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

CESPK-RDI-U 28 MAR 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-2024-00077]

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.

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[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.

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) W-1, non-jurisdictional under Section 404 of the Clean Water Act.

(2) W-2, 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 5-acre review area is located west of North Highway 89, Latitude 41.31321°, Longitude -112.01293°, Pleasant View, Weber 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, which is a water of the United States pursuant to 33 C.F.R. §328.3(a)(1) and 40 C.F.R. §230.3(s)(1), the "traditional navigable waters." 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

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

The Great Salt Lake 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 Great Salt Lake (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. W-1 does not have a continuous surface connection flowpath to a TNW, interstate water, or the territorial seas, as it is in a topographic depression with no surface outlet such as an upland swale or pipe connection. W-2 directly abuts a 30-foot culverted road crossing that outlets into a 20-foot-long (a)(5) RPW open channel before flowing through a 25-foot culverted railroad crossing, andback into a 17-foot (a)(5) RPW open channel. The RPW channel then enters the Pleasant View City piped stormwater system. Water in the stormwater system flows for approximately 1,955 feet before discharging into a city-managed stormwater pond. The water from the pond is released via slide gates along the western boundary into a relatively permanent tributary ditch (RPW), an (a)(5) water. The frequency in which water is released from the pond into the abutting RPW ditch is unknown. The open ditch flows for approximately 5.77 miles (30,447 feet) with 19 otherwise culverted sections, the longest being 434 feet, before merging with First Salt Creek (RPW), an (a)(5) water, then merging with the Willard Bay Reservoir toe ditch (RPW), an (a)(5) water. Water flows west for approximately 8,340 feet before flowing under a 70-foot canal where it enters the Harold Crane Waterfowl Management Area (WFMA), an (a)(4) water. Water flows through the WFMA for approximately 12,900 aerial feet (2.44 miles) before discharging into Willard Bay ((a)(4) water), then the Bear River Bay ((a)(4) water), before finally flowing into the GSL, the nearest TNW (AJD MFR Enclosure 2).

6. SECTION 10 JURISDICTIONAL WATERS[5]: 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.[6]

[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

7. SECTION 404 JURISDICTIONAL WATERS: One of the aquatic resources within the review area (AJD MFR Enclosure 3) was 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*.

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): W-2 is a 0.8-acre palustrine emergent wetland directly abuts a culvert that daylights into a (a)(5) RPW tributary. The open channel was previously a natural, perennial stream channel (RPW; (a)(5) water) that has been piped into the city's stormwater system over the past 15 years (AJD MFR Enclosure 5). Since W-2 abuts culvert that does not cause a break in the ordinary high water mark of the open channel, and the channel flows at least seasonally through a flowpath shown in historic aerials, historic topographical maps, and water seen flowing on both the February 13 and 26, 2025 site visits, W-2 abuts a requisite jurisdictional water and therefore has a continuous surface connection to the GSL, the nearest TNW.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. There are no 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]

b. There are no aquatic resources and features within the review area identified as "generally not jurisdictional" in the *Rapanos* guidance.

c. There are no 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.

329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

[7] 51 FR 41217, November 13, 1986.

d. There are no aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.).

e. There are no 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."

f. One aquatic resource totaling 0.05-acre 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 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).

W-1 is a 0.05-acre palustrine emergent wetland. It is not adjacent to an (a)(1)-(a)(6) water. W-1 is isolated and located in a topographic depression. Based on reviewing aerial imagery as shown in AJD MFR Enclosure 5, lidar, and photos (AJD MFR Enclosure 6), W-1 does not have a discrete flowpath to an (a)(1)-(a)(6) water and therefore does not have a continuous surface connection to a jurisdictional water.

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 Resource Delineation prepared by [redacted] dated November 2023. The consultant prepared the delineation report in accordance with the U.S. Army Corps of Engineers 1987 Wetland Delineation manual and the USACE Regional Supplement for the Arid West Region.

b. February 13 and February 26, 2025, USACE site visit and Mapped Photo Log (Site Visit Photos).

c. GoogleEarth. (13 August 1993, 27 July 2002, 31 August 2003, 25 May 2006, 16 June 2015, 7 June 2017). Pleasant View, Weber County, Utah. Latitude 41.31321°, Longitude -112.01293°, eye alt 3688 ft. Retrieved 17 March 2025, from http://www.earth.google.com.

d. Photos included in the [redacted] Aquatic Resource Delineation.

e. Storm Drain System maps provided by Pleasant View City Public Works on 30 January 2025.

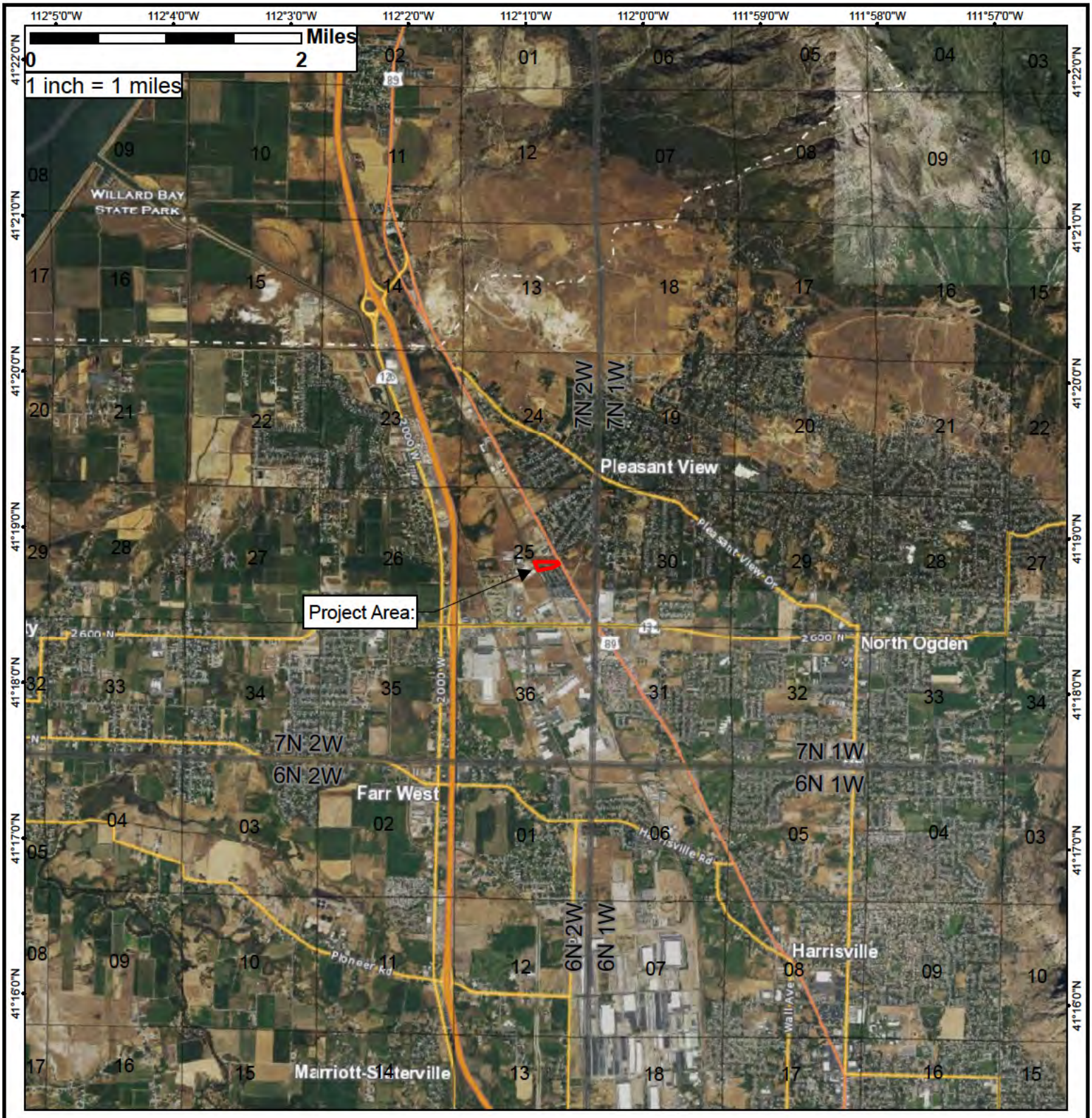
f. USGS topography map Plain City Quad. 1955. USGS TopoView. https://ngmdb.usgs.gov/topoview/.

10. OTHER SUPPORTING INFORMATION. The water source/hydrology for W-2 primarily comes from a culvert pipe on the eastern boundary of the wetland. The upstream source is unknown but likely is a combination of stormwater runoff and irrigation tailwater. This culvert was not identified in the delineation report provided but was discovered during a site visit. During both the February 13 and 26, 2025 site visits, water flow was observed exiting the culvert.

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.

[redacted]

6 Encls
Encl 1 – Location Map
Encl 2 – Flowpath Map
Encl 3 – Aquatic Resources Delineation Map
Encl 4 – Site Visit Photos
Encl 5 – Historic Topo Map and Aerial Photos
Encl 6 – W-1 Non-connectivity Supporting Information



Project Location

Rueco Parcel

Section 25
in T.7N, R.2W, S.L.B.&M.

Legend

Project Area

Projection:
NAD 83 UTM Zone 12N

Source:
UGRC Basemap Hybrid Imagery 8/12/21

Survey Performed by
Cody Mittanck

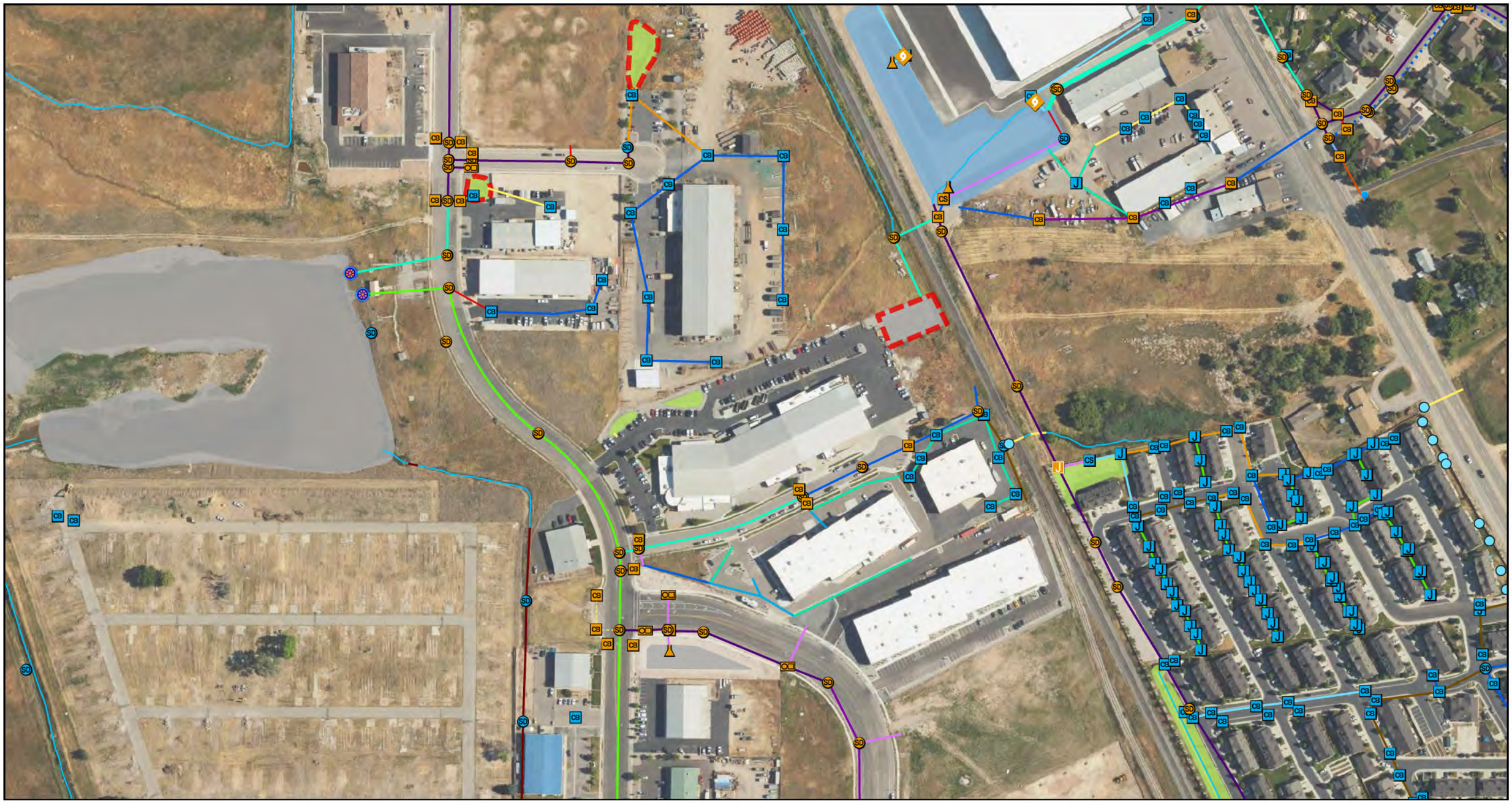
[redacted]

Created: 10/31/2023
Author: CMM

Map 1


Pleasant View
NORTH OGDEN DR.
1100 WEST
4409
4294
4270
UNION
235
CANAL
4260
4300
4323
ST
30
25
BM 4281
4260
4270
PACIFIC
LANE
4290
WEST
1000
STREET
4301
4265
84
30
89
91
4280
BM 4296
Lat: 41° 18' 37" N Long: 112° 1' 33" W
DMS DD MGR UTM
Horse Track
31
36
4270
Scale 1:18,056
Map Records: 36
Snow showers likely. 41° near Pleasant View, UT.

Storm Drain System



1/30/2025, 12:01:02 PM

1:2,666

0 0.03 0.07 0.13 mi

0 0.05 0.1 0.2 km

Source: Esri, Maxar, Earthstar Geographics, IGN, and the GIS User Community

PVC Outfall
Hydrodynamic Separator

PVC Structures
Catch Basin
Combination Box
Control Structure
Manhole

Junction Box
Flared End

Non PVC Structures
Catch Basin
Control Structure
Manhole
Unknown

Junction Box
Pipe Opening

PVC Land Drain Pipes
8 Inch

PVC Storm Drain Pipes
12 Inch
15 Inch
18 Inch
21 Inch
24 Inch
27 Inch
30 Inch
36 Inch
42 Inch
72 Inch
Unknown

Non PVC Pipes
6 Inch
8 Inch
10 Inch
12 Inch
15 Inch
18 Inch
24 Inch
48 Inch
Unknown
Open Channels, Canals & Streams

Basins to Investigate
Yes

Detention & Retention Basins
Pleasant View City
Private
Other

SPK-2024-00077 Flowpath Map

0 0.01 0.01 0.03

mi

Map Center: 112.013074°W 41.313112°N

Map Created by: [redacted]

Date: 3/12/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

SPK-2024-00077 Flowpath Map

0 0.05 0.1 0.2

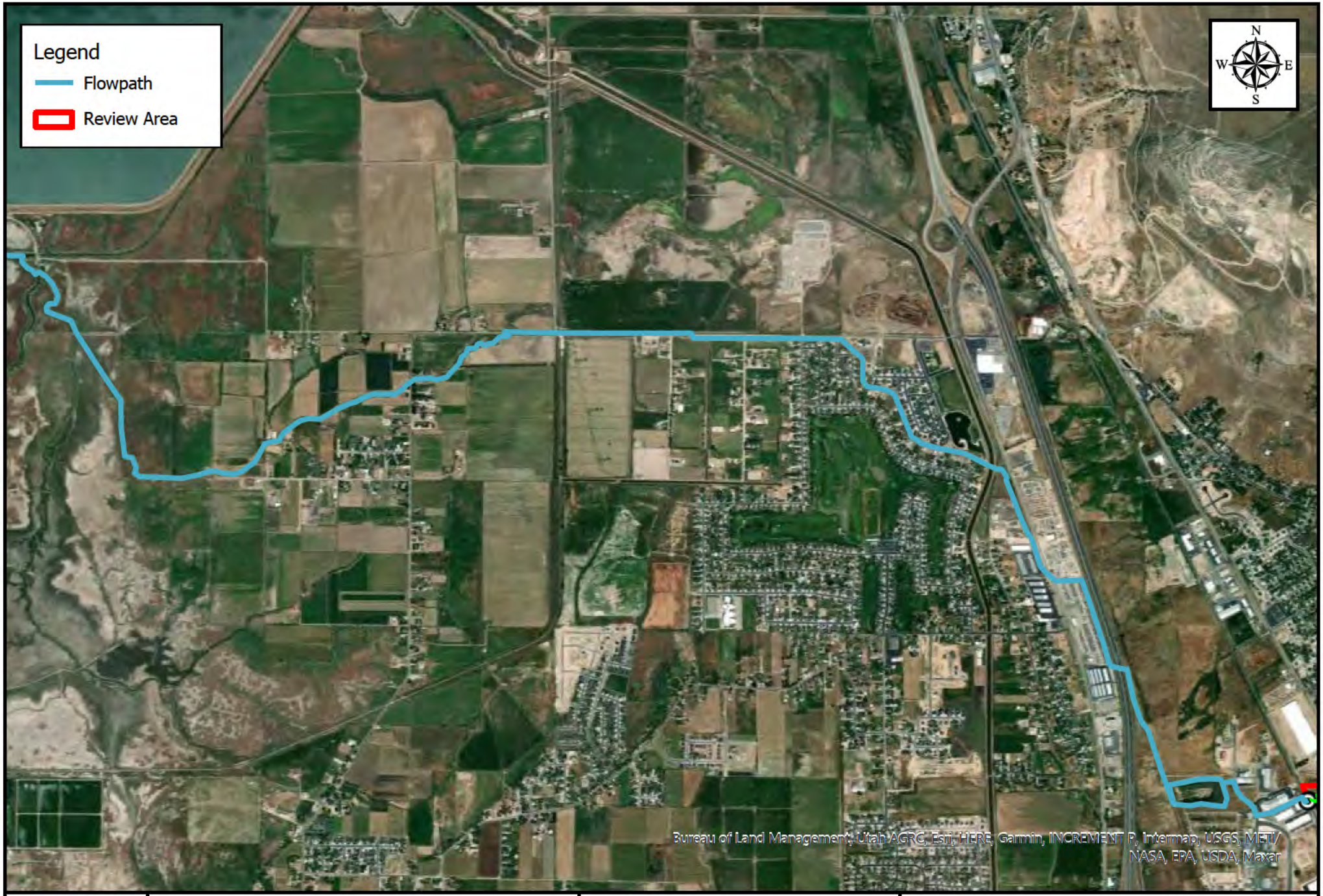
mi

Map Center: 112.016438°W 41.313179°N

Map Created by: [redacted]

Date: 3/10/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



SPK-2024-00077 Flowpath Map

0 0.28 0.55 1.1

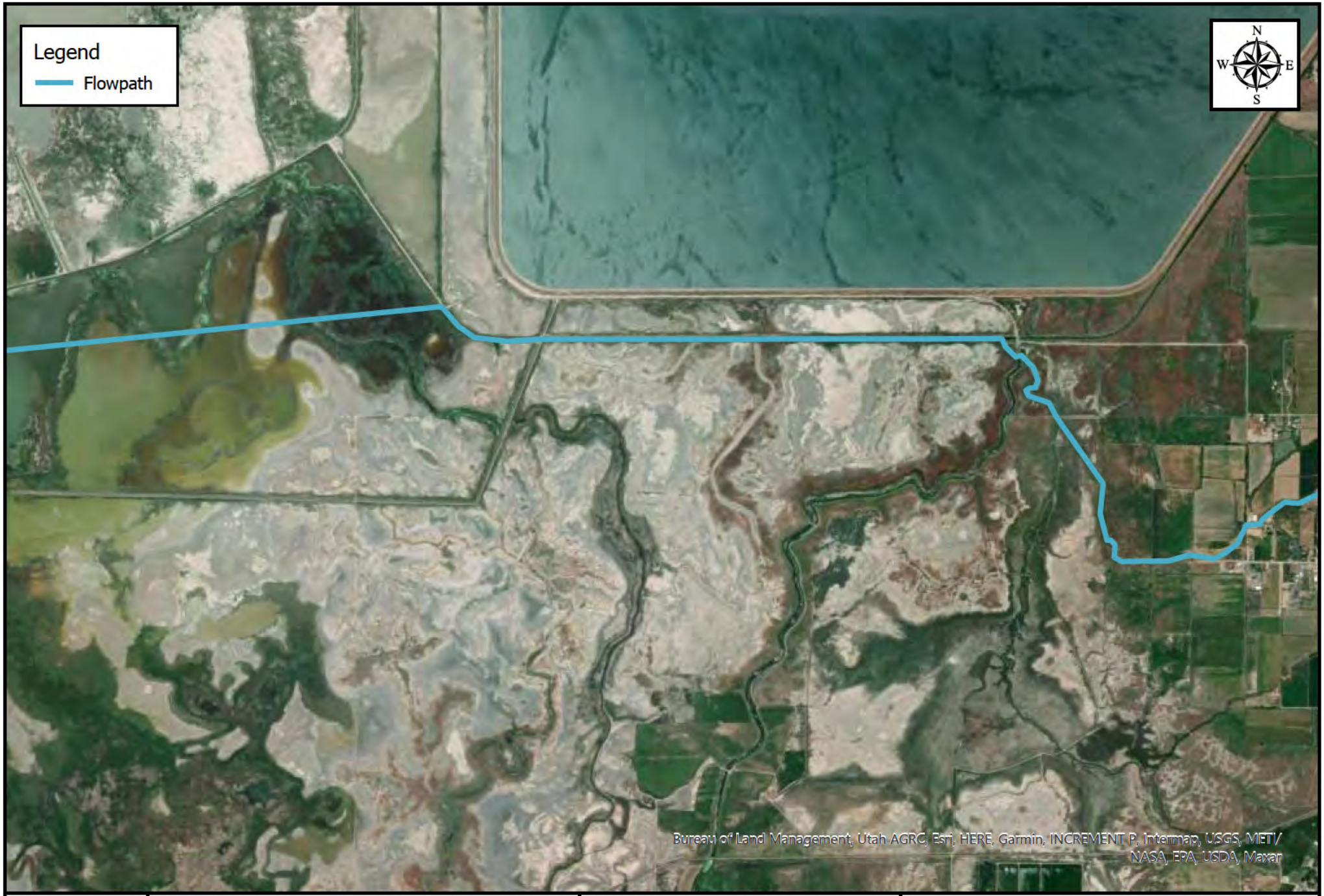
mi

Map Center: 112.056928°W 41.33031°N

Map Created by: [redacted]

Date: 3/10/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



SPK-2024-00077 Flowpath Map

0 0.28 0.55 1.1

mi

Map Center: 112.121745°W 41.334425°N

Map Created by: [redacted]

Date: 3/10/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere

SPK-2024-00077 Flowpath Map

0 1 2 4

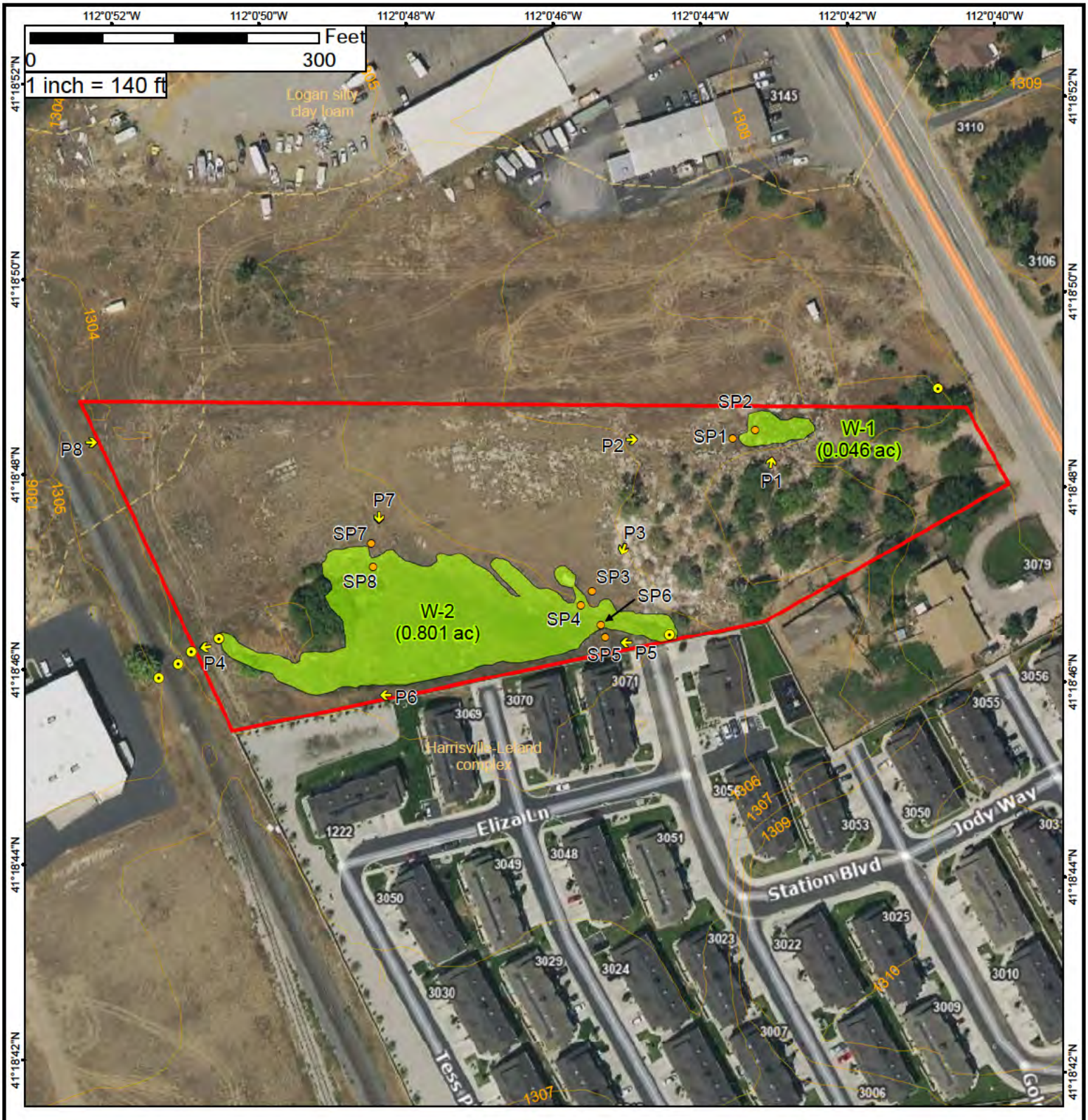
mi

Map Center: 112.242595°W 41.309479°N

Map Created by: [redacted]

Date: 3/10/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere



Delineation Detail

Rueco Parcel

Project Dimensions:

Note: dimensions include features w/in project area

Project area = 5.038 ac
Wetlands = 0.847 ac

Legend

- Project Area
- Directional Photo Points (P)
- Sample Points (SP)
- Culverts
- Palustrine Emergent Wetland
- Soils
- Contours (1m height interval)

Projection:
NAD 83 UTM Zone 12N

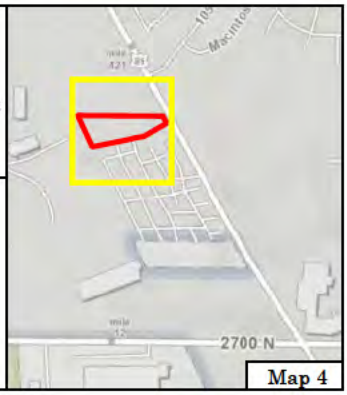
Source:
UGRC Basemap Hybrid Imagery 8/12/21

N
W
E
S

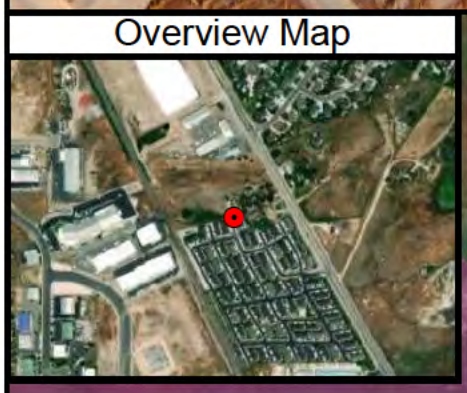
Survey Performed by
Cody Mittanck

[redacted]

Created: 10/31/2023
Author: CMM



Map 4



Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by [redacted]
on 2/26/2025 at 10:10:59 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/27/2025 using the
Photo Log Toolbar, written by [redacted]

Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by [redacted]
on 2/26/2025 at 10:29:17 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/27/2025 using the
Photo Log Toolbar, written by [redacted]

Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by [redacted]
on 2/26/2025 at 10:30:47 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/27/2025 using the
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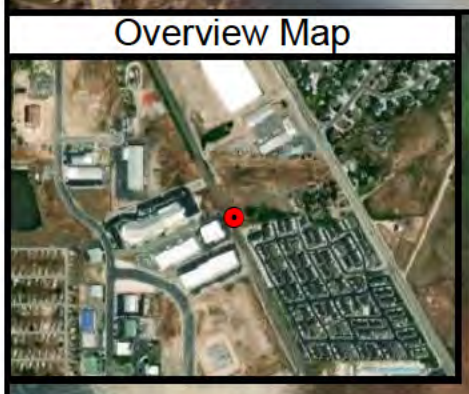
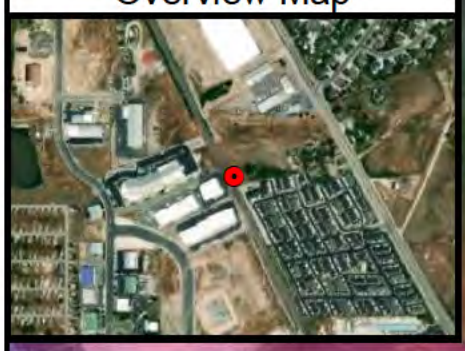


Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by [redacted]
on 2/13/2025 at 9:41:33 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/18/2025 using the
Photo Log Toolbar, written by [redacted]

Overview Map



Legend

Photo Location

Field of View

Coordinate System: GCS WGS 1984
Photo Coordinates: -112.014078 41.312812
Upper Left Corner: -112.015309 41.313673
Lower Right Corner: -112.012847 41.311950
Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

0 40 80 160

Feet

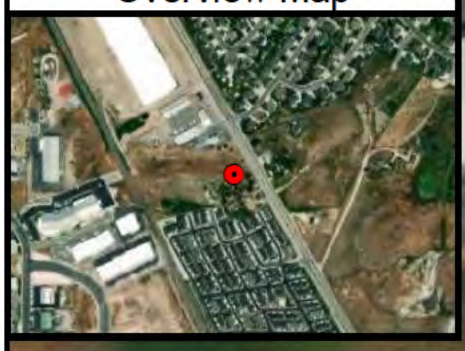
N W E S

Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by Al[redacted]
on 2/13/2025 at 9:41:40 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/18/2025 using the
Photo Log Toolbar, written by [redacted]

Overview Map



Legend

Photo Location

Field of View

Coordinate System: GCS WGS 1984
Photo Coordinates: -112.011743 41.313583
Upper Left Corner: -112.012962 41.314436
Lower Right Corner: -112.010525 41.312731
Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

0 40 80 160

Feet

N

W E

S

Mapped Photo Log for Rueco Parcel SPK-2024-00077

Description:

Photographed by [redacted]
on 2/13/2025 at 9:32:55 AM MST
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 2/18/2025 using the
Photo Log Toolbar, written by [redacted]

Photo 1. View north. Paired sample points SP-1 and SP-2. Palustrine emergent wetland W-1.

Photo 2. View east. Wetland W-1 is isolated within closed depression. No continuous surface connection to the west.

SPK-2024-00077

August 13, 1993

SPK-2024-00077

July 27, 2002

Google Earth

N

800 ft

SPK-2024-00077

August 31, 2003

SPK-2024-00077

May 25, 2006

SPK-2024-00077

June 16, 2015

Google Earth

N

300 ft

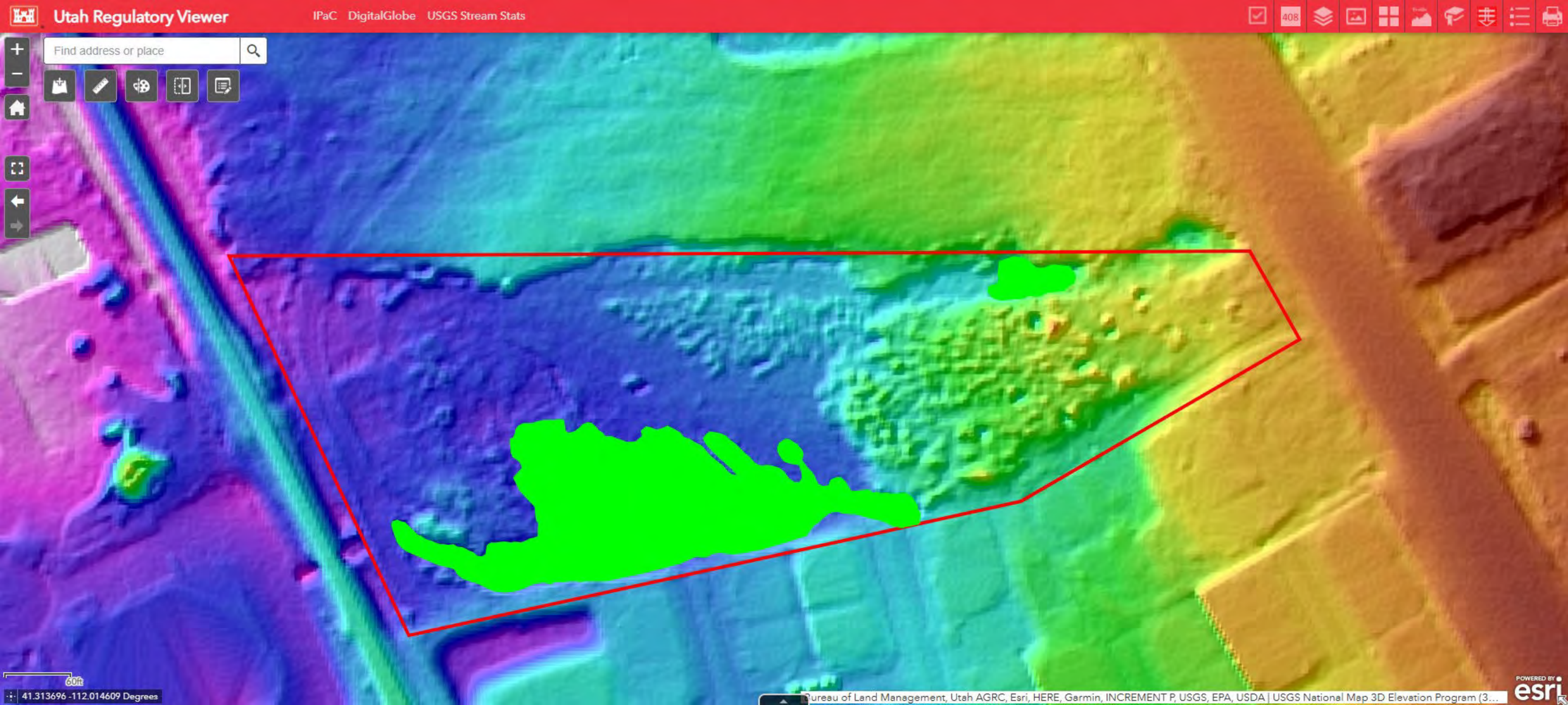
SPK-2024-00077

June 7, 2017

Google Earth

200 ft

N


Utah Regulatory Viewer
IPaC
DigitalGlobe
USGS Stream Stats
Find address or place
60ft
41.313696 -112.014609 Degrees
Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | USGS National Map 3D Elevation Program (3...
POWERED BY esri