



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

CESPK-RDI-U

14 JUL 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-2007-00947-UO] (MFR 1 of 1)

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.

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) Wetland 1, Jurisdictional under Section 404 of the Clean Water Act.

(2) Wetland 2, Jurisdictional under Section 404 of the Clean Water Act.

(3) Wetland 3, Jurisdictional under Section 404 of the Clean Water Act.

(4) Ditch, Jurisdictional under Section 404 of the Clean Water Act.

(5) Wetland 4, 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 5.97 acre review area is located within Section 14 Township 9 North, Range 2 West, Salt Lake Meridian, Latitude 41.520354°, Longitude - 112.03130°, Brigham City, Box Elder 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.

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

The GSL meets Criteria 2, 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 onsite wetlands directly abut relatively permanent waters (RPWs) that either originate or flow through the subject site. The RPW subject to this MFR is an unnamed, unidentified order perennial RPW (ditch) which flows east to west across the review area into the Box Elder Creek, which drains into the Black Slough, which ultimately drains into the Bear River Bay of the Great Salt Lake (AJD MFR Enclosure 3).

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

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

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.

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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): There is 0.06 acre (340 linear feet) of a tributary that is a relatively permanent waters (RPWs) within the review area.

Ditch – Approximately 0.06 acre (340 linear feet) occur within the study area. The unnamed stream is a relatively permanent water with perennial flows to the Great Salt Lake that meets the (a)(5) category “waters of the United States” in the pre-2015 regulatory regime. A review of aerial records between 2009 and 2023 with photos taken during different times of the year shows water within this ditch year-round (AJD MFR Enclosure 3).

f. The territorial seas (a)(6): None

g. Adjacent wetlands (a)(7): There are adjacent wetlands having a continuous surface connection (directly abutting) to a RPW within the review area.

A total of 0.93 acre of palustrine emergent wetlands within the study area meet the (a)(7) category of “waters of the United States” per the pre-2015 regulatory regime.

The areas identified as Wetland 1 (0.42 acre), Wetland 2 (0.50 acres), and Wetland 3 (0.004 acre) are adjacent (i.e. directly abutting the ditch). These wetlands meet the (a)(7) category “waters of the United States” per the pre-2015 regulatory regime since they are directly abutting and have a continuous surface connection to the ditch, which is a relatively permanent (a)(5) tributaries to the Great Salt Lake.

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.

⁷ 51 FR 41217, November 13, 1986.

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Wetland 4 does not have a continuous surface connection (directly abutting) to a RPW within the review area.

A total of 0.73 acre of palustrine emergent wetland within the study area are not adjacent to a water identified in paragraph (a)(1) through (6). Wetland 4 does not connect to Wetland 1 or Wetland 2 as well as the onsite ditch. As such, this wetland is isolated from the other aquatic resources within the review area.

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.

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. There are no 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).

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 Report “Hansen Motors Storage Lot” prepared by [REDACTED] dated March 14, 2024. 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 Arid West Region.

b. Flow path – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved May 2, 2025 (AJD MFR Enclosure 3)

c. Photographs: Photos included in the [REDACTED] Aquatic Resources Delineation Report. Corps photolog collected (April 08, 2025). Cache County, Latitude 41.520355°, Longitude -112.03130°. Retrieved (October 2014, June 2017, September

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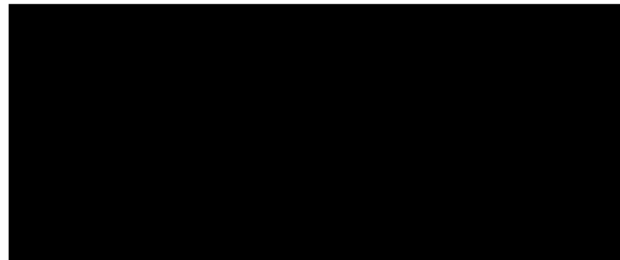
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2018, May 2021, and June 2023), from <http://www.earth.google.com> (AJD MFR Enclosure 4)

d. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved DATE (AJD MFR Enclosure 5)

10. OTHER SUPPORTING INFORMATION. The Corps concurs with the aquatic resource delineation report and map. On April 8th, 2025, the Corps visited the site to take a sample point between Wetland 2 and Wetland 4 to see if both wetlands were connected. The sample point did not meet all three criteria for a wetland as such the area between Wetland 2 and Wetland 4 is uplands.

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.



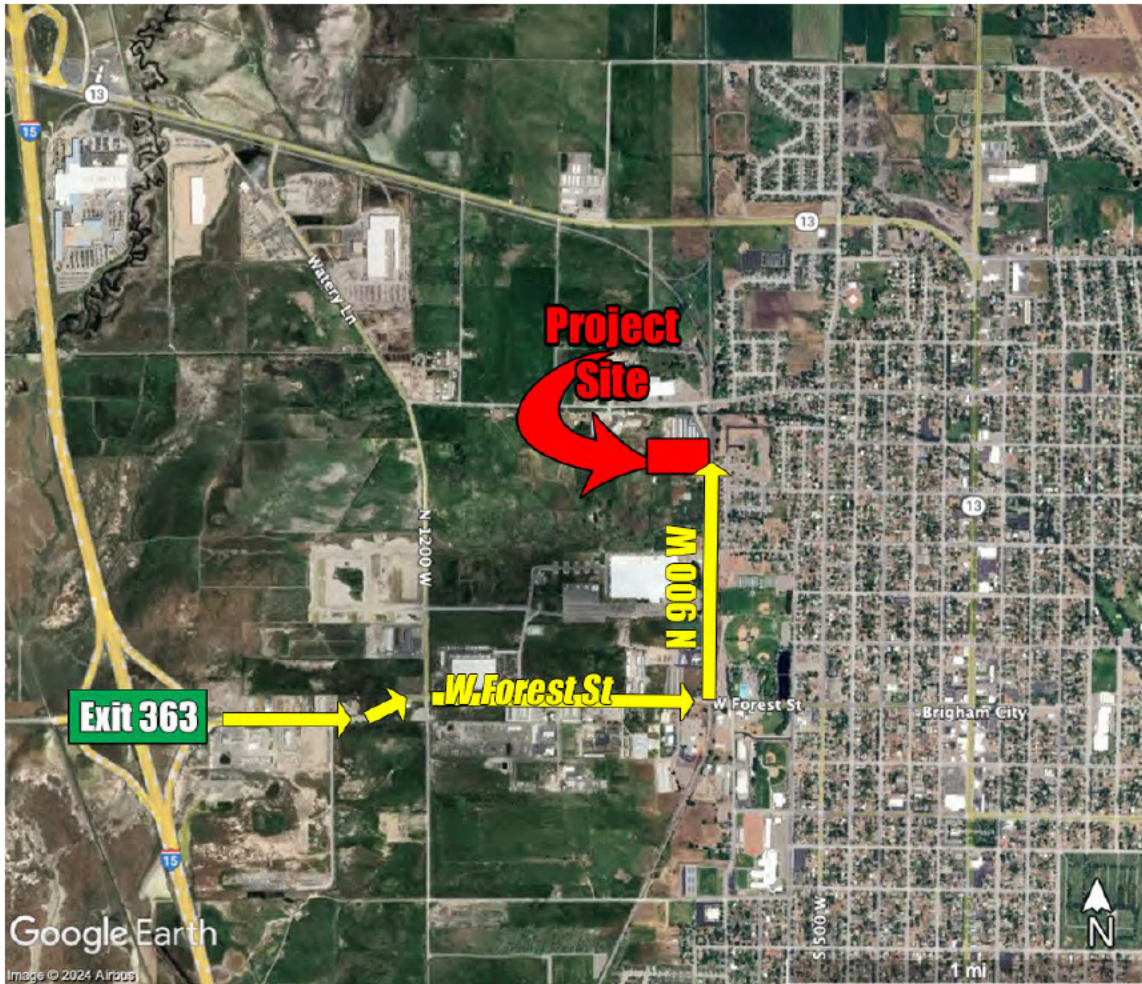
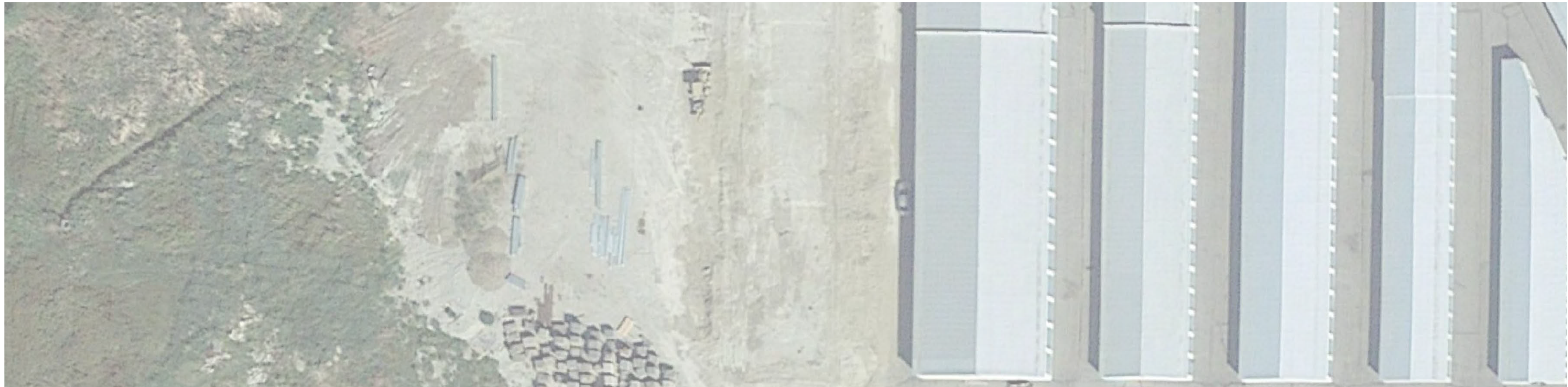


FIGURE 1. LOCATION OF THE HANSEN MOTORS STORAGE LOT.

The HMSL is located in Brigham City, Box Elder County, Utah at approximately 4,260 feet above sea level, and it lies within Section 14 Township 9 North, Range 2 West, Salt Lake Meridian. The approximate center of the project is at 41.52037039° , -112.03145052° in decimal degrees.

To reach the HMSL, take I-15 to Exit 363 for Brigham City. Turn right (east) onto Forest Street. Travel east approximately 1.35 miles to N 900 W. Turn left (north) and travel approximately 0.7 mile. The property gate will be on the left (west) side.





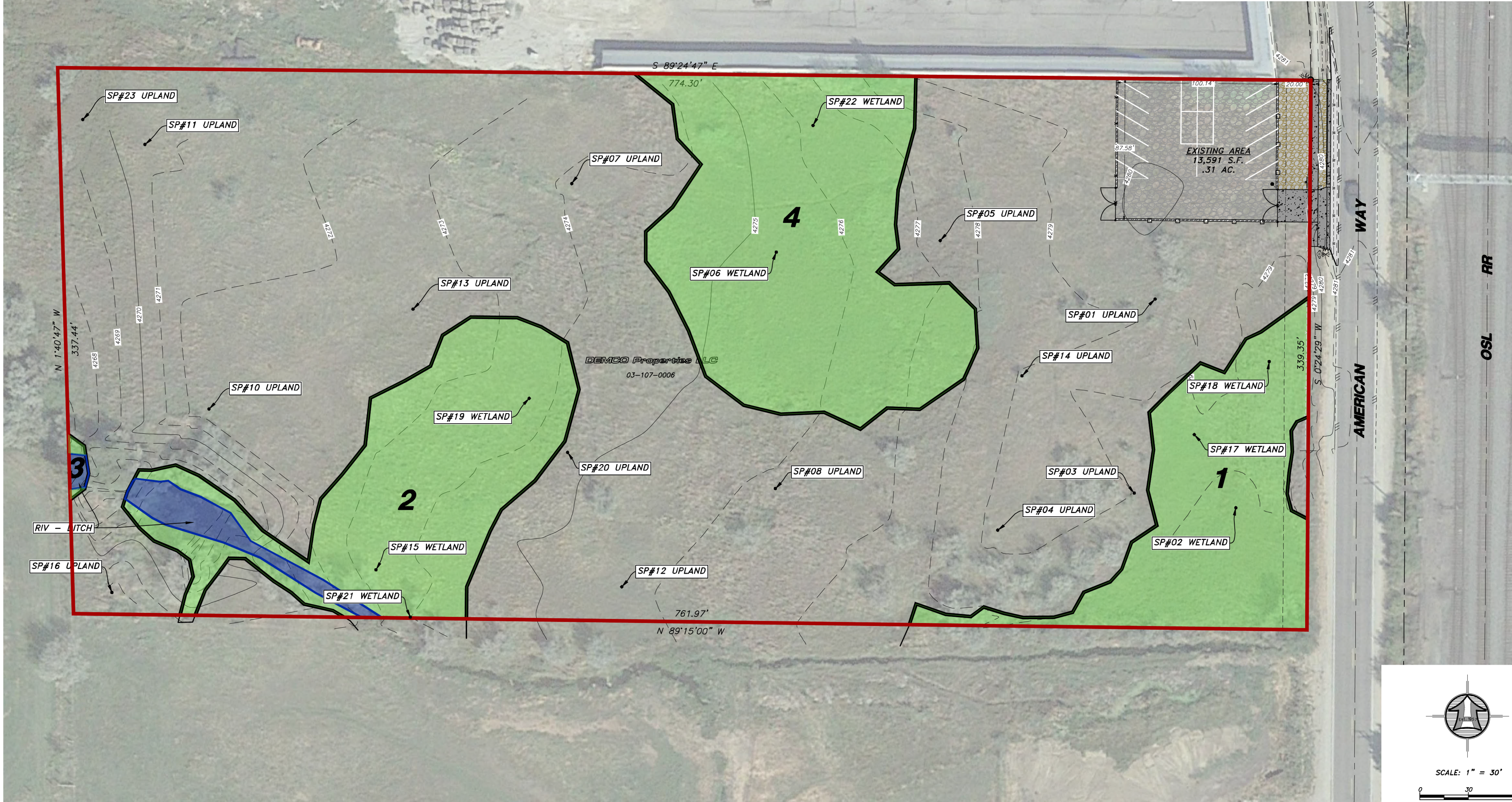
WETLAND	TYPE	AREA (Acres)	AREA (s.f.)
1	PEM	0.422	18,384
2	PEM	0.504	21,955
3	PEM	0.004	157
4	PEM	0.730	31,811
DITCH	RIV	0.057	2,473

TOTAL WETLANDS: 1.717 Acres (74,780 s.f.)
TOTAL UPLANDS: 4.248 Acres (185,050 s.f.)

TOTAL PROJECT AREA: 5.965 Acres (259,830 s.f.)

LEGEND

STUDY AREA	
SOIL PIT	
DELINEATED WETLANDS	
DITCH	



Drawn By: SRH

Designed By:

Checked By:

Approved By:

Scale: 1" = 30'

Drawing File:

JOB NUMBER: 20-5-56

DATE: 03/15/24

HANSEN MOTOR CO. PROPERTY

465 North American Way

Brigham City, Box Elder County, Utah

A Part of the Northeast Quarter of Section 14,

Township 9 North, Range 2 West, S.L.B.&M.

Sheet

1

of

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Sheets