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

CESPK-RDI-U 13 JUNE 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-2022-00466]

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.

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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) W1: non-jurisdictional under Section 404 of the Clean Water Act.

(2) W2: non-jurisdictional under Section 404 of the Clean Water Act.

(3) Ditch 1: 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 16-acre review area consists of the entire review area outlined in the aquatic resources delineation report, apart from aquatic resources W3 and W4. W3 and W4 were previously determined to be non-jurisdictional under a separate March 25, 2025, AJD (SPK-2022-00466). The review area is located near 1800 North 4500 West, latitude 41.140737°, longitude -112.110864°, West Point City, Davis County, Utah (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 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). 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 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. The aquatic resources onsite flow out of the review area from the northwest corner of the review area via Ditch 1 and at the southwest corner where W1 abuts a culvert. After leaving the review area, Ditch 1 splits to flow west through an irrigation ditch across an agricultural field (flowpath A) and south, within a separate irrigation ditch within the same agricultural field (flowpath B).

Flowpath A continues west for approximately 600 feet before turning south for an additional 550 feet. Flowpath A then enters a roadside upland swale with no bed, bank, or ordinary high water mark indicators where flow terminates with no downstream connection to a TNW.

The culvert abutted by W1 in the southwest corner of the review area passes below 4500 west and ties into flowpath B. Flowpath B then flows south through a culvert beneath 1800 North into another roadside swale. Water then turns east and flows through a culvert back under 4500 West, into an irrigation ditch, which is a relatively permanent water (RPW) that has bed/bank and ordinary high water mark indicators. The RPW ditch flows south along 4500 West for approximately 980 feet before entering a stormdrain pipe for 370 feet, which discharges into the Howard Slough. The Howard Slough is a RPW that discharges into the GSL (MFR Enclosure 2).

6. SECTION 10 JURISDICTIONAL WATERS[5]: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

[5] 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was

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

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

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"navigable in law" even though it is not presently used for commerce, or is presently incapable of such

[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.

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

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

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). Approximately 2.35 acre of wetlands and 1,094 linear feet of ditch consisting of W1 (2.15 acre), W2 (0.2 acre) and Ditch 1 (0.08 acre) sit within the review area. After leaving the review area, Ditch 1 flows through agricultural fields before terminating in uplands without connecting to a downstream TNW. Flowpath B flows into an upland swale after leaving the review area. As such, the flowpath B connection does not constitute an adjacent connection between W1 and a RPW (MFR Enclosure 3).

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 titled "Aquatic Resources Delineation Report 1800 North West Point" prepared by [redacted] and dated July 29, 2022, amended October 20, 2022. 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. Photographs: USACE photologs collected on February 7, 2025, February 19, 2025, and May 7, 2025 (MFR Enclosure 4) and aerial images Google Earth 7.3.6.10201 dated June 2023, June 2022, and June 2022 (MFR Enclosure 5).

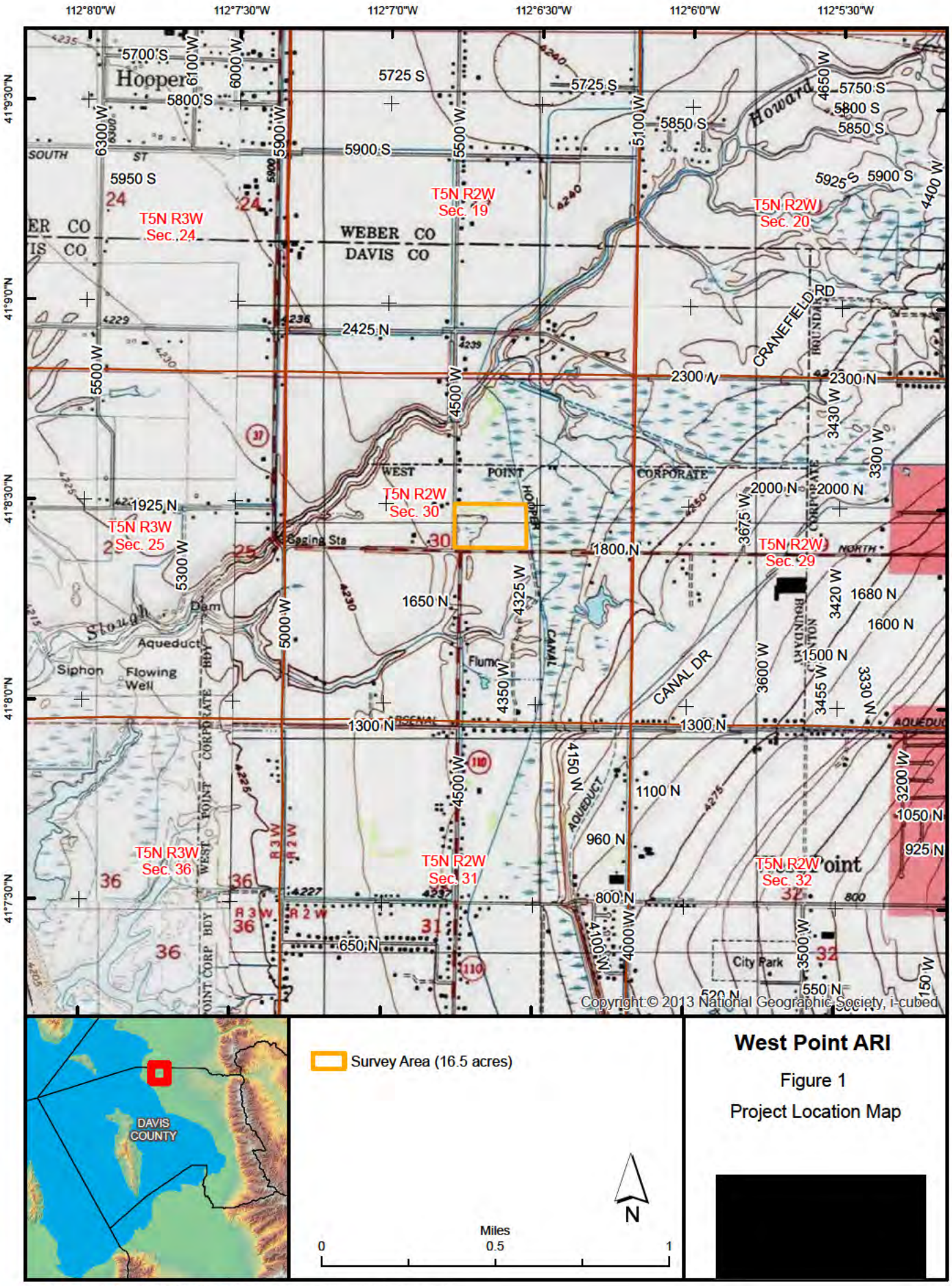
c. LiDAR: National layer in the National Regulatory Viewer for the South Pacific Division (MFR Enclosure 6).

d. Storm drain map: West Point City's GIS map showing storm drain alignments, provided by a West Point City official on 6 March 2024 (MFR Enclosure 7).

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.

7 Encls
Enclosure 1: Location map
Enclosure 2: Flow path map
Enclosure 3: AR map
Enclosure 4: Corps photolog
Enclosure 5: Aerial images
Enclosure 6: LiDAR map
Enclosure 7: Storm drain map



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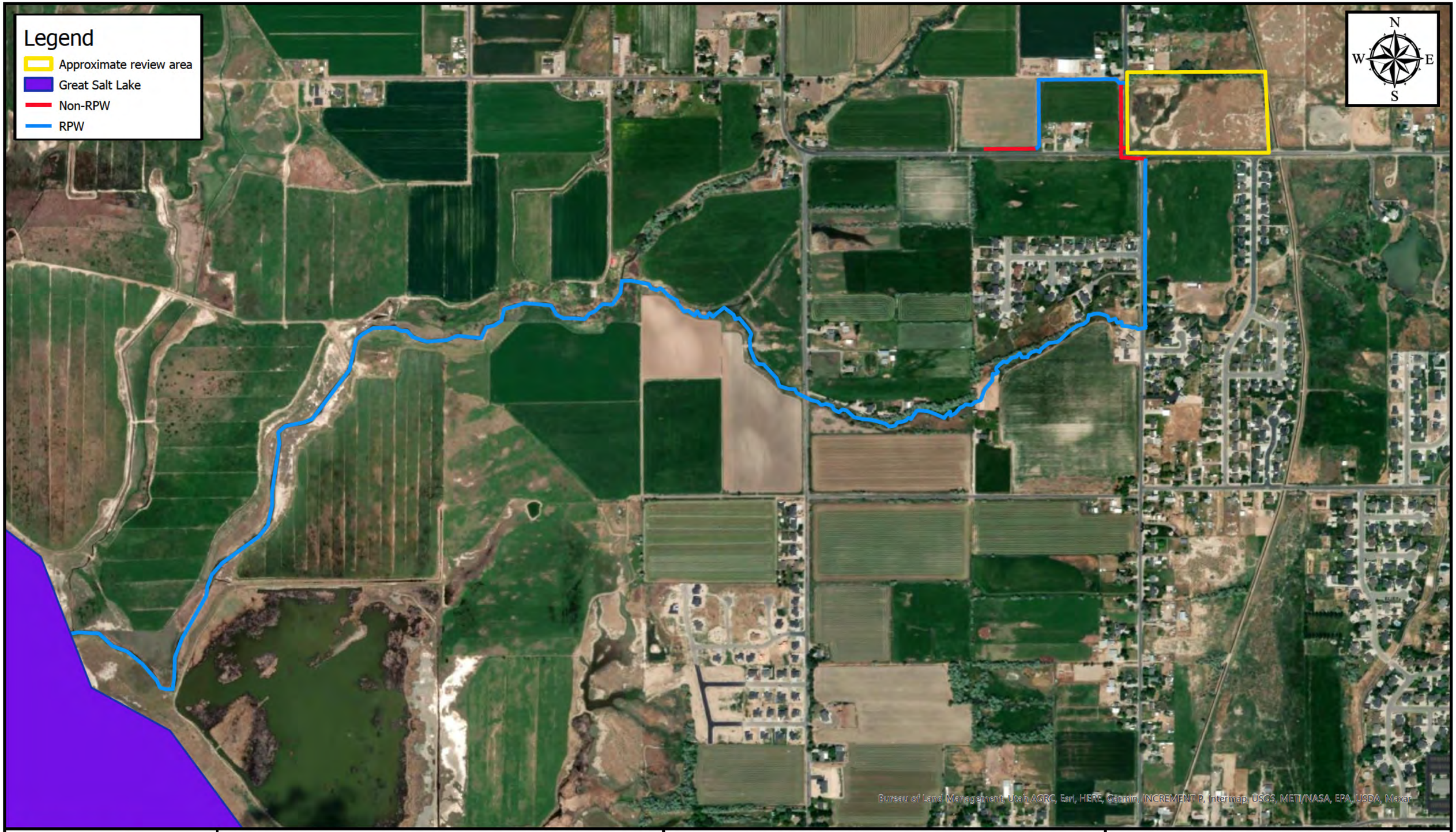
MFR Enclosure 1



SPK-2022-00466

0 0.17 0.35 0.7

mi

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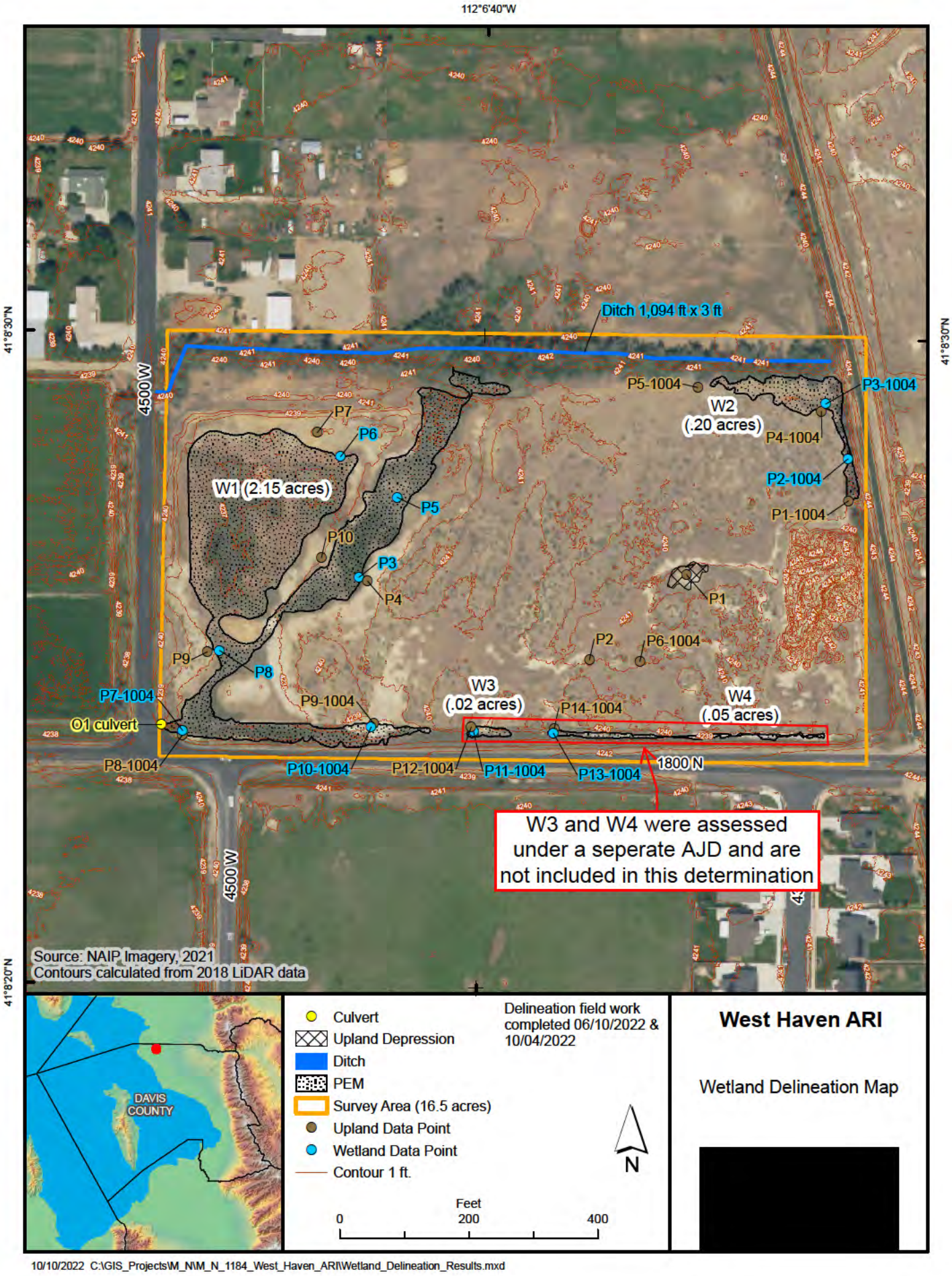
Map Created by: [redacted]

Date: 6/12/2025

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere

MFR Enclosure 2



MFR Enclosure 3

Mapped Photo Log for Seifert Estates SPK-2022-00466

Description:

Photographed by [redacted]
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Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 6/11/2025 using the
Photo Log Toolbar, written by Jason C. Deters

MFR Enclosure 4

Mapped Photo Log for Seifert Estates SPK-2022-00466

Description:

Photographed by [redacted]
on 5/7/2025 at 2:22:32 PM MDT
Camera: NIKON CORPORATION COOLPIX W300
Location Source: Camera's internal GPS
Heading Source: Camera's internal compass
Map generated on 6/11/2025 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: -112.112952 41.141418
Upper Left Corner: -112.114170 41.142271
Lower Right Corner: -112.111733 41.140566
Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

0 40 80 160
Feet

N W E S

Mapped Photo Log for Seifert Estates SPK-2022-00466

Description:

Photographed by [redacted]
on 5/7/2025 at 2:25:25 PM MDT
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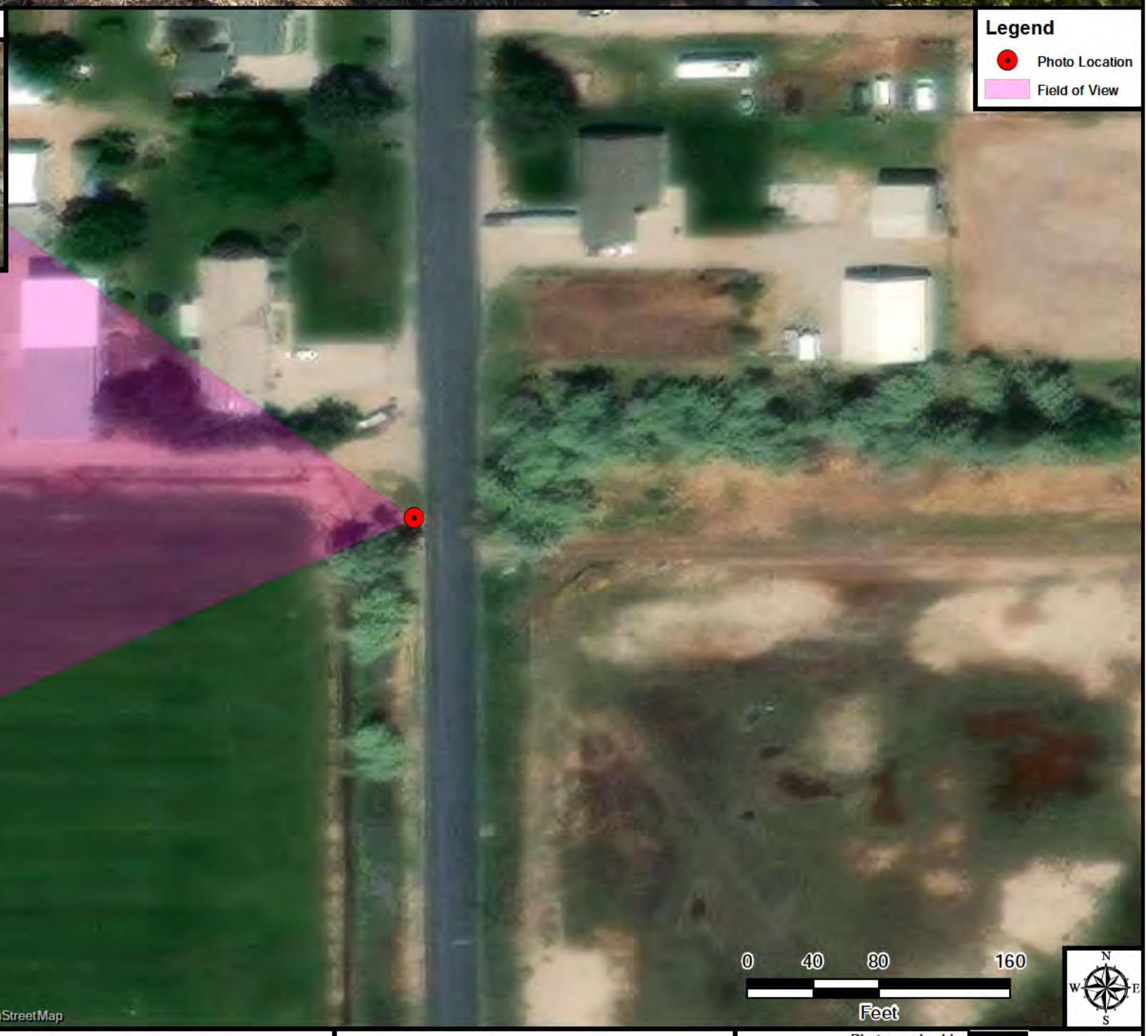

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Map generated on 6/11/2025 using the
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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

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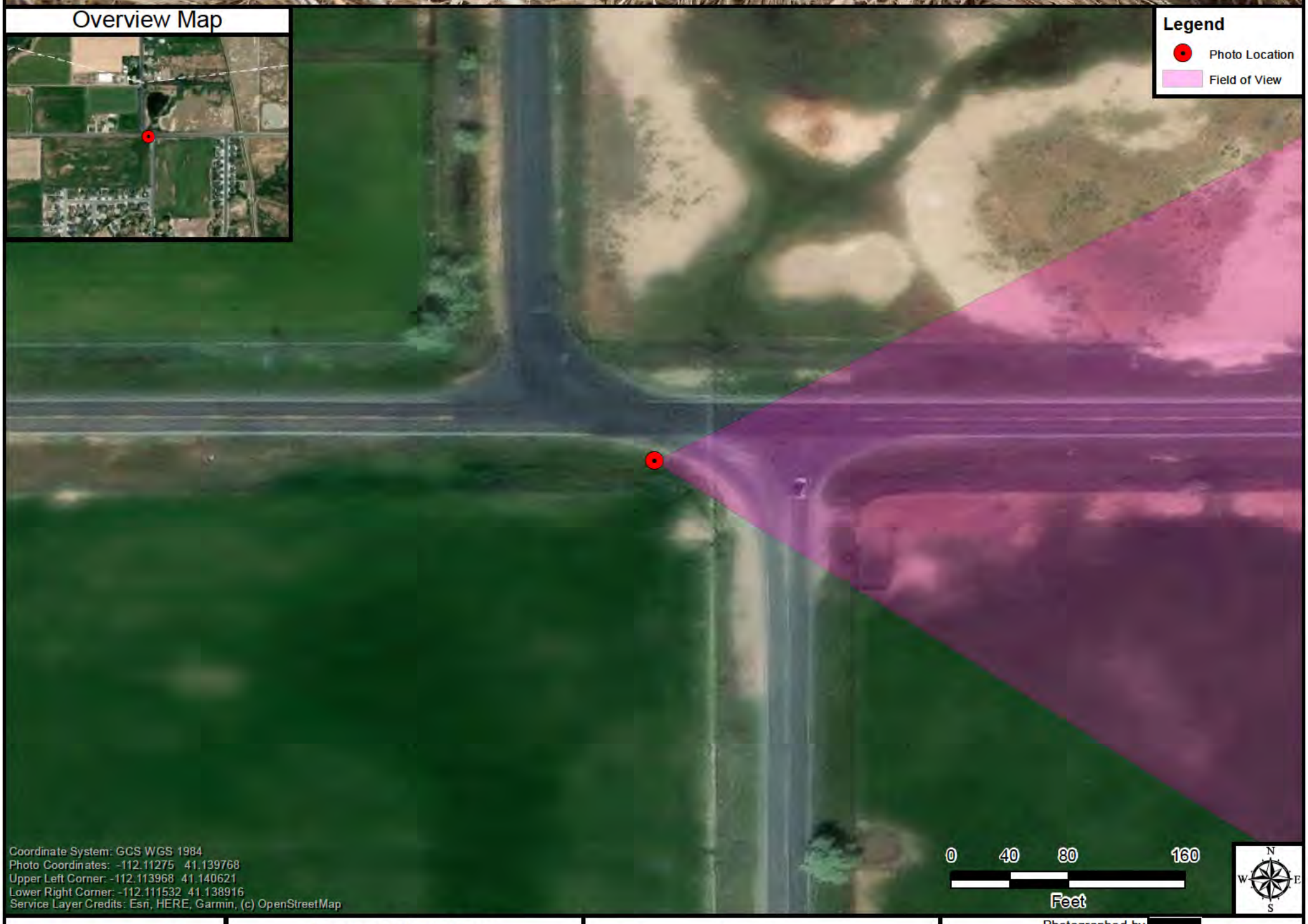

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Map generated on 2/7/2025 using the
Photo Log Toolbar, written by Jason C. Deters

Mapped Photo Log for Seifert Estates 202200466

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Heading Source: Camera's internal compass
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Photo Log Toolbar, written by Jason C. Deters

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Mapped Photo Log for Seifert Estates 202200466

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Mapped Photo Log for Seifert Estates SPK-2022-00466

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Map generated on 2/20/2025 using the
Photo Log Toolbar, written by Jason C. Deters

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Heading Source: Camera's internal compass
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Heading Source: Camera's internal compass
Map generated on 2/20/2025 using the
Photo Log Toolbar, written by Jason C. Deters


3/2025
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Image © 2025 Airbus
Google Earth
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Imagery Date: 6/3/2023 lat 41.140811° lon -112.110887° elev 4241 f
MFR Enclosure 5


6/2022
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Image © 2025 Maxar Technologies
Google Earth
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Imagery Date: 6/9/2022 lat 41.140811° lon -112.110887° elev 4241 ft eye alt 5543 ft


6/2022
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Image © 2025 Maxar Technologies
Google Earth
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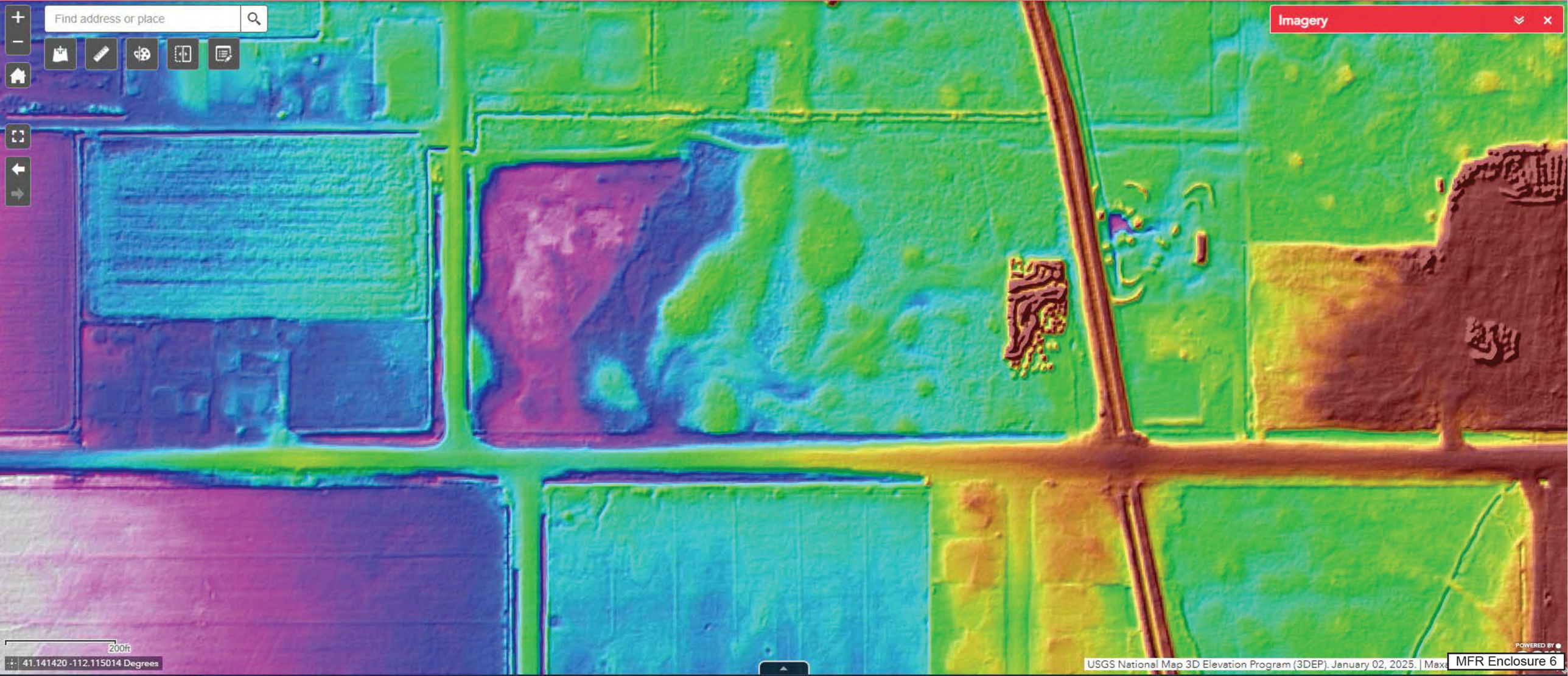
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200ft
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USGS National Map 3D Elevation Program (3DEP). January 02, 2025.
MFR Enclosure 6


1800 N
5000 W
4500 W
1650 N
1550 N
1475 N
4300 W
SD 15in
SD 18in
SD 24in
SD 8in
MFR Enclosure 7