



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

CESPK-RDI-U

26 MARCH 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-2015-00472]²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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 A (0.06 acre), non-jurisdictional under Section 404 of 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 0.38-acre review area is located at 1583 East 1600 North, Latitude 40.13058 °, Longitude -111.62749°, Spanish Fork, Utah County, Utah (Enclosure 1). The review area is located adjacent to a residential development and to the north is an abandoned agricultural field. This wetland was flood irrigated by a ditch along the northern review line that historically flowed east to west, and northwest approximately 550 feet into an unnamed channel, the nearest a(5) relative permanent waterway (RPW). This ditch was abandoned around 2019 and the subject wetland's main current hydrology is groundwater no longer connects with this ditch (Enclosure 2).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Utah Lake. A November 9, 2007, "Memorandum for Record, Traditional Navigable Waterways, Federally Navigable Determination (SPK-2007-01601)" verified that Utah Lake is a "traditional navigable water" and therefore jurisdictional under 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The subject wetland does not flow to the nearest a(1) TNW, Utah Lake. The wetland is adjacent to, but not directly abutting an abandon irrigation ditch (i.e. the wetlands and ditch are separated by an area of uplands). The irrigation ditch connects to an unnamed RPW approximately 550 feet downstream, which flows to Dry Creek, which flows into Utah Lake (Enclosure 4).

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ None.

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): None.
- b. Interstate Waters (a)(2): None.
- c. Other Waters (a)(3): None.
- d. Impoundments (a)(4): None.
- e. Tributaries (a)(5): None.
- 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

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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“preamble waters”).⁸ 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. None.

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. None.

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. None.

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. None.

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*. None.

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).

- Wetland A (0.06 acre) is a palustrine emergent wetland that does not have a continuous surface connection (CSC) with the nearest a(5) RPW, an unnamed channel located approximately 550 feet to the northwest. Historically, it appears that an irrigation ditch outside the review area historically connected this wetland and the unnamed downstream channel. The wetland does not directly abut the old irrigation ditch (i.e. they are separated by an area of uplands dominated by orchard grass (*Dactylis glomerata*-FACU) and smooth brome (*Bromus inermis*- FACU)). Around 2019, this irrigation ditch was abandoned and no longer used to flood irrigate the pasture to the north. This abandoned ditch originates approximately 1,400 feet to the east at SR-51. This section of irrigation ditch lacks an OHWM, which is evident by the lack of physical indicators and dominance of Canada thistle (*Cirsium arvense* -

⁸ 51 FR 41217, November 13, 1986.

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FACU) near the subject wetland and orchard grass (*Dactylis glomerata* -FACU) closer to the unnamed channel. An aquatic resources delineation for a separate project to the north (SPK-2022-00304) was verified on November 17, 2022, that contains this abandoned ditch, which verified the ditch to not have an OHWM. Therefore, Wetland A (0.06 acre) is not an a(7) adjacent wetland and is non-jurisdictional, due to the dryland between the wetland and ditch, and the ditch lacking an OHWM.

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. Site visit August 20, 2024.
- b. Google Earth 7.3.3.7692. (2019 July, 2020 June, 2021 August, and 2022 July). Spanish Fork, Utah. 40.130598° Latitude, -111.627507° Longitude, eye alt 7,650 ft. Retrieved 6 March 2025.
- c. LiDAR - National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 6 March 2025.
- d. Aquatic Resource Delineation Bach Meadow Creek, prepare by Civil Solutions Group Incorporated, dated September 2023.
- e. USDA Natural Resources Conservation Service Soil Survey: Included in the Civil Solutions Aquatic Resources Report.

10. OTHER SUPPORTING INFORMATION. The August 20, 2024, site visit determined that the aquatic resource delineation for the review area was accurate and the 0.06 acres of wetland have no CSC with the nearest a(1) TNW, the Great Salt Lake.

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.



5 Encls
Enclosure 1: Vicinity Map
Enclosure 2: AR Maps and Photos
Enclosure 3: LiDAR
Enclosure 4: Flow Path Map
Enclosure 5: Aerials

HOLLIS JENCKS
REGULATORY PROJECT MANAGER
UTAH SECTION

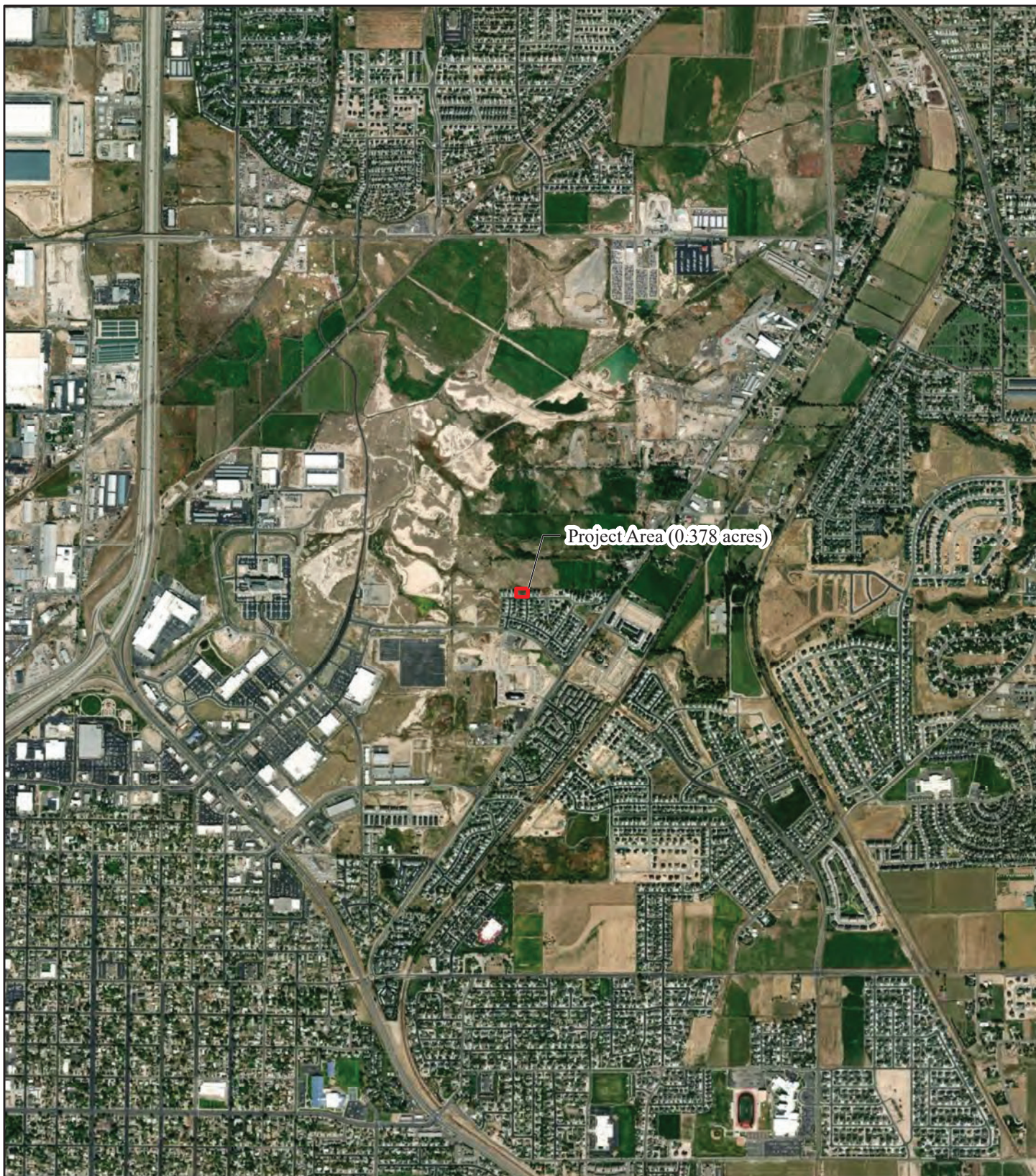


Figure 2b. Project Area Map
24k Aerial Base

Base layer: Vivid 7/2022
Map Date: 9/19/2023

 Project Area

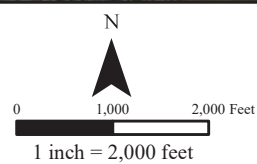


Figure 3.
Aquatic Resource Delineation Map

Legend:

- Project Area
- Delineation Sample Point
- Wetland
- Photo View Direction

Map Date: 8/21/2023
Map By: C. Kline
Delineation Date: 5/2023 and 9/2023 by C. Kline
Aerial Imagery: Google Earth 2022

Map Scale: 1 inch = 100 feet

North Arrow

Scale Bar: 0 50 100 200 feet

Coordinate System: NAD 1983 StatePlane Utah Central FIPS 4302 UTM
Projection: Lambert Conformal Conic
Datum: North American 1983

civilsolutionsgroup inc.



Bach Meadow Creek
September 2023
Photo Log



Photo 1a. North view looking toward Wetland A. Elevated uplands located in the foreground.



Photo 1b. Northwest view looking toward west boundary of Wetland A. Elevated uplands in foreground.

Bach Meadow Creek
September 2023
Photo Log



Photo 1c. Northeast view looking toward Wetland A. Elevated uplands in foreground.



Photo 2. West view looking in decommissioned irrigation ditch. No OHWM observed.

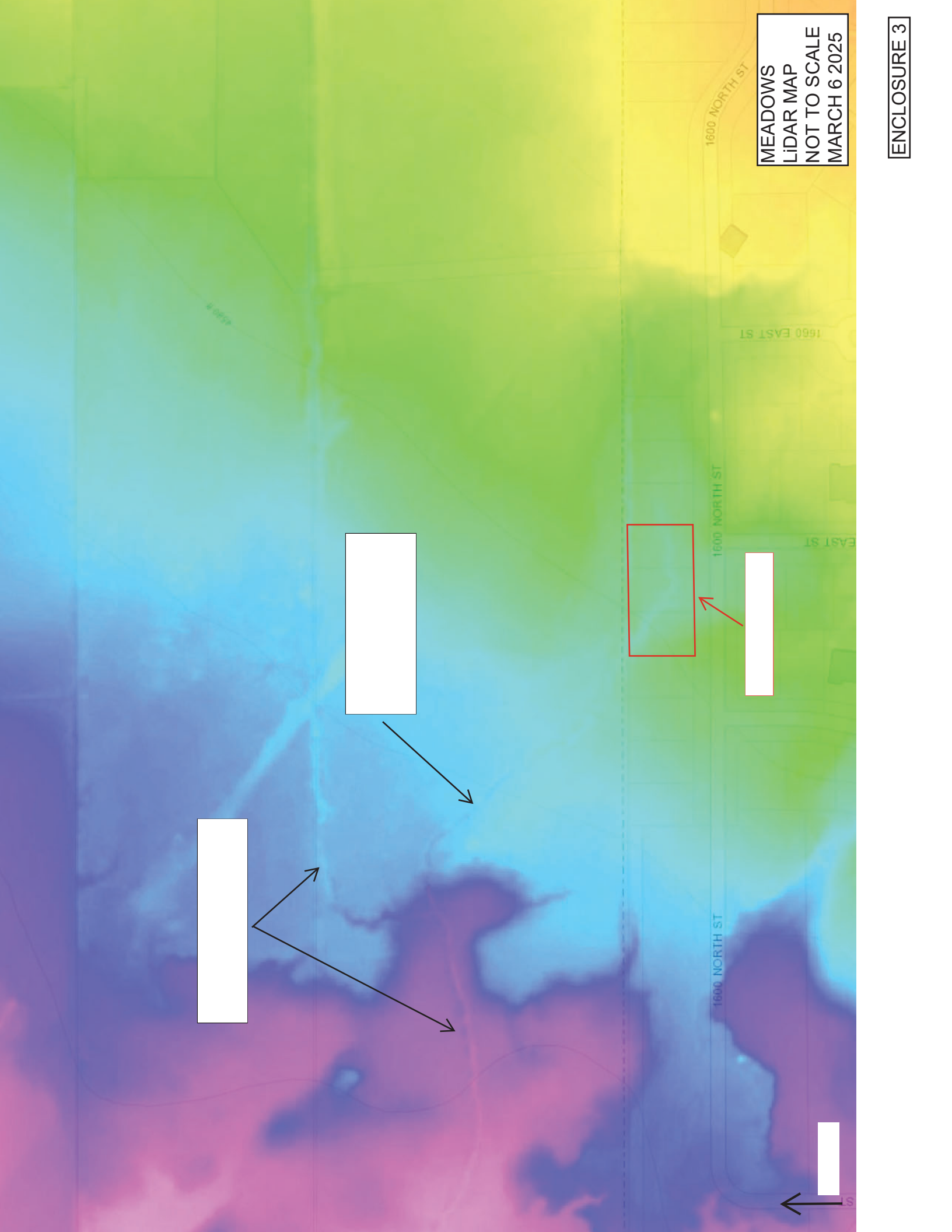
Bach Meadow Creek
September 2023
Photo Log



Photo 3a. Southeast view of decommissioned irrigation ditch. No OHWM observed.



Photo 3b. Northwest view of decommissioned irrigation ditch. No OHWM observed.



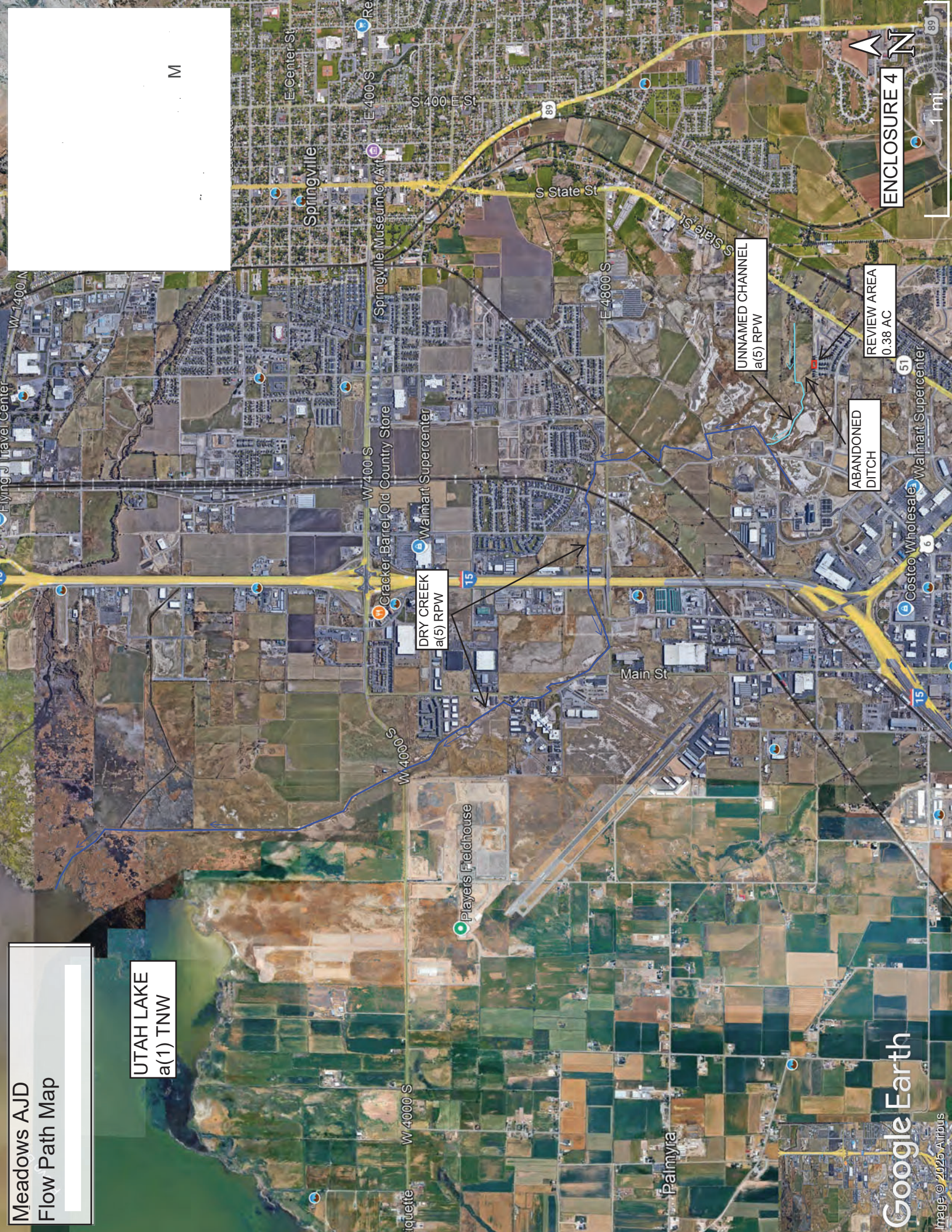
MEADOWS
LIDAR MAP
NOT TO SCALE
MARCH 6 2025

ENCLOSURE 3

Meadows AJD
Flow Path Map

UTAH LAKE
a(1) TNW

M

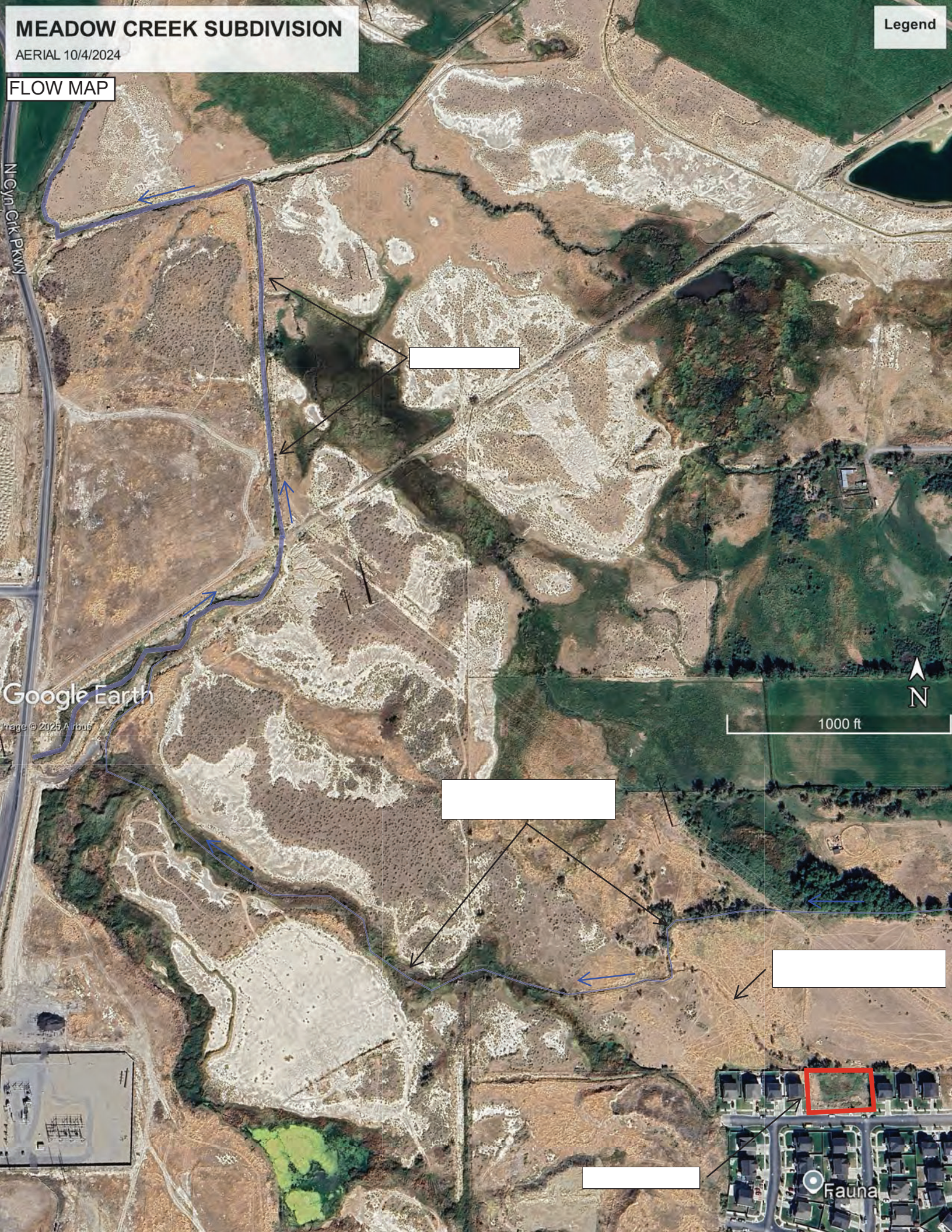


MEADOW CREEK SUBDIVISION

AERIAL 10/4/2024

Legend

FLOW MAP



MEADOW CREEK SUBDIVISION

AERIAL 7/18/2019

Legend

UNNAMED CHANNEL
NEAREST RPW

ABANDONED DITCH
NO OHWM



MEADOW CREEK SUBDIVISION

AERIAL 6/1/2020

Legend

UNNAMED CHANNEL
NEAREST RPW

ABANDONED DITCH
NO OHWM

Google Earth

Image © 2025 Maxar Technologies



200 ft

MEADOW CREEK SUBDIVISION

AERIAL 8/28/2021

Legend

UNNAMED CHANNEL
NEAREST RPW

ABANDONED DITCH
NO OHWM



MEADOW CREEK SUBDIVISION

AERIAL 7/1/2022

Legend

UNNAMED CHANNEL
NEAREST RPW

ABANDONED DITCH
NO OHWM



200 ft