



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

CESPK-RDI-U

14 JULY 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-2024-00133]

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 the State of 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) W01, jurisdictional under Section 404 of the Clean Water Act.

(2) Ditch 1, 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 6-acre review area is located near 1050 South Foothill Drive, Latitude 40.628566°, Longitude -111.269101°, Kamas, 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 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);

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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. Ditch 1 flows onto the adjacent property to the north where it turns to run west along the southern property boundary. The boundary of W01 appears to extend beyond the review area to the north and directly abut Ditch 1. Ditch 1 then enters an irrigation ditch network that flows into Beaver Creek then to the Weber River, which flows into the GSL (MFR Enclosure 2).

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 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

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.

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): Ditch 1 meets the definition of an (a)(5) tributary. Ditch 1 is a permanent tributary that flows into the GSL. The flow regime of this tributary was based on a review of aerial images, where it appears to contain standing or flowing water in the majority of images taken during the irrigation season.

f. The territorial seas (a)(6): N/A

g. Adjacent wetlands (a)(7): W01 meets the definition of an (a)(7) adjacent wetland. Based on available data, W01 continues off site to the north and directly abuts Ditch 1, a relatively permanent water that flows into a TNW (MFR Enclosure 3).

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. 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

⁷ 51 FR 41217, November 13, 1986.

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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). 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 titled “Aquatic Resources Delineation Report Kamas Foothills Parcel” prepared by [REDACTED] and dated February 8, 2024. 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 Western Mountains, Valleys, and Coast region.

b. Photographs – aerial images dated May 2024, August 2020, May 2017, May 2013, September 2011, May 2009, and an unknown month in 2005. Davis County, Latitude 40.992320°, Longitude -111.918579°. Retrieved 23 January 2025, from <http://www.earth.google.com> (AJD MFR Enclosure 4)

c. LiDAR – National Layer in the National Regulatory Viewer for the South Pacific Division. Retrieved 09 July 2025 (AJD MFR Enclosure 5)

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.

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4 ENCL

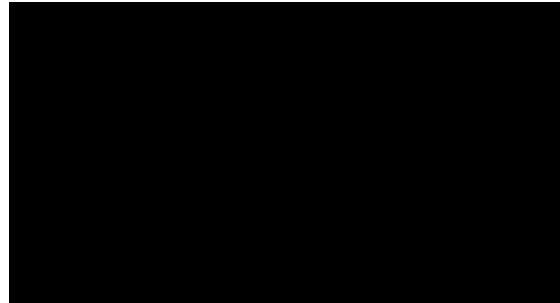
Enclosure 1: Location map

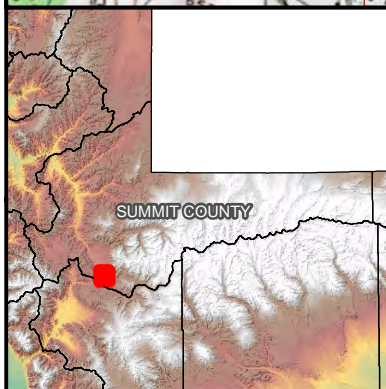
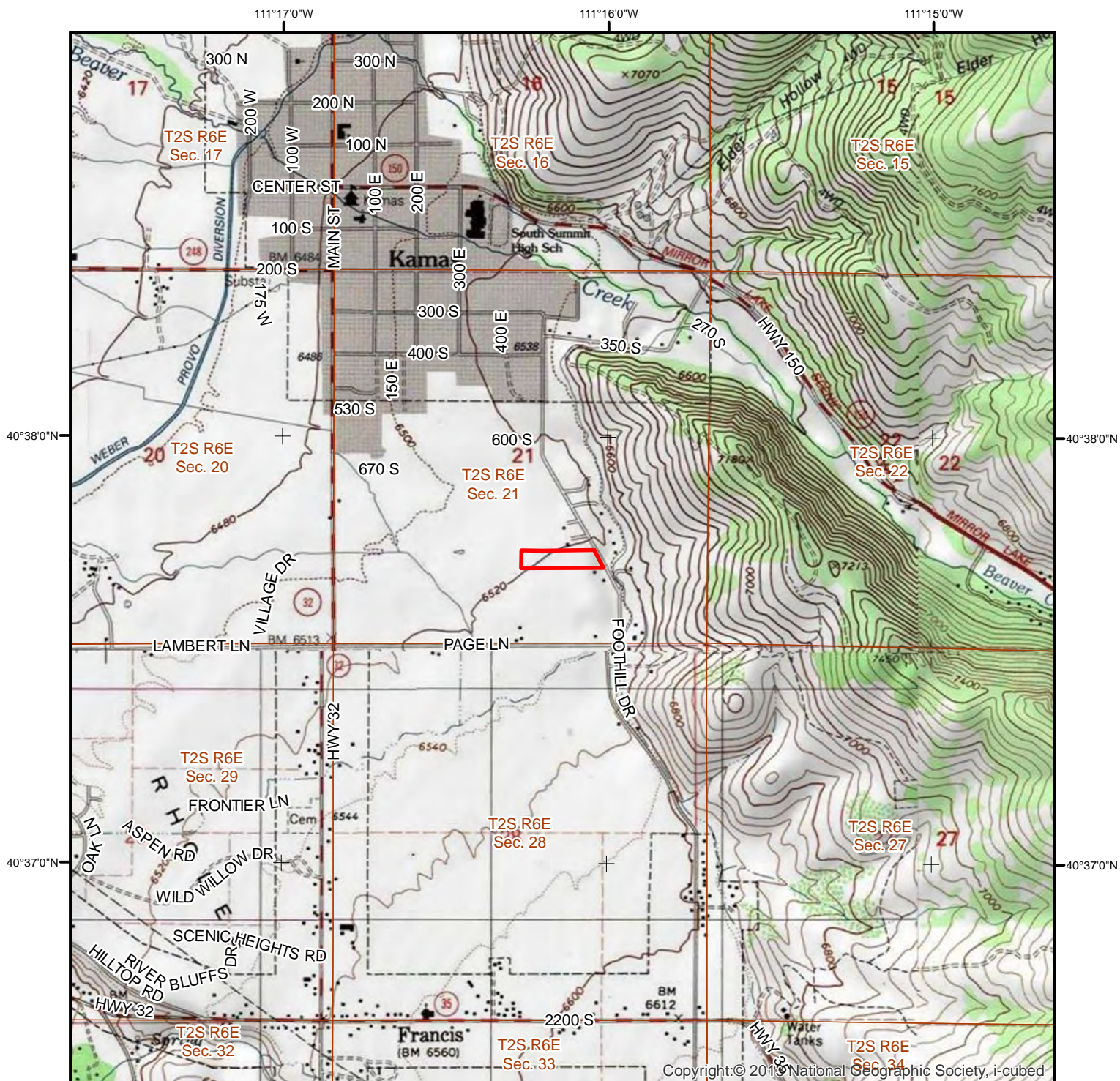
Enclosure 2: Flow path map

Enclosure 3: AR map

Enclosure 4: Aerial images

Enclosure 5: LiDAR-Digital elevation
model and hillshade map





 Survey Area (6.36 acres)

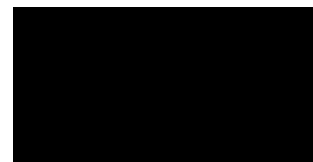


0 0.25 0.5 0.75 1
Miles

Kamas Foothill

Figure 1

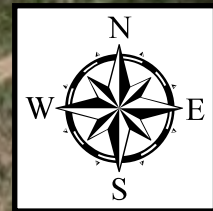
Project Location





Legend

- Flowpath
- Weber River
- Review area



Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, USGS, METI/NASA, EPA, USDA, Maxar



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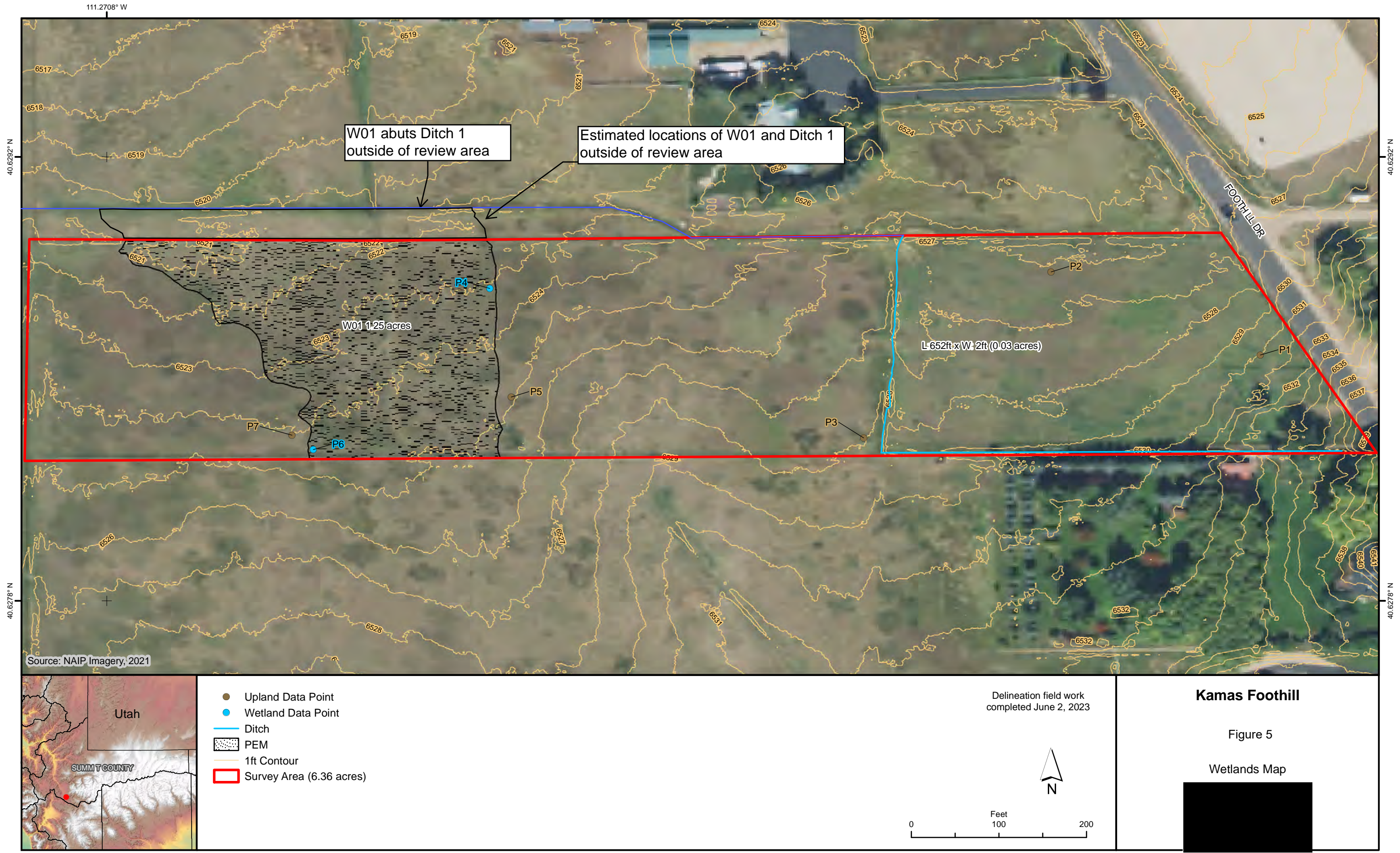


Map Center: 111.287321°W 40.663843°N

Author Name

Date: 7/2/2025

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



AJD review area

Image © 2025 Airbus

AJD MFR Enclosure 4

Google Earth

1985 8/2020 2024

Navigation controls including a compass, a street view pegman, and a vertical zoom slider.

AJD review area



Image © 2025 Maxar Technologies

Google Earth

1985 6/2017 2024

Navigation controls including a compass, a hand icon for panning, a person icon for street view, and a vertical zoom slider.



AJD review area



1985 6/2013 2024

Navigation controls including a compass, a street view pegman, and a vertical zoom slider.

AJD review area



Google Earth

1985 10/2011 2024

Click and drag to rotate, or click "N" to reset to north

Navigation controls including a compass, a hand icon for panning, a person icon for street view, and a vertical zoom slider with plus and minus buttons.

AJD review area



Image USDA/FPAC/GEO

Google Earth

8/2009

AJD review area

Image USDA/FPAC/GEO

Google Earth

Imagery Date: 6/22/2009 lat 40.628678° lon -111.269021° elev 6530 ft eye alt 7650 ft

1985

12/2006

AJD review area

Image State of Utah

Google Earth

1985

Imagery Date: 12/31/2005 lat 40.628678° lon -111.269021° elev 6530 ft eye alt 7650 ft



AJD review area

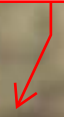


Image USDA/FPAC/GEO

Google Earth

Map navigation controls including zoom in (+), zoom out (-), home, and a search bar labeled "Find address or place". Below the search bar are icons for layers, a ruler, a compass, a location pin, and a document. On the left side, there are icons for full screen, previous view, and next view.

