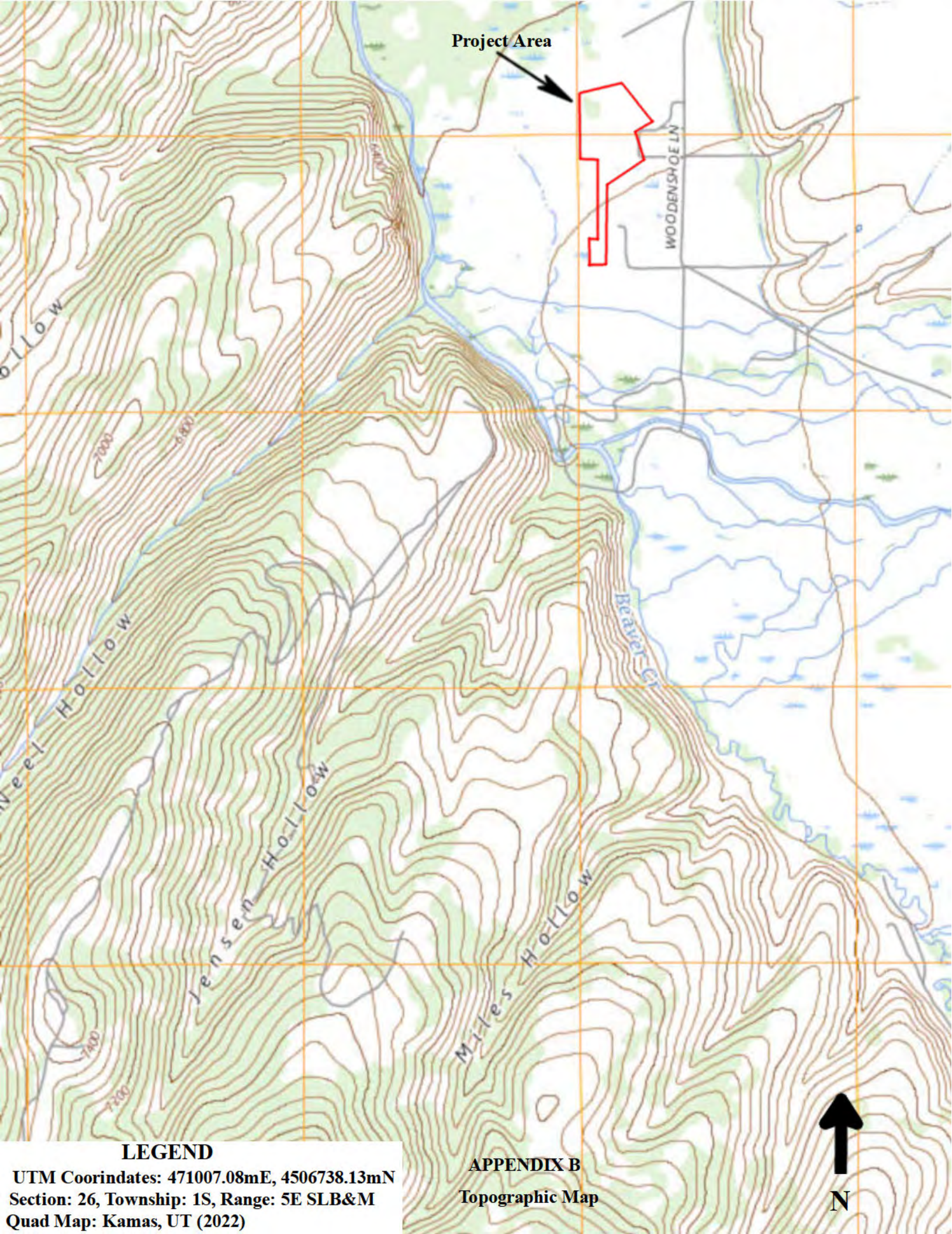
Enclosure 1: Location map

Enclosure 2: AR map

Enclosure 3: Ground and aerial photos

Enclosure 4: LiDAR-Digital elevation model and hillshade maps





Project Area

WOODSHOE LN

ollow

Jensen Hollow

Jensen Hollow

Miles Hollow

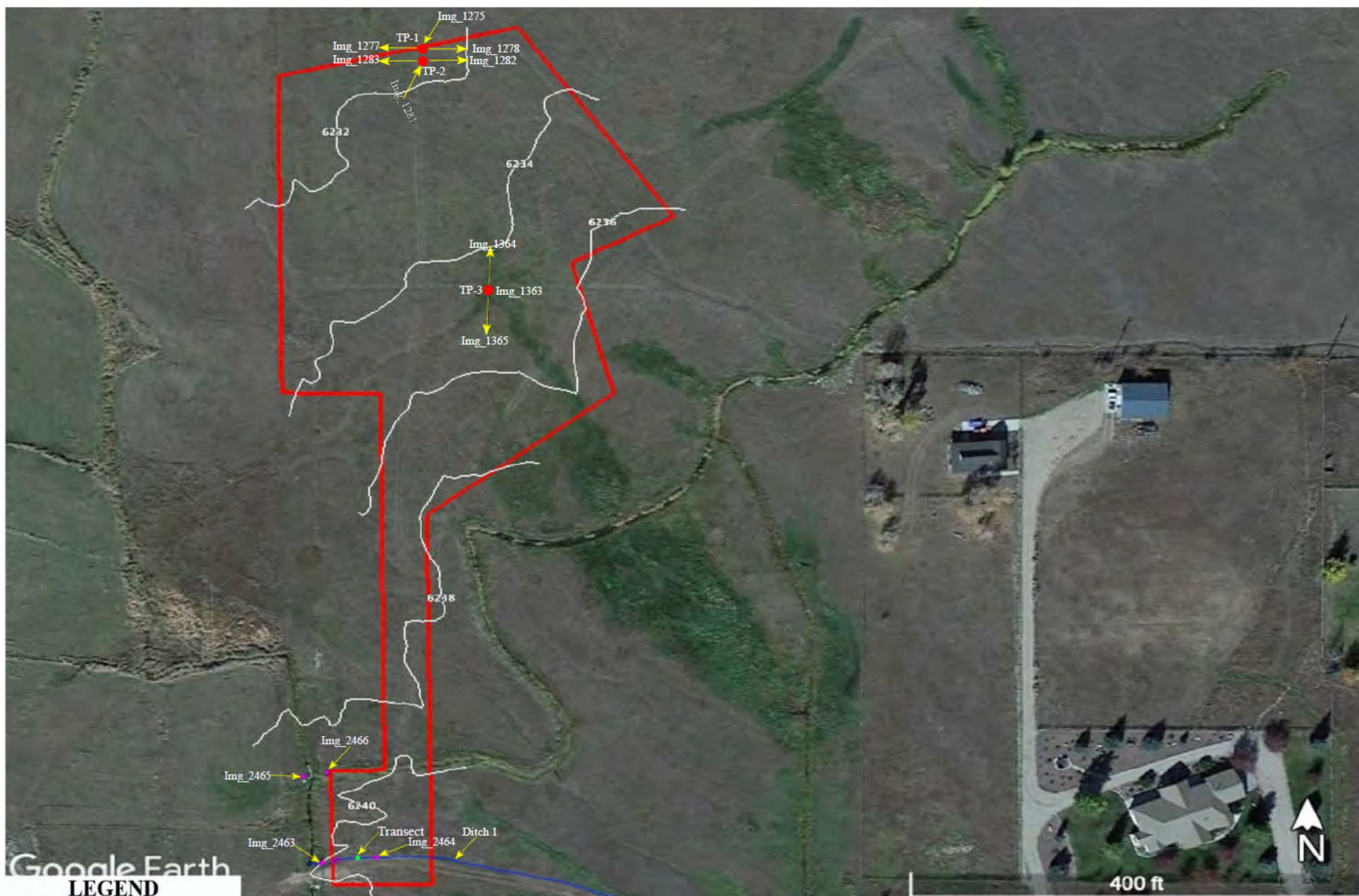
Beaver Creek

LEGEND

UTM Coordinates: 471007.08mE, 4506738.13mN
Section: 26, Township: 1S, Range: 5E SLB&M
Quad Map: Kamas, UT (2022)

APPENDIX B
Topographic Map





LEGEND
 Project Area: 3.0-Acres
 Project Area
 Test Pit-Upland
 TP Photo Points
 Ditch Transect Point
 Irrigation Ditch (Active)
 0.0007-acres on PA
 Topography: 2 Ft. Contour Interval
 Image Date: 10/16/2022

Homesite
 Woodenshoe Lane
 Peoa, Summit County, Utah
Aquatic Resources Delineation Map
 Appendix A

Project: SPK-2023-00619

Investigator: [REDACTED]

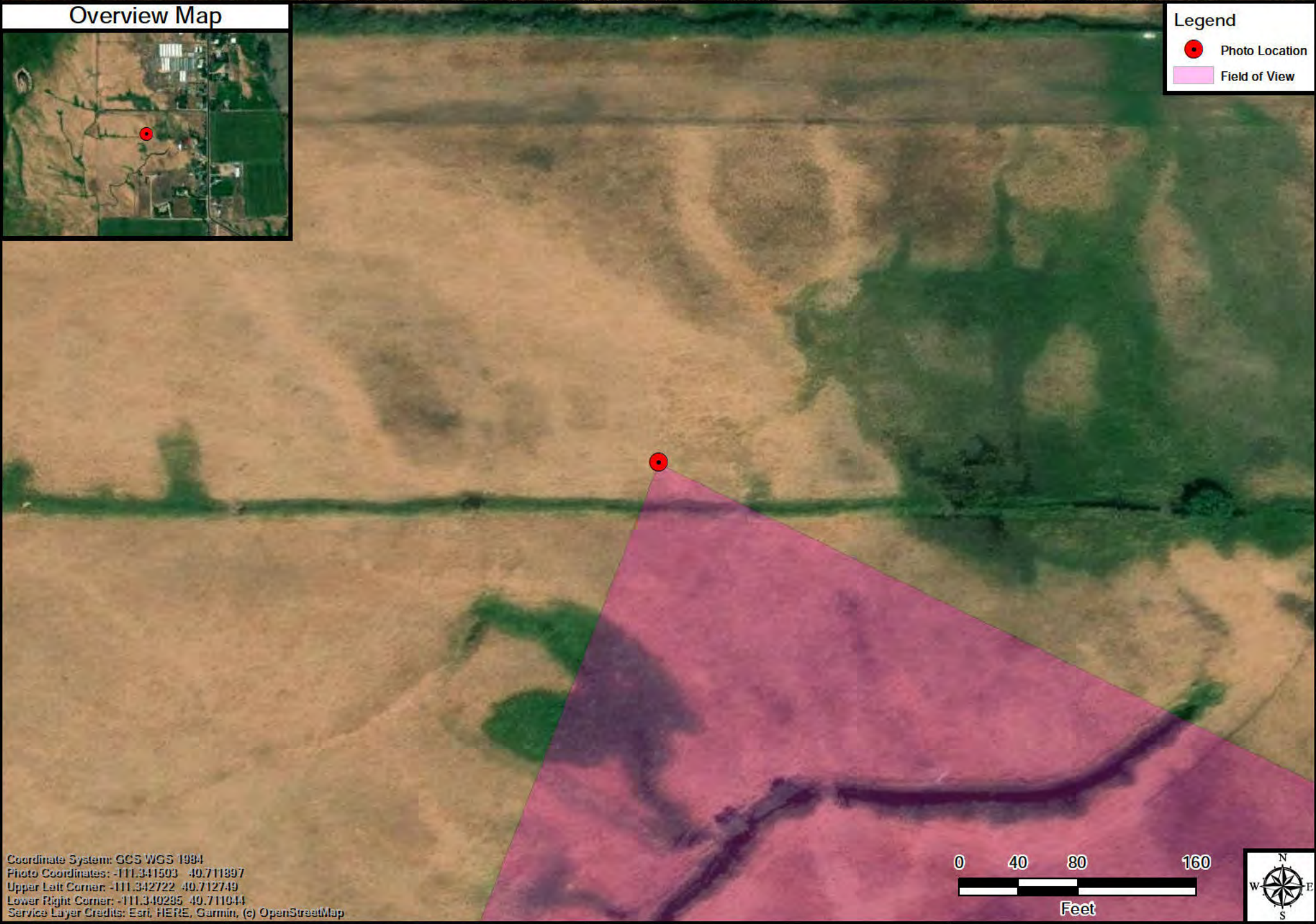
Date: 07/05/2023

Revision Date: 11/08/2023



Legend

- Photo Location
- Field of View



Coordinate System: GCS WGS 1984
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Upper Left Corner: -111.342722 -40.712749
Lower Right Corner: -111.340295 -40.711044
Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap



Mapped Photo Log
for [redacted] Homesite
SPK-2023-00619

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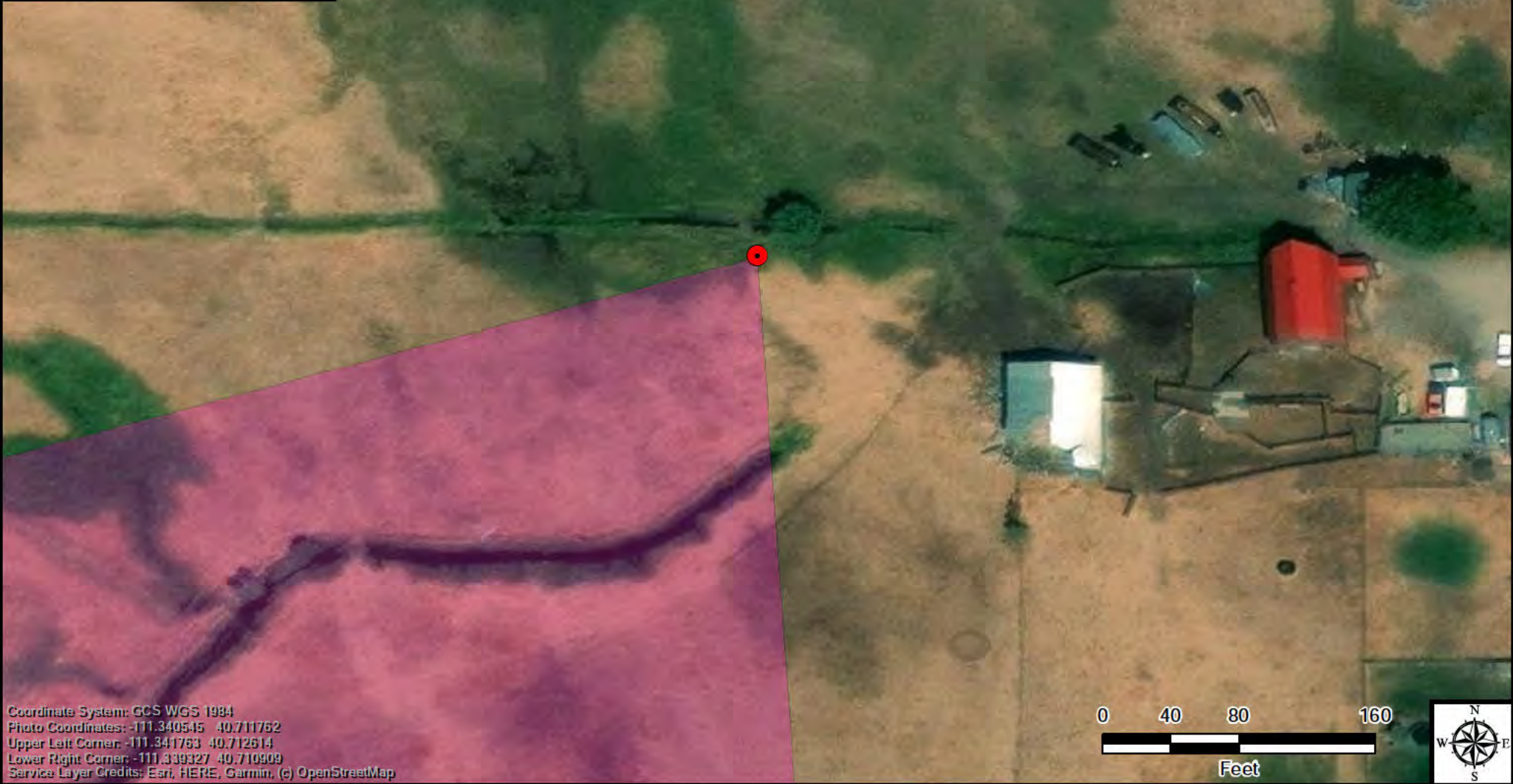
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Photographed by [redacted]
on 5/15/2024 at 9:34:00 AM MDT
Camera: NIKON CORPORATION COOLPIX W300
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Heading Source: Camera's internal compass
Map generated on 7/15/2024 using the
Photo Log Toolbar, written by Jason C. Deters



Legend

- Photo Location
- Field of View



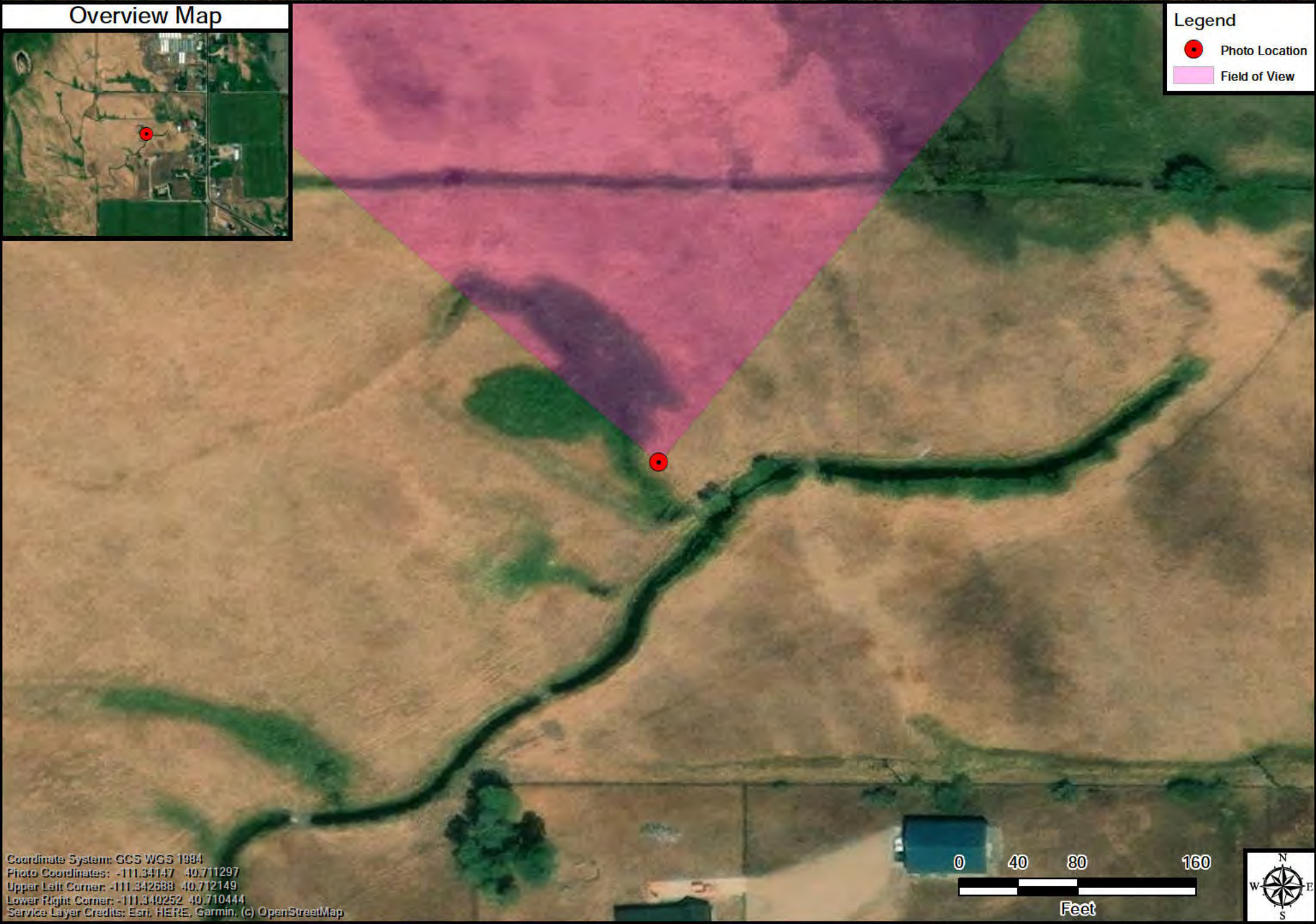
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Mapped Photo Log
for [redacted] Homesite
SPK-2023-00619

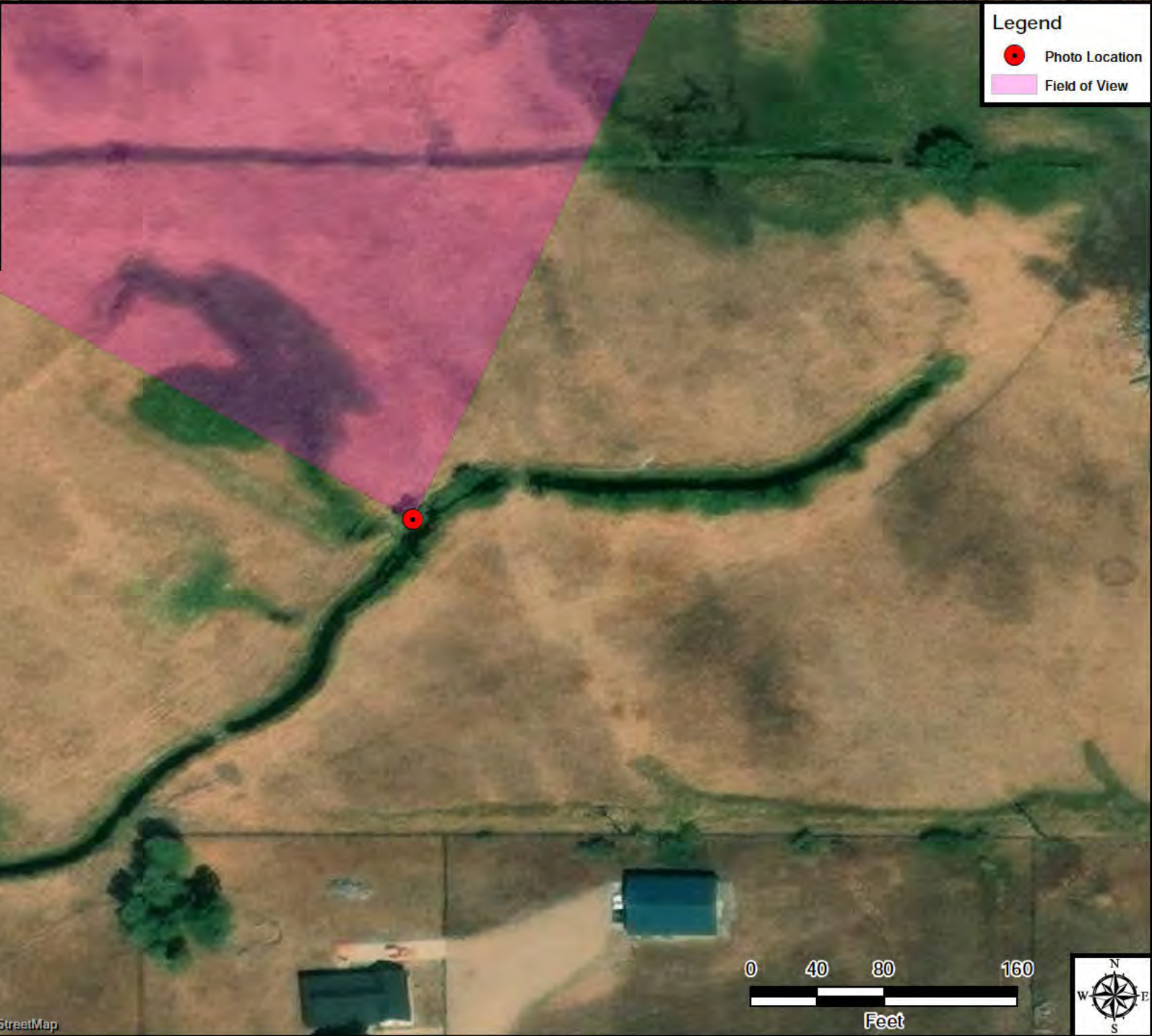
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Heading Source: Camera's internal compass
Map generated on 7/15/2024 using the
Photo Log Toolbar, written by Jason C. Deters





Overview Map



Legend

- Photo Location
- Field of View

Coordinate System: GCS WGS 1984
Photo Coordinates: -111.341363 40.71122
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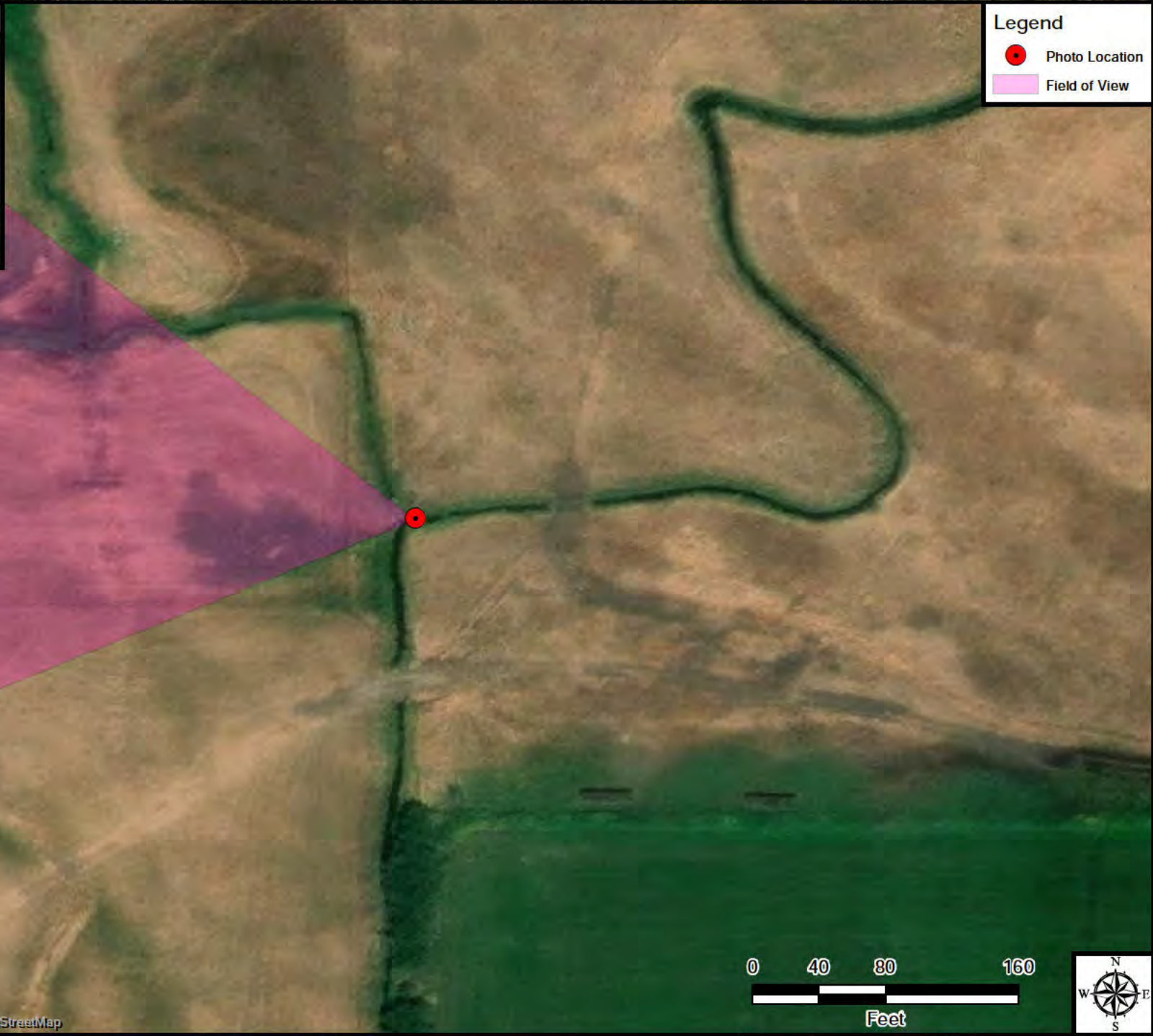
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Feet



Mapped Photo Log
for ██████████ Homesite
SPK-2023-00619

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Heading Source: Camera's internal compass
Map generated on 7/15/2024 using the
Photo Log Toolbar, written by Jason C. Deters



Legend

- Photo Location
- Field of View

Coordinate System: GCS WGS 1984
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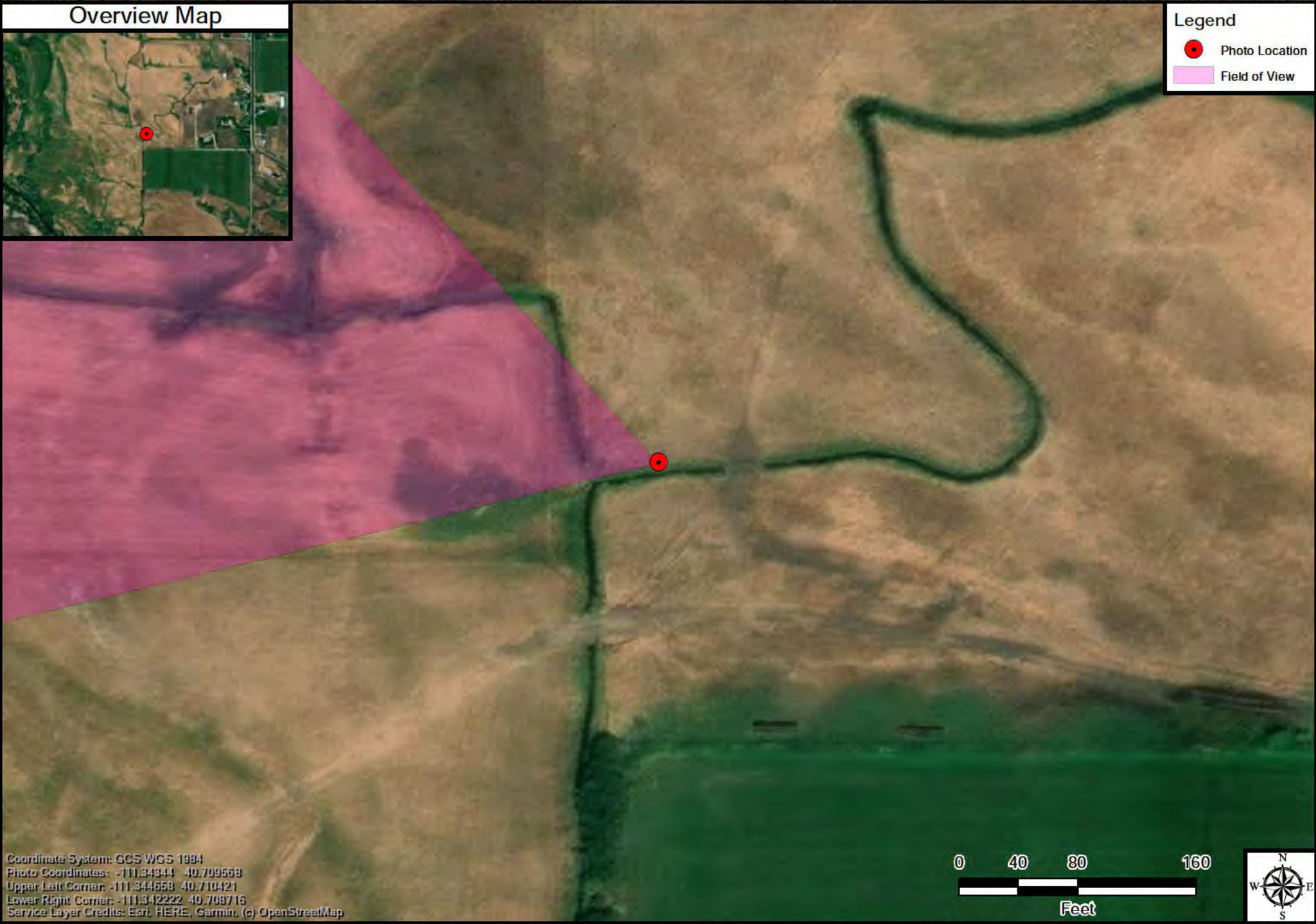


Mapped Photo Log
for [redacted] Homesite
SPK-2023-00619

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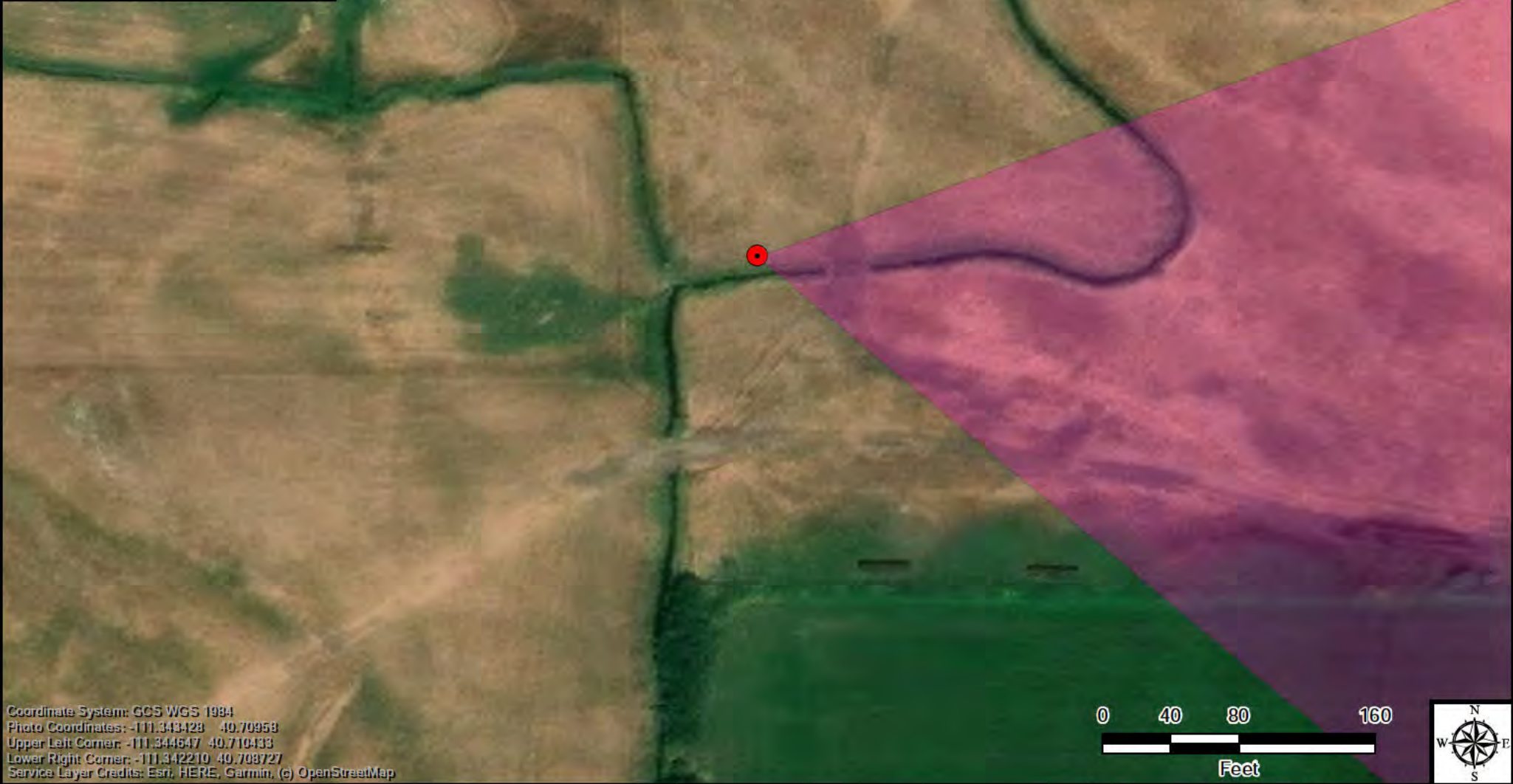


Overview Map



Legend

- Photo Location
- Field of View



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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap



Mapped Photo Log
for [redacted] Homesite
SPK-2023-00619

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Photo Log Toolbar, written by Jason C. Deters



Legend

- Photo Location
- Field of View



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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

0 40 80 160
Feet



Mapped Photo Log
for [redacted] Homesite
SPK-2023-00619

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Photo Log Toolbar, written by Jason C. Deters

8/2024

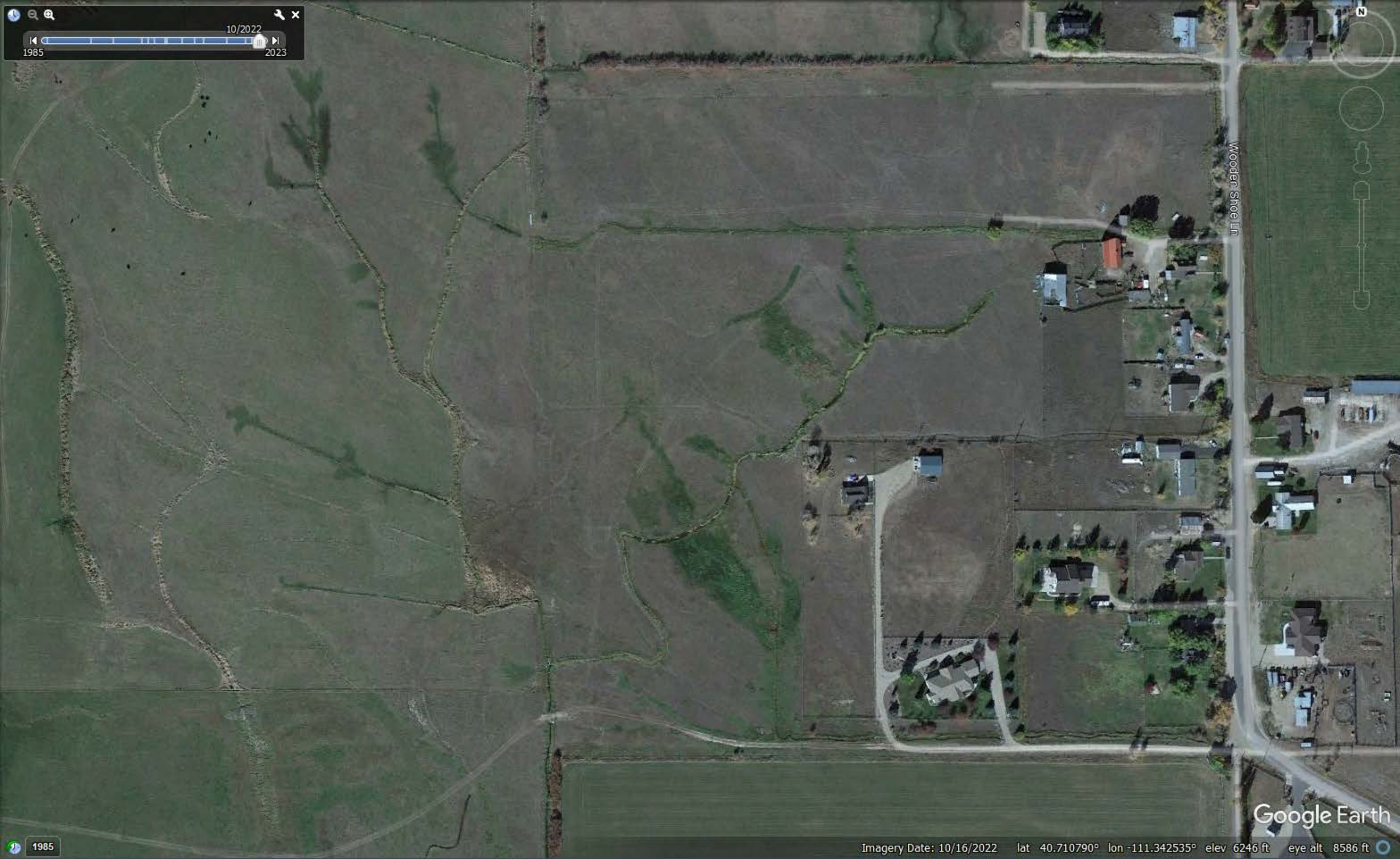
Wooden Shoe Ln

Image © 2025 Airbus

Google Earth

Imagery Date: 7/4/2023 lat 40.710790° lon -111.342535° elev 6246 ft eye alt 8586 ft

1985



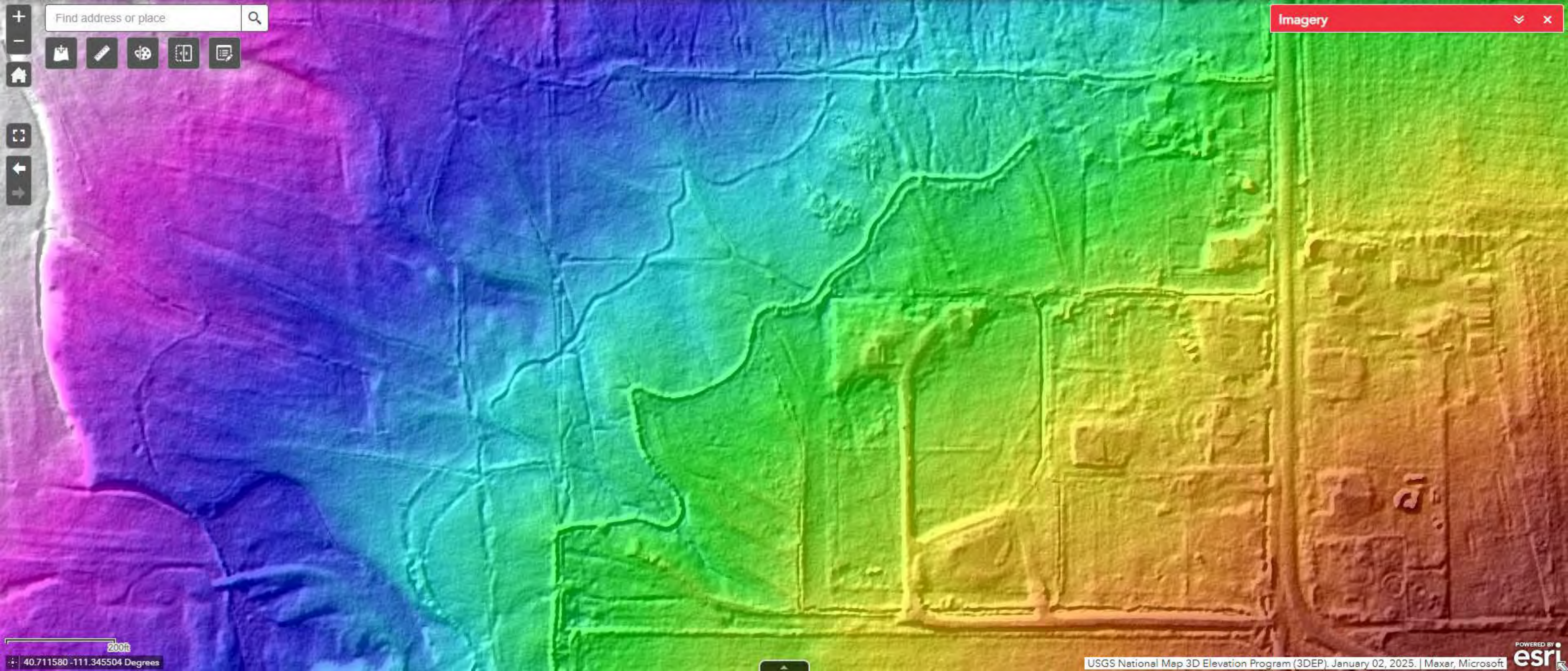


8/2020
1985 2026



Image © 2025 Maxar Technologies

Google Earth



Find address or place



Imagery

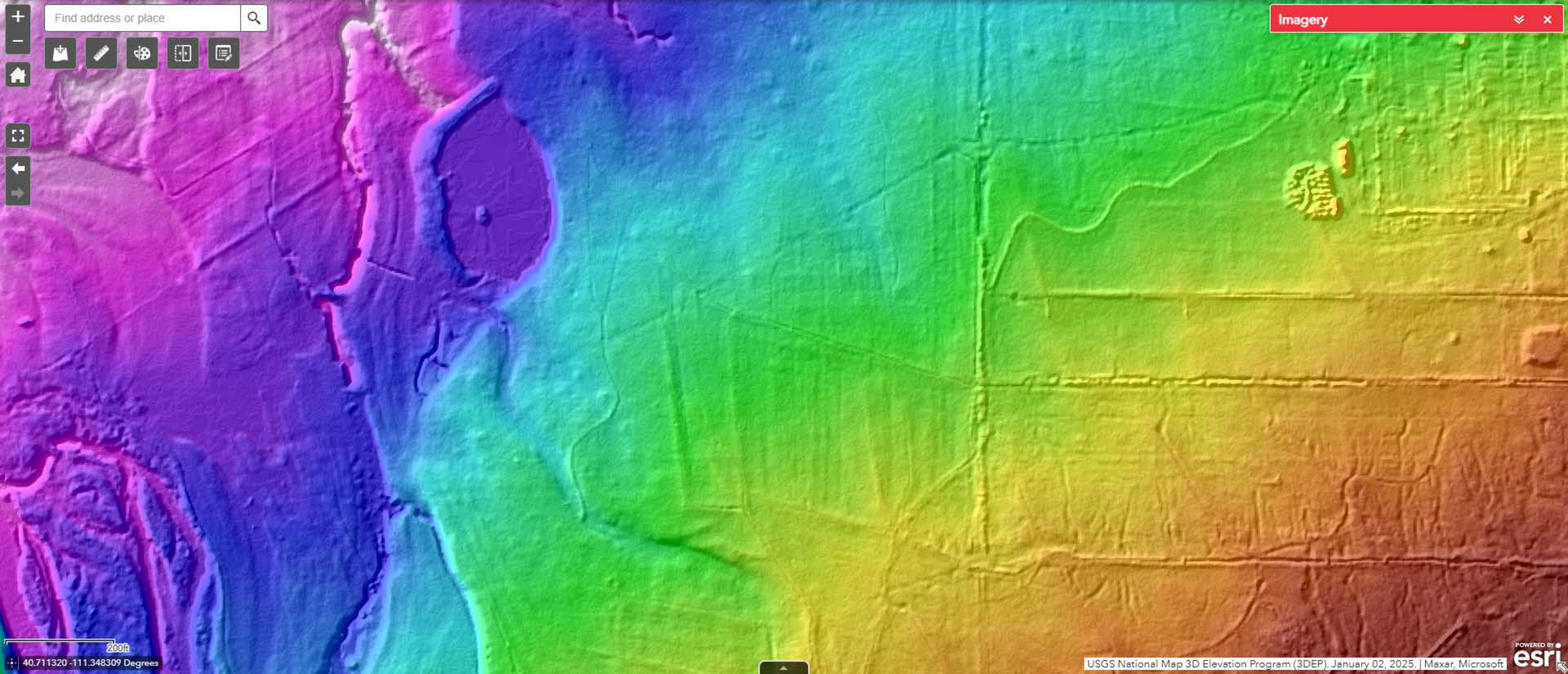


200ft

40.711580 -111.345504 Degrees

USGS National Map 3D Elevation Program (3DEP). January 02, 2025. | Maxar, Microsoft

POWERED BY
esri



Find address or place



Imagery

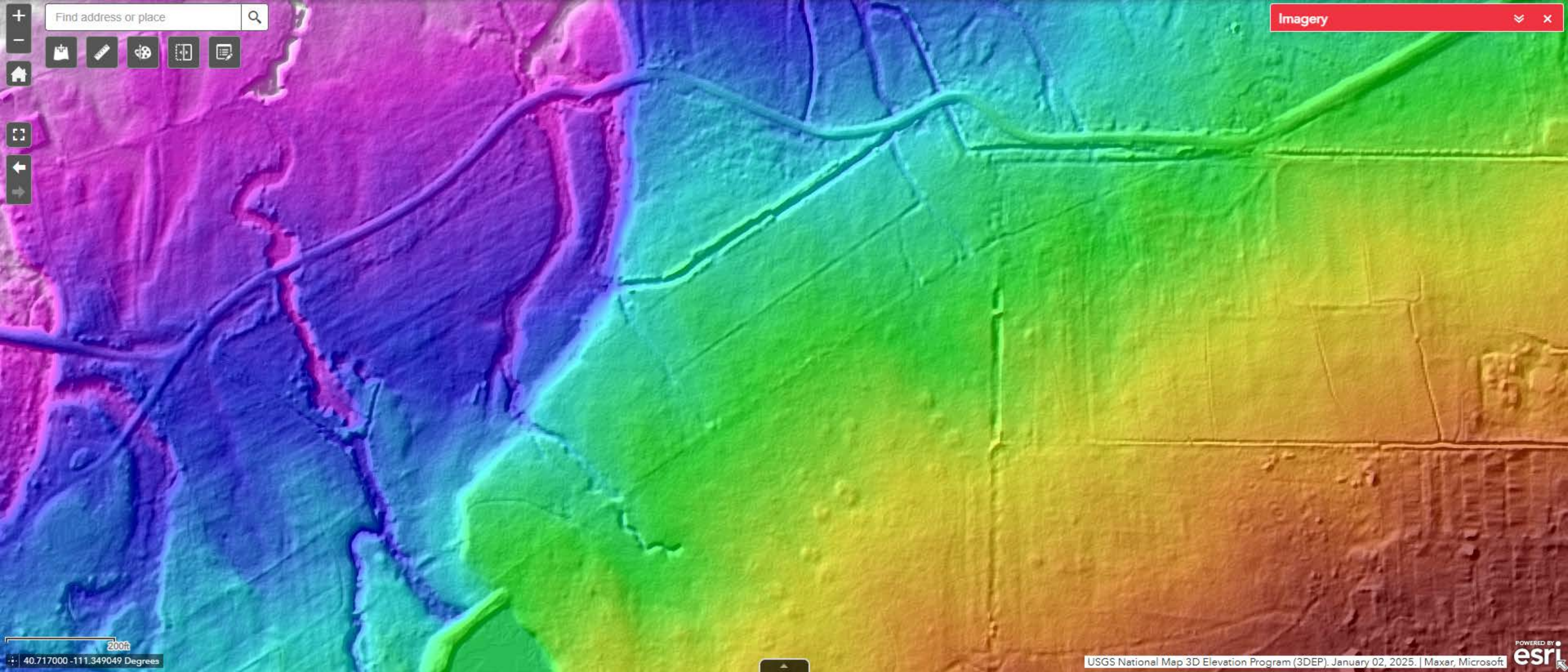


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USGS National Map 3D Elevation Program (3DEP). January 02, 2025. | Maxar, Microsoft

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esri

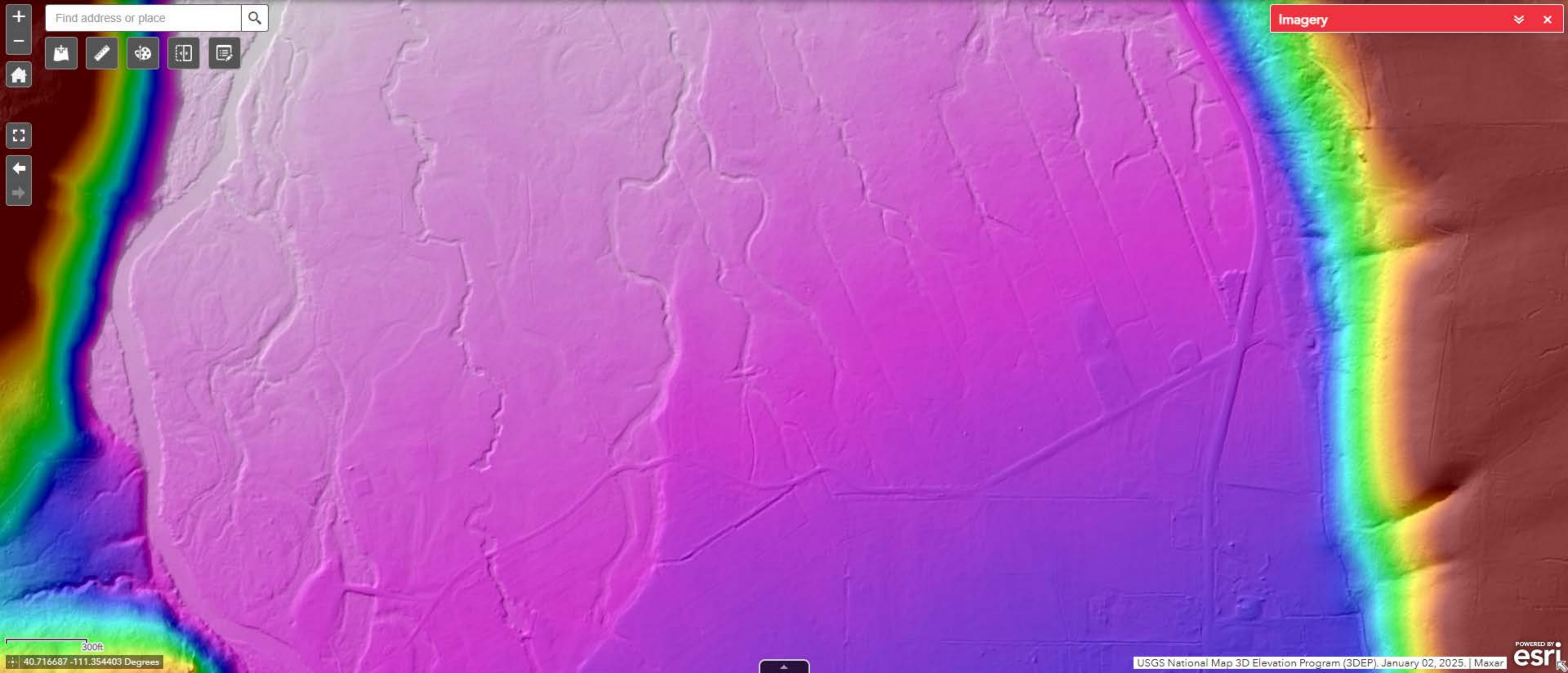


Find address or place



Imagery

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Find address or place

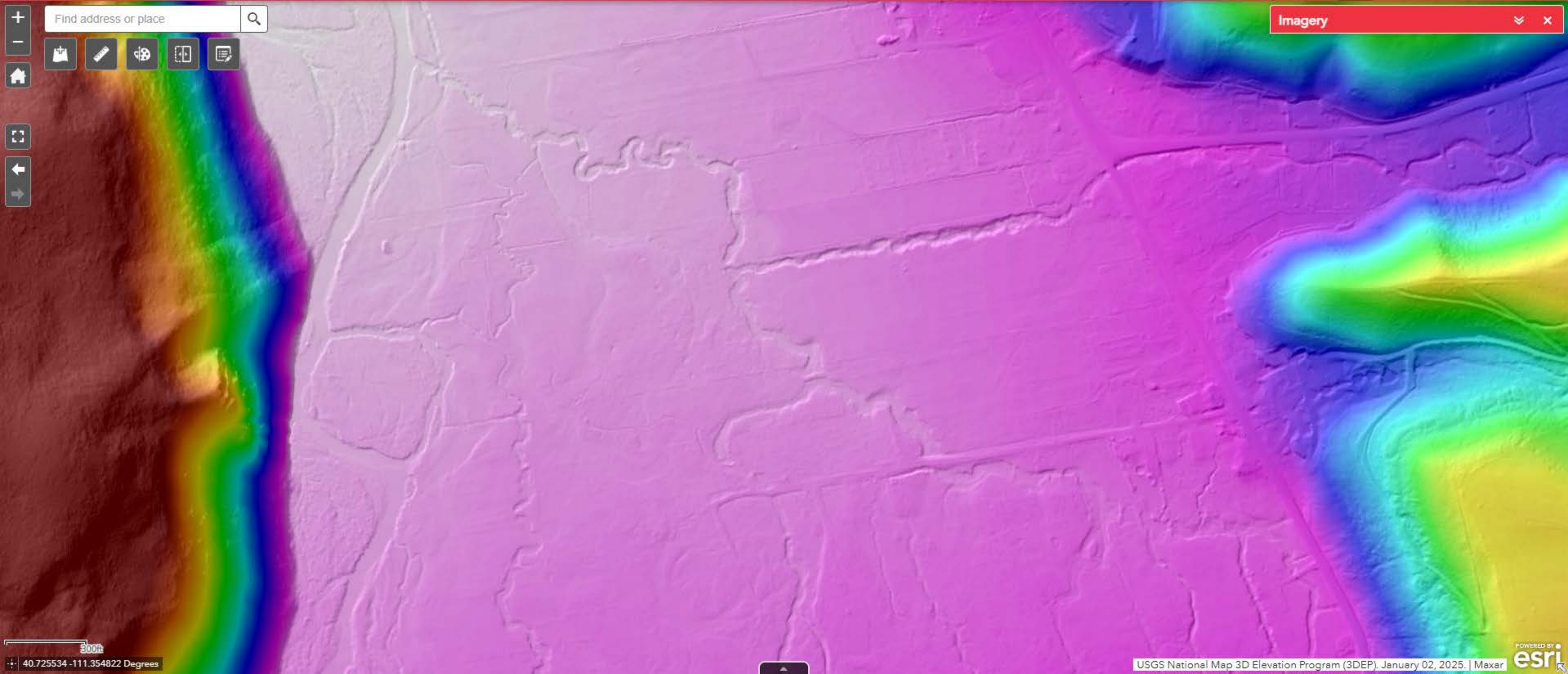


Imagery

300ft
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USGS National Map 3D Elevation Program (3DEP). January 02, 2025. | Maxar

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esri



Find address or place



Imagery



300ft

40.725534 -111.354822 Degrees

USGS National Map 3D Elevation Program (3DEP). January 02, 2025. | Maxar

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