



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

CESPK-RDI-U

04 February 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),<sup>1</sup> [SPK-2024-00479]

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.<sup>2</sup> 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.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> 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.

---

<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00479]

## 1. SUMMARY OF CONCLUSIONS.

a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area). Based on the results of the associated aquatic resources delineation report and corroboration of supporting data, including aerial imagery and LiDAR map layers, the review area is comprised entirely of uplands.

## 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 4.3-acre review area is located on 567 West 5200 North, Latitude 40.705971°, Longitude -111.521087°, Park City, 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 East Canyon Reservoir (ECR). The ECR 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);

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00479]

- d. Have historically been used for commercial navigation, including commercial waterborne recreation; or
- e. Are susceptible to being used in the future for commercial navigation, including commercial waterborne recreation.

The ECR meets Criteria c above, having been found navigable-in-fact under project number SPK-2008-00529. Thus, the ECR 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. The review area is comprised entirely of dry land (uplands). However, based on LiDAR data, surface flows would drain to the northeast, into a swale/ditch that sits outside of the review area and bisects the corner of the parcel. The ditch then runs north of the review area and drains into Kimball Creek, which connects to East Canyon Creek that flows to East Canyon Reservoir.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: 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.<sup>6</sup> 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

---

<sup>5</sup> 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.

<sup>6</sup> 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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00479]

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

#### 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”).<sup>7</sup> 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. N/A

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

---

<sup>7</sup> 51 FR 41217, November 13, 1986.



CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00479]

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 “Aquatic Resources Delineation Report 4.54-Acres 567 West 5200 North Park City, Summit County, Utah” prepared by [REDACTED], dated June 17, 2024. The Corps did not agree that sample point TJS-5 met the hydric soil indicator A12, *Thick Dark Surface*. Based on the submitted information, the value of the soil at this location is too high to meet this indicator. As such, based on the available information, this point does not exhibit hydric soils. In addition, the Corps did not agree with the map titled “[REDACTED] Property Aquatic Resources Delineation Map” as submitted ground photographs indicated that the swale labeled “Ditch” may be a wetland. Rather than submitting additional information to clarify if the ditch met wetland parameters, the applicant opted to submit a revised map that removed the ditch from the AJD review area. Apart from the instances specified above, 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.

b. Photographs: Aerial images dated (May 2022, August 2021, July 2016, and May 2015). 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

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00479]

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.

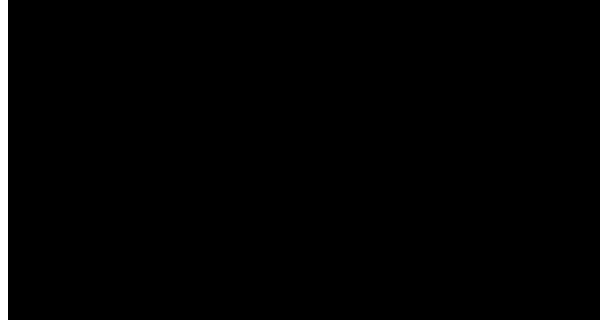
4 ENCL

Enclosure 1: Location map

Enclosure 2: AR map

Enclosure 3: Ground and aerial photos

Enclosure 4: LiDAR-Digital elevation model and hillshade maps





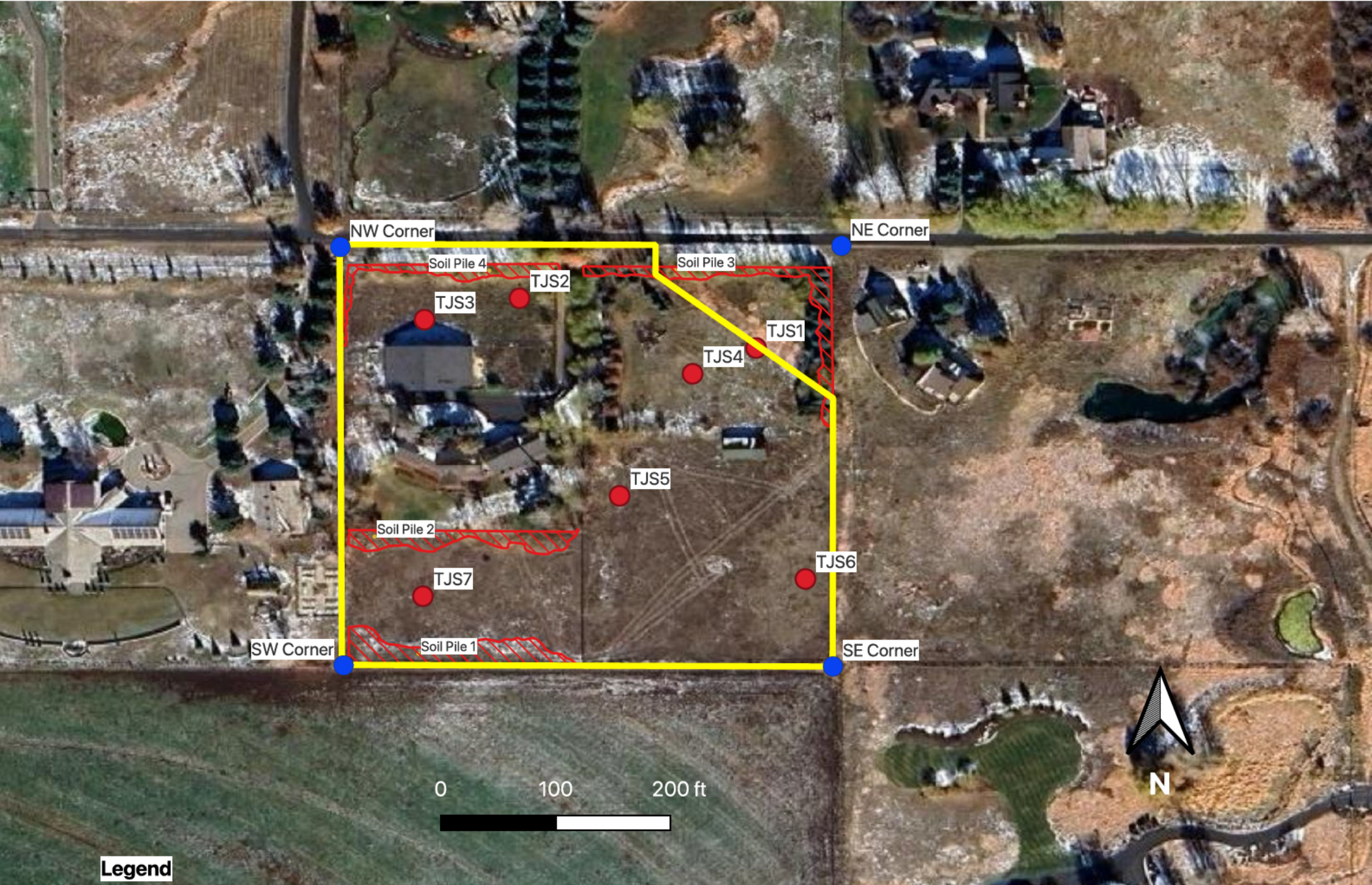
### LEGEND

UTM Coordinates: 455956 Easting, 4506220 northing  
Section: 29,Township: 1S,Range: 4E SLB&M  
Quad Map: Park City West,UT (2023)

### Topographic Map

### Appendix B





**Legend**

- PA Corner Photo Points
- PA Boundary Amended
- ▨ Soil Piles
- Test Pits

**PROPERTY**  
**567W 5200 North**  
**Park City, Utah**

**AQUATIC RESOURCES DELINEATION MAP (Amended)**  
**Appendix A**

Project No.: SPK-2024-00479  
Investigator: [REDACTED]  
Date: 07/10/2024  
Revision: 01/29/2025  
Image Date: 11/06/2024





5/2022

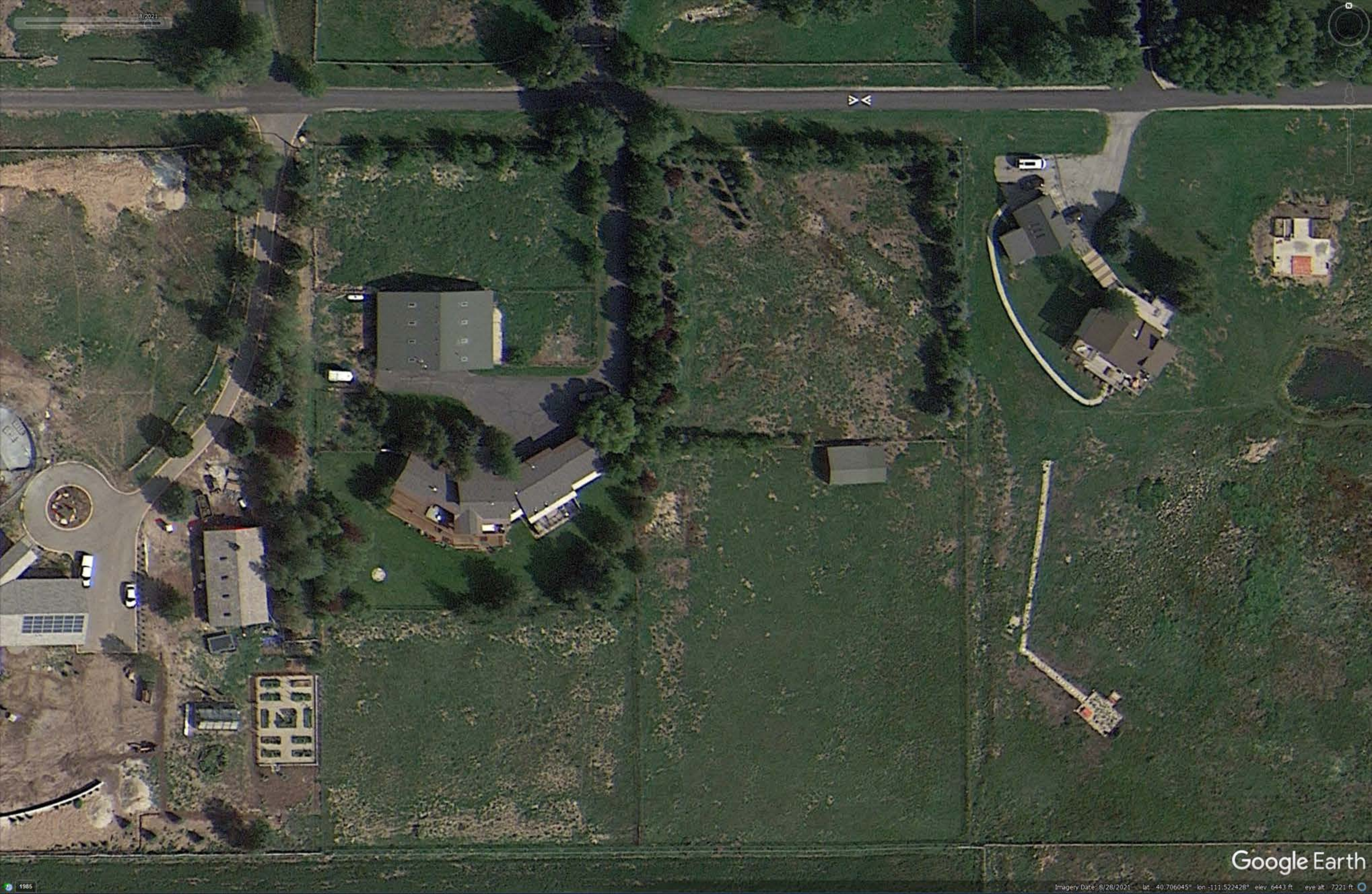


Google Earth

Imagery Date: 5/24/2022 lat: 40.705709° lon: -111.521396° elev: 6442 ft eye at: 7221 ft

1985





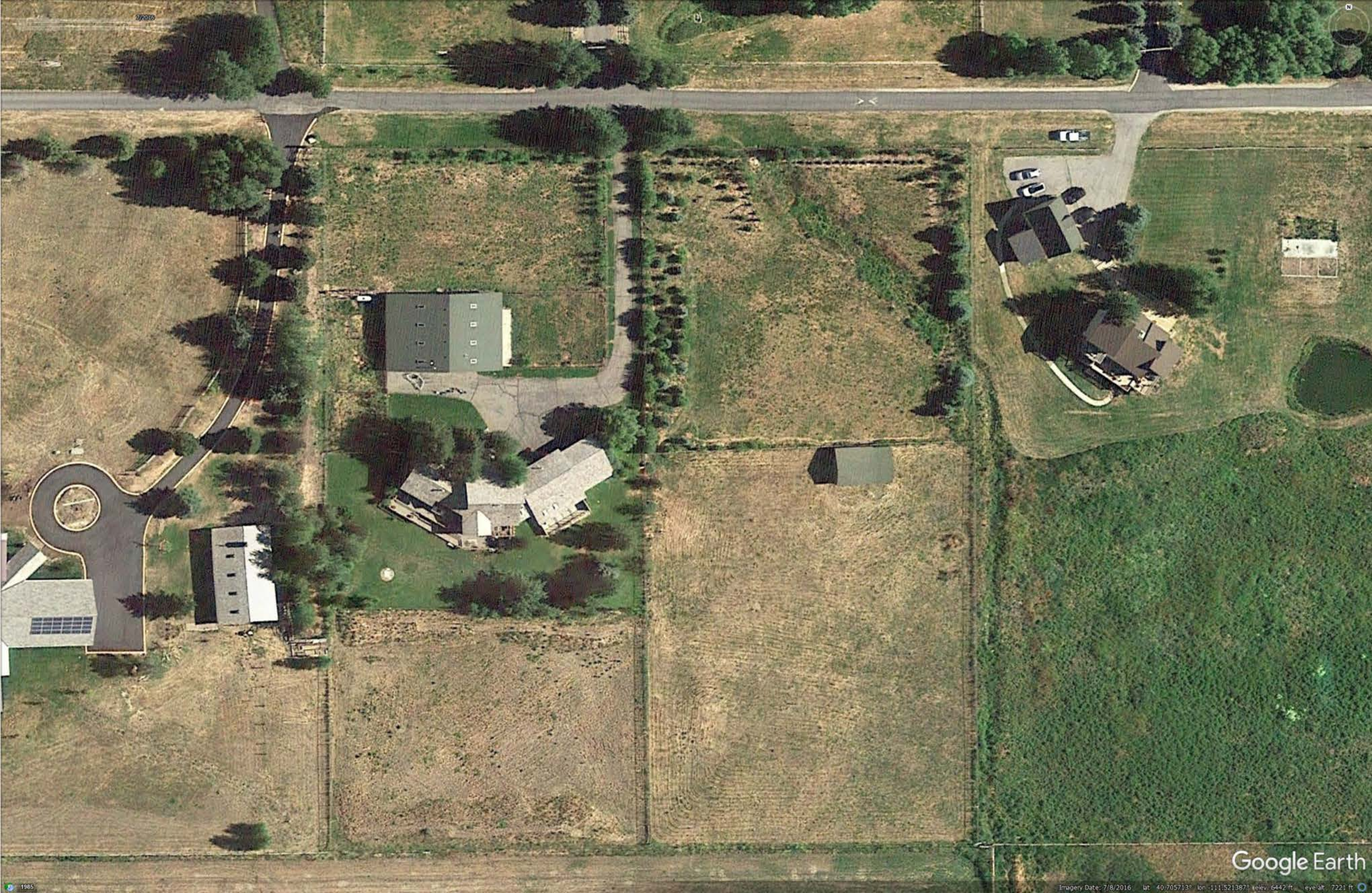
8/2021

Google Earth

Imagery Date: 8/28/2021 lat: 40.706045° lon: -111.522428° elev: 6443 ft eye alt: 7221 ft

1985





7/2016

Google Earth

Imagery Date: 7/8/2016 lat: 40.705713° lon: -111.521387° elev: 6442 ft eye alt: 7221 ft

1985







+

-

Find address or place

Q

