



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

CESPK-RDI-U

02 OCTOBER 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-2018-00648]

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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2018-00648]

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: 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 1-acre project site is located at 7300 North Greenfield Drive, Latitude 40.736943°, Longitude -111.504059°, Park City, Summit 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 East Canyon Reservoir (ECR). The ECR 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;

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

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2018-00648]

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

The ECR meets Criteria c above, having been found navigable-in-fact under project number SPK-2008-00529. Thus, the ECR 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. Wetland 1 is a wetland swale that runs north to south across the study area. Approximately 35 feet south of the review area, the downstream connection of wetland 1 is severed by an upland berm that is approximately 45 feet wide. The swale continues on the southern side of the berm for approximately 200 feet before entering a culvert. A Corps site visit and ground photographs identified no ordinary high water mark indicators along this section of swale. The culvert empties into a wide swale for approximately 1,350 feet before entering a tributary of Kimball Creek, which flows into East Canyon Creek then East Canyon Creek Reservoir, a TNW (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 aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A

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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2018-00648]

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 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

⁷ 51 FR 41217, November 13, 1986.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2018-00648]

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 1 is a non-tidal wetland with no continuous surface connection to a downstream TNW. Wetland 1 is a long depressional swale that is interrupted by an upland berm south of the study area. An unpronounced swale continues after the berm, but this section of swale does not appear to meet wetland parameters based on ground photographs. Wetland 1's downstream connection is severed by upland berm, sections of upland swale, and culvert (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 0.89-Undeveloped Acres 7300 N. Greenfield Drive Park City, Summit County, Utah" prepared by [REDACTED] and dated June 10, 2025. 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: USACE photolog collected on September 10, 2025 (MFR Enclosure 4) and aerial images from Google Earth Pro 7.3.6.10201 dated May 2022, and July 2019 (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.

5 Encls

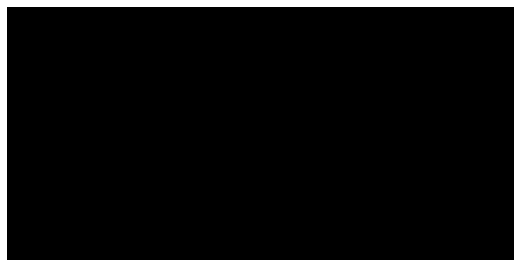
Enclosure 1: Location map

Enclosure 2: Flow path map

Enclosure 3: AR map

Enclosure 4: Corps photolog

Enclosure 5: Aerial images





Legend

-  Project Area
-  Road

**7300 N.Greenfield Dr.
Park City,Utah 84098**

VICINITY MAP Appendix B

Project No.: 
Investigator: 
Date: 06/03/2025
Revision:
Image Date: 11/06/2024



Legend

- AJD study area
- Upland berm
- Wetland swale
- Swale
- Culvert
- Tributary of Kimball Creek



SPK-2018-00648

0 0.05 0.1 0.2
mi
Map Center: 111.503935°W 40.734595°N

Map Created by: [REDACTED]
Date: 10/1/2025
Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere



Legend

PA Corner Photo Points

Delineation Points-Test Pits

● TP1

● TP2

● TP3

— Watercourse

— Wetland Boundary

● Termination Point

— Project Area

— Photo Direction

Contour = 1ft.

**7300 N.Greenfield Dr.
Park City,Utah 84098**

AQUATIC RESOURCES DELINEATION MAP Appendix A

Project No.: [REDACTED]

Investigator: [REDACTED]

Date: 06/03/2025

Revision:

Image Date: 11/06/2024



Legend

-  Photo Location
-  Field of View

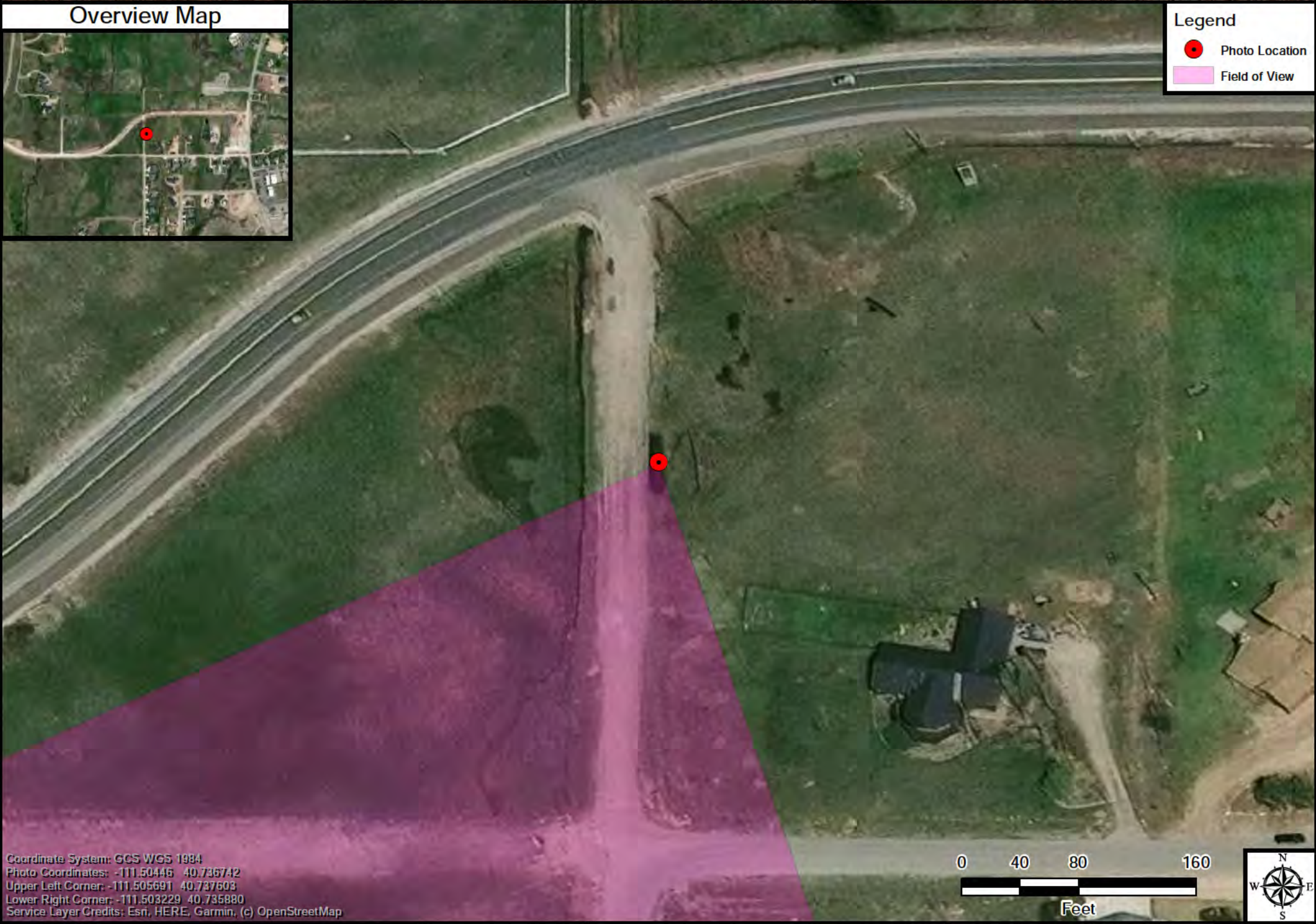
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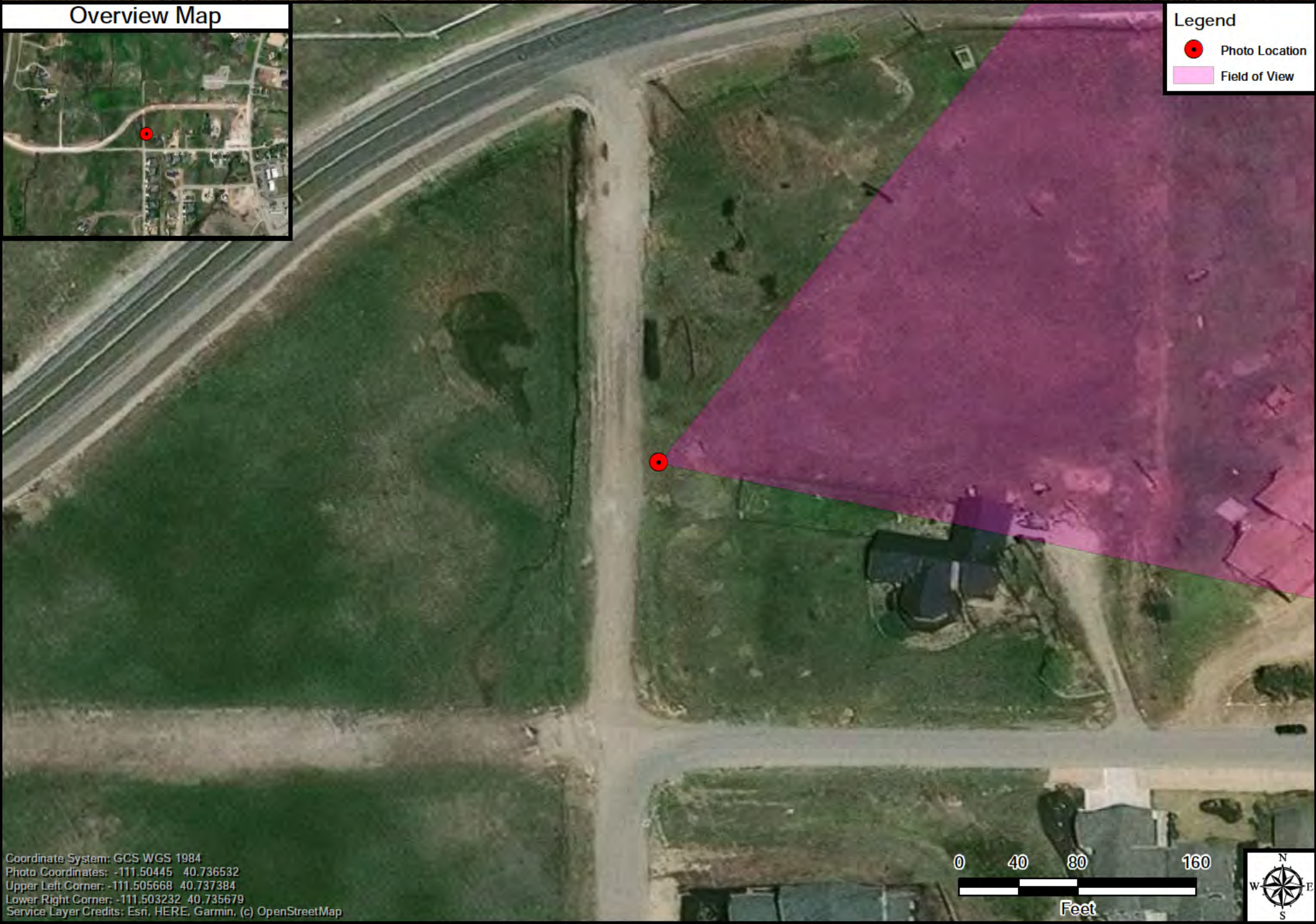


Mapped Photo Log
for [REDACTED] Driveway Culvert
201800648

Description:

Photographed by [REDACTED]
on 9/10/2025 at 2:53:35 PM MDT
Camera: NIKON CORPORATION COOLPIX W300
Location Source:
Heading Source: Camera's internal compass
Map generated on 9/29/2025 using the
Photo Log Toolbar, written by Jason C. Deters





Coordinate System: GCS WGS 1984
Photo Coordinates: -111.50445 40.736532
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Lower Right Corner: -111.503232 40.735679
Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap



Mapped Photo Log
for [REDACTED] Driveway Culvert
201800648

Page 3 of 12

Description:

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Heading Source: Camera's internal compass
Map generated on 9/29/2025 using the
Photo Log Toolbar, written by Jason C. Deters



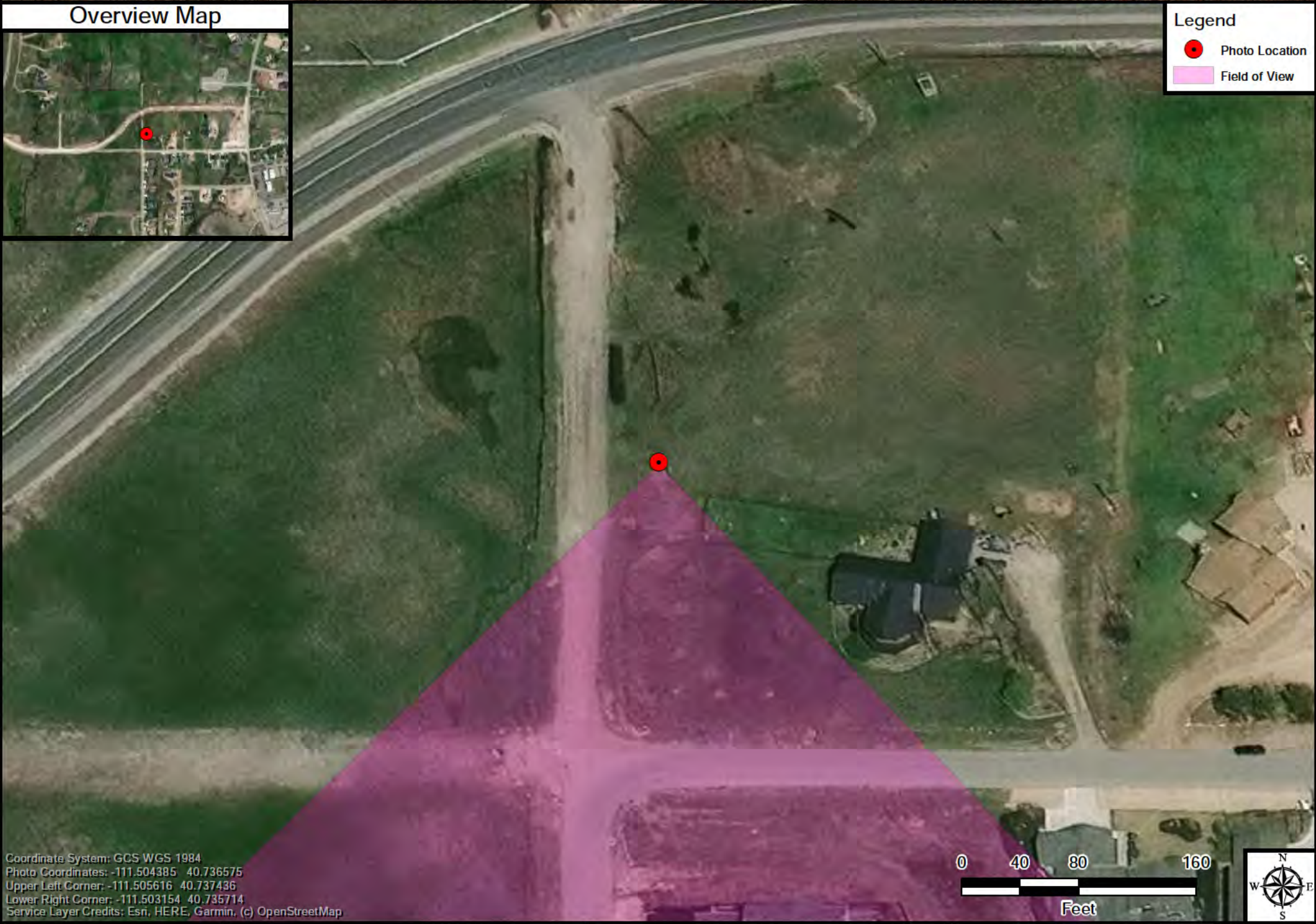
Overview Map



Legend

Photo Location

Field of View



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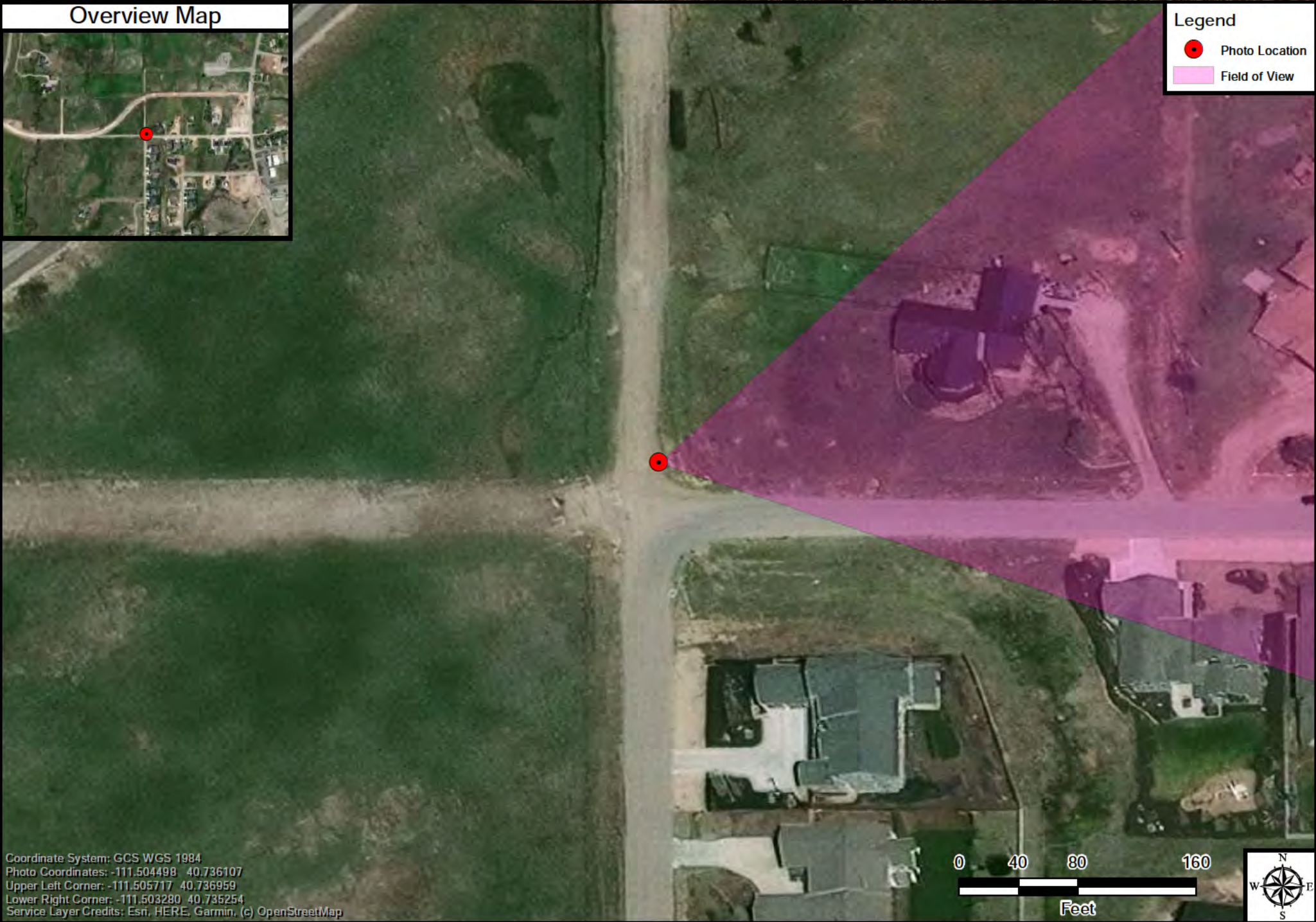
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Feet

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Overview Map



Legend

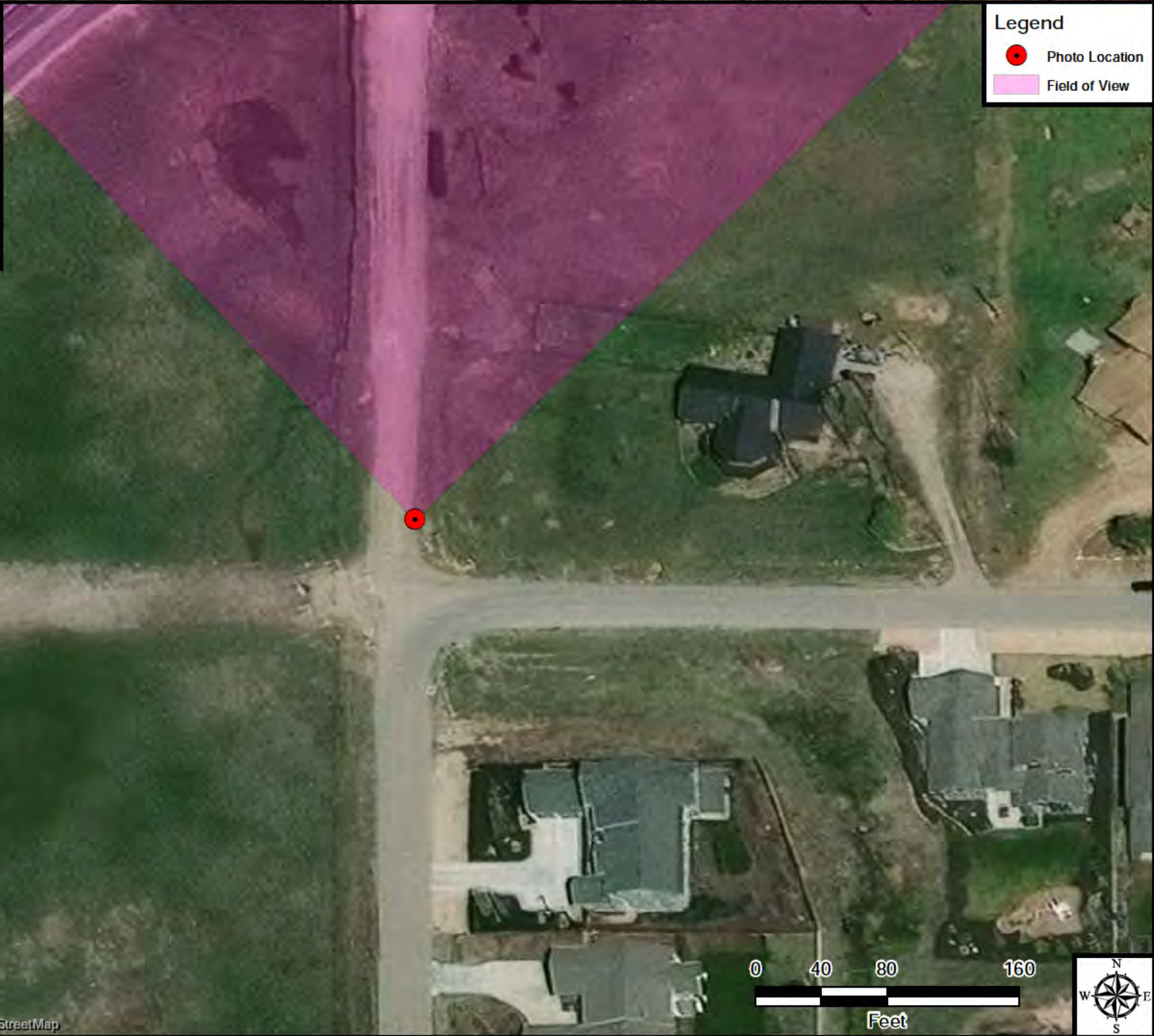
- Photo Location
- Field of View



Mapped Photo Log
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201800648

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Heading Source: Camera's internal compass
Map generated on 9/29/2025 using the
Photo Log Toolbar, written by Jason C. Deters



- Legend
- Photo Location
 - Field of View

Coordinate System: GCS WGS 1984
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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap



Mapped Photo Log
for [REDACTED] Driveway Culvert
201800648

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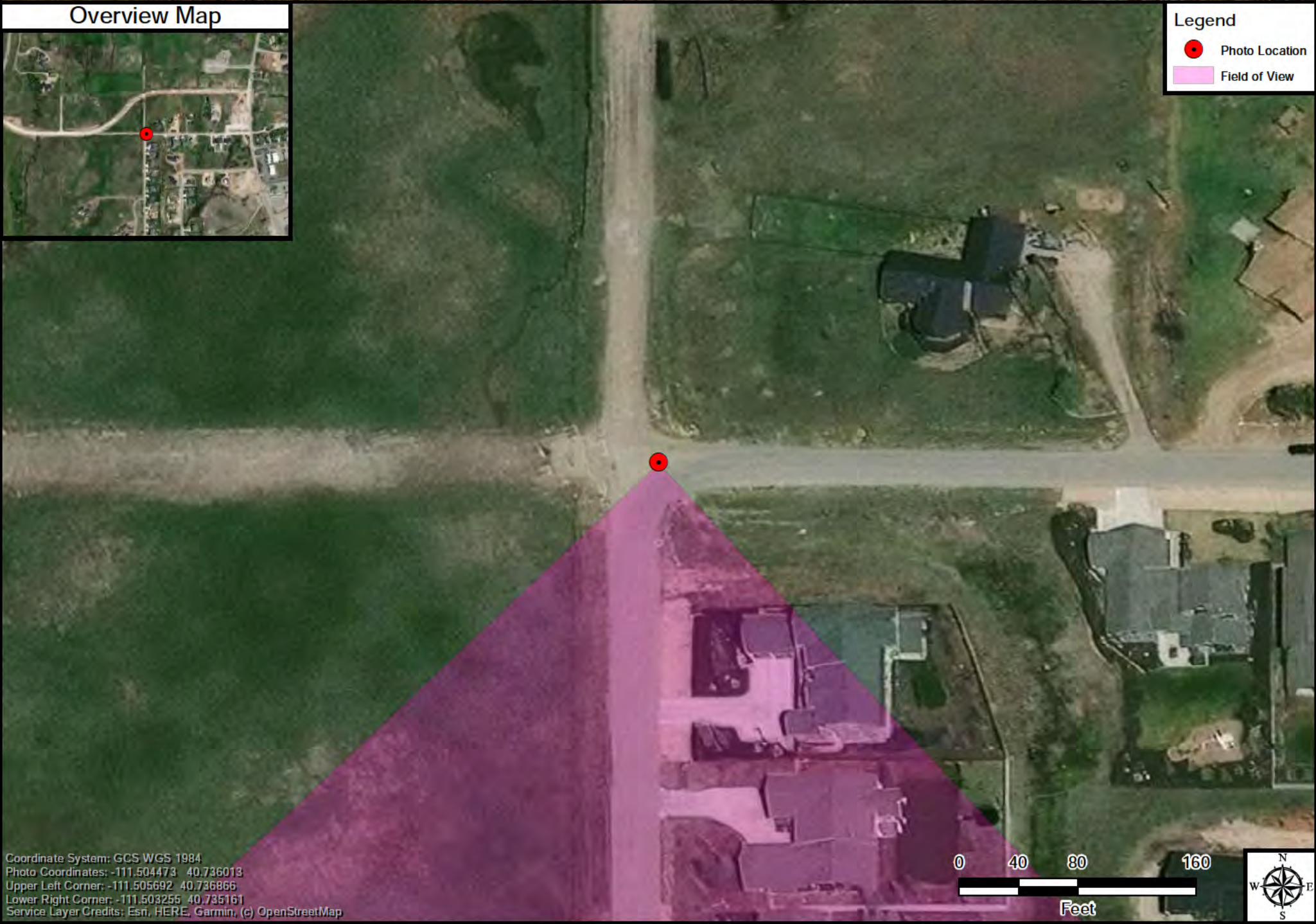
Overview Map



Legend

Photo Location

Field of View



Coordinate System: GCS WGS 1984
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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

04080160

Feet

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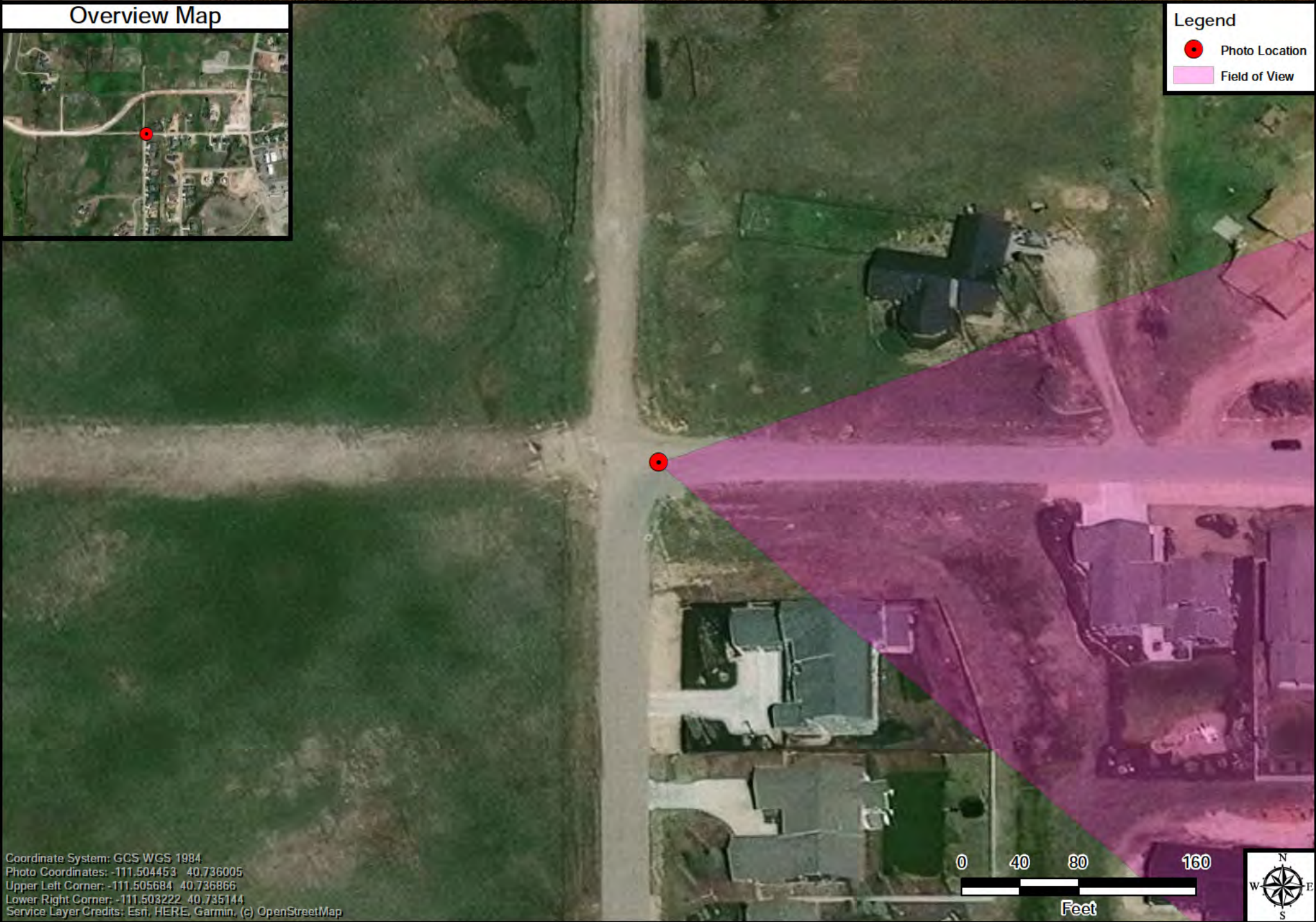
Overview Map



Legend

Photo Location

Field of View



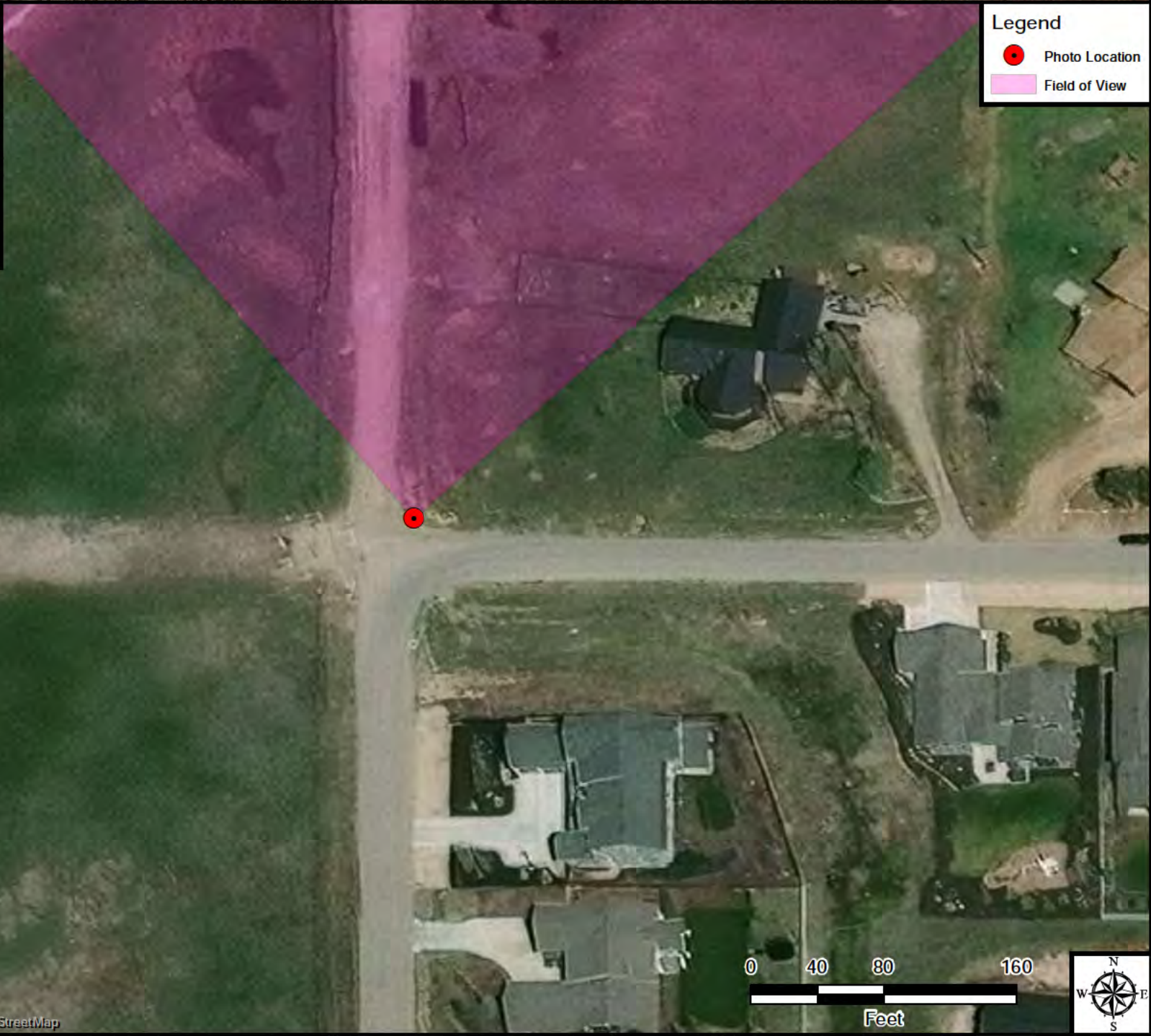
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Mapped Photo Log
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201800648

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Map generated on 9/29/2025 using the
Photo Log Toolbar, written by Jason C. Deters



Legend

- Photo Location
- Field of View

Coordinate System: GCS WGS 1984
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Feet

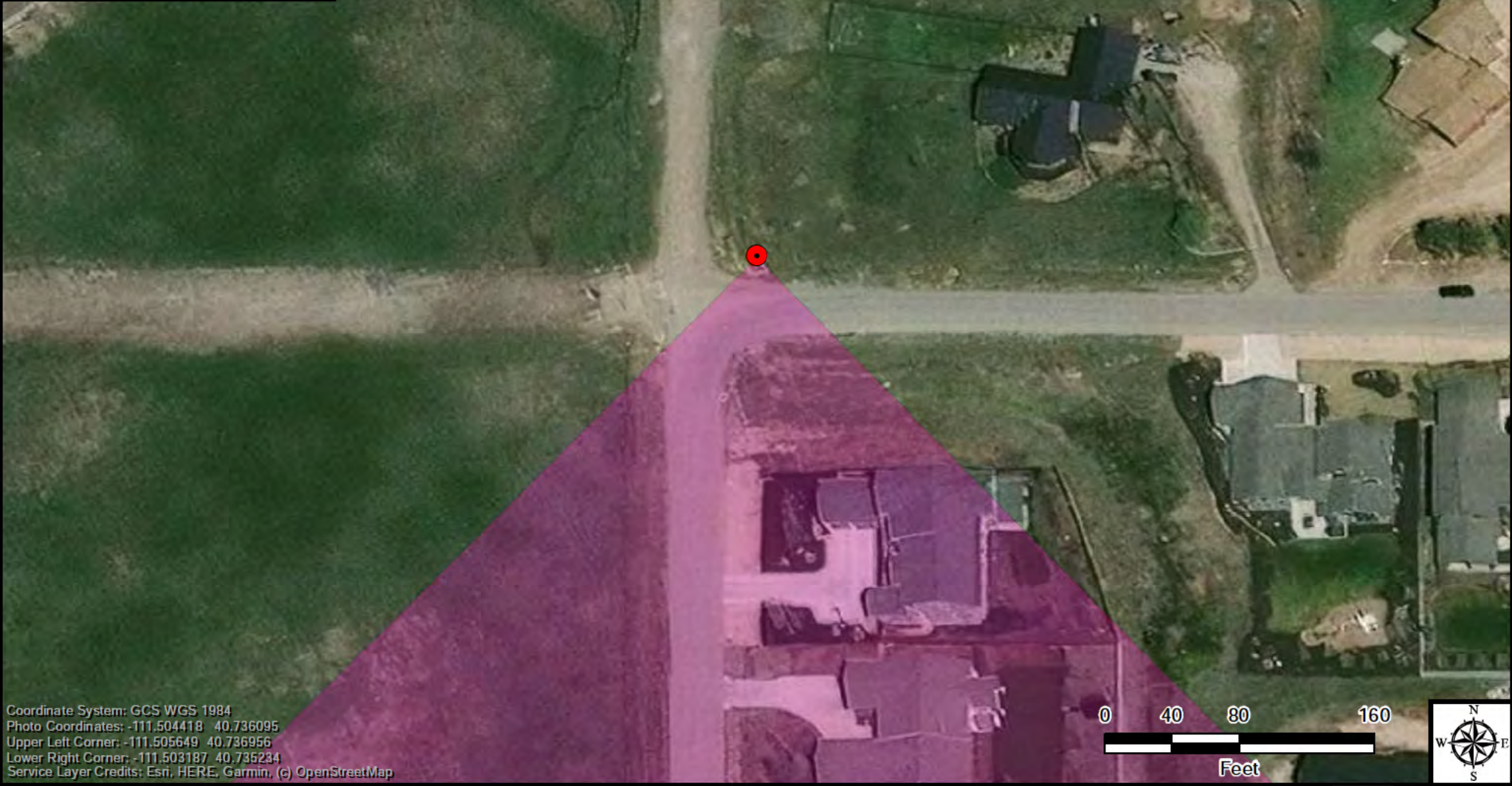


Mapped Photo Log
for [redacted] Driveway Culvert
201800648

Page 9 of 12

Description:

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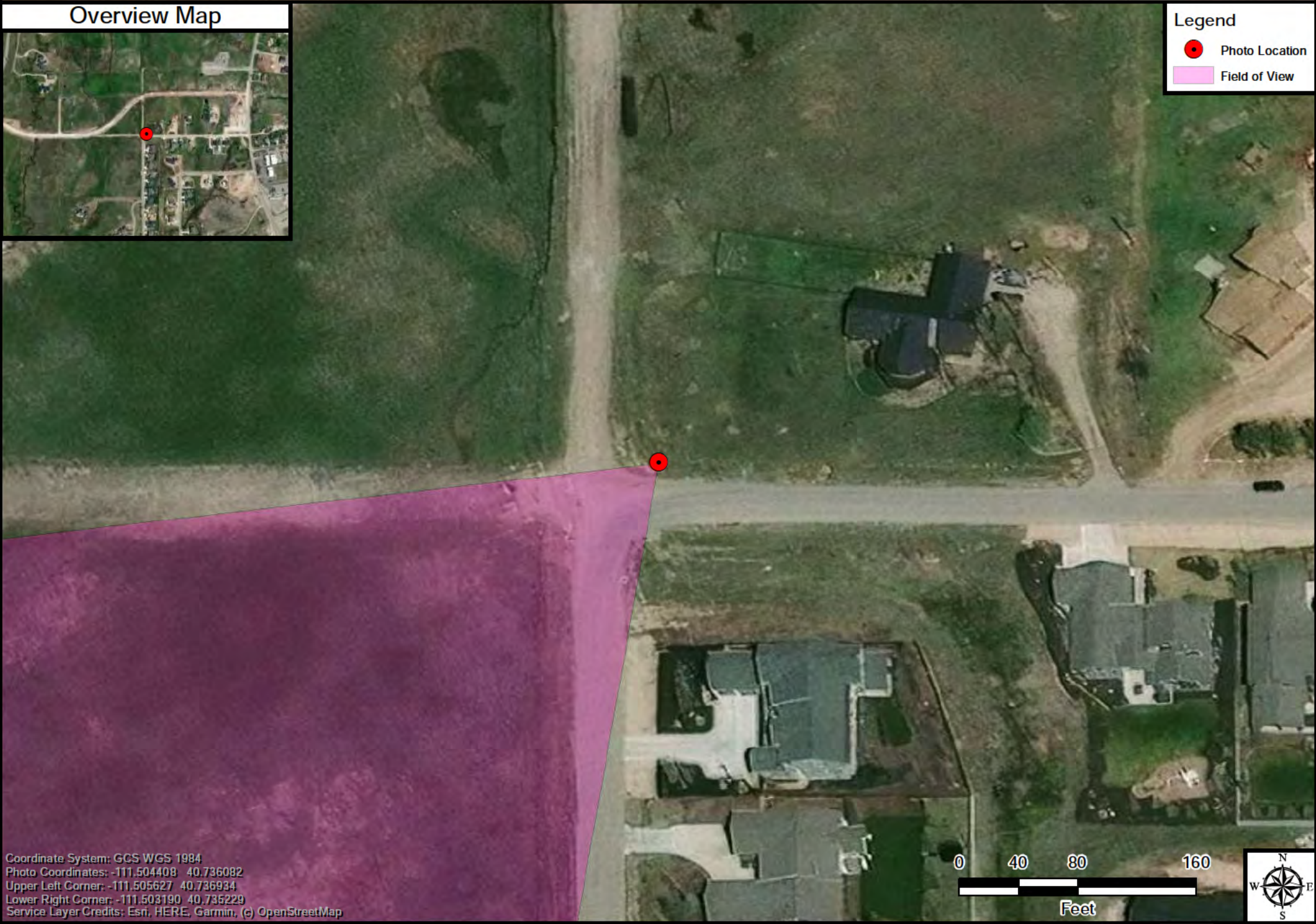
Legend

- Photo Location
- Field of View

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Feet

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Overview Map



Legend

- Photo Location
- Field of View



Coordinate System: GCS WGS 1984
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Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap

0 40 80 160
Feet



Mapped Photo Log
for [REDACTED] Driveway Culvert
201800648

Description:

Photographed by [REDACTED]
on 9/10/2025 at 2:57:17 PM MDT
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Heading Source: Camera's internal compass
Map generated on 9/29/2025 using the
Photo Log Toolbar, written by Jason C. Deters

5/2022

N



1985

Google Earth

Imagery Date: 5/24/2022 lat 40.736579° lon -111.504067° elev 6419 ft eye alt 7291 ft

1985 7/2019 2024

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

