



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

CESPK-RDI-U

07 January 2026

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-2008-01558]

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-2008-01558]

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) OW-1: jurisdictional, subject to Section 404 of the Clean Water Act
- (2) OW-2: **non**-jurisdictional under to Section 404 of the Clean Water Act
- (3) C-1: jurisdictional, subject to Section 404 of the Clean Water Act
- (4) C-2a: jurisdictional, subject to Section 404 of the Clean Water Act
- (5) C-2b: jurisdictional, subject to Section 404 of the Clean Water Act
- (6) C-2c: jurisdictional, subject to Section 404 of the Clean Water Act
- (7) C-3: jurisdictional, subject to Section 404 of the Clean Water Act
- (8) C-4: jurisdictional, subject to Section 404 of the Clean Water Act
- (9) W-1a: **non**-jurisdictional under to Section 404 of the Clean Water Act
- (10) W-1b: **non**-jurisdictional under to Section 404 of the Clean Water Act
- (8) W-2a: jurisdictional, subject to Section 404 of the Clean Water Act
- (9) W-2b: jurisdictional, subject to 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)

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2008-01558]

3. REVIEW AREA. The approximately 5-acre review area is located at 2455 White Pine Canyon Road, Latitude 40.675473°, Longitude -111.553505°, 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 East Canyon Reservoir (ECR). ECR 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 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. The aquatic resources onsite flow into two separate flowpaths, Flowpath A and Flowpath B.

The project site is connected to a TNW. C-1(White Pine Creek) within the site flows into McLeod Creek, followed by Kimball Creek, then into East Canyon Creek, then ECR, a TNW (MFR Enclosure 2). Information regarding the aquatic resources on the property to the northeast were verified in a 2025 AJD (SPK-2024-00108).

W-1a abuts W-1b, which extends into the property to the northeast, outside of this AJD review area. On the northeastern property, W-1b directly abuts an RPW ditch that flows into a pond. A culvert connects the pond to another ditch that continues off of the northeastern property, where it terminates in the uplands (MFR Enclosure 2). This determination is based on LiDAR data and a 2018 aquatic resources delineation report that was not verified by the Corps (SPK-2022-00113).

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2008-01558]

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

b. Interstate Waters (a)(2): N/A

c. Other Waters (a)(3): N/A

d. Impoundments (a)(4): N/A

e. Tributaries (a)(5): C-1, C-2a, C-2b, C-2c C-3, C-4, and OW-1 meet the definition of an (a)(5) tributary. C-1 is a relatively permanent tributary that flows into ECR. C-2a, C-2b, C-2c, C-3, C-4, and OW-1 are relatively permanent tributaries that flow into C-1. The flow regime of these tributaries was determined based on a May 16, 2024 Corps site visit of the adjacent downstream property, a review of aerial images, and information submitted in the February 1, 2024 ARDR.

f. The territorial seas (a)(6): 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-2008-01558]

g. Adjacent wetlands (a)(7): W-2a and W-2b meet the definition of an (a)(7) adjacent wetland. W-2b continues onto the next property where it abuts a relatively permanent tributary that flows into C-1, a relatively permanent tributary that flows into a TNW.

W-2a is separated from W-2b via an approximately 15-foot-long culvert. Based on the available information, W-2a and W-2b function as one single wetland. However, W-2a is a palustrine emergent wetland and W-2b is a palustrine forested wetland. This difference in vegetative community is due to recent artificial disturbance in the form of vegetation removal from W-2a, as depicted in aerial images between 2017 and 2024 (MFR Enclosure 4). Prior to this disturbance, both wetlands were forested and appear to be comprised of the same tree community. Both wetlands exhibit very similar soils and hydrologic indicators. Differences in vegetation are the result of anthropogenic vegetation removal, which resulted in altered conditions, such as physical removal of woody vegetation and an increase in direct sunlight to understory species. This vegetation removal is recent, artificial, and not representative of normal circumstances. As such, wetlands W-2a and W-2b are a single wetland, consistent with the joint memorandum on LRB-2021-01386 between the U.S. Environmental Protection Agency and the Office of the Assistant Secretary of the Army for Civil Works. W-2b continues onto the adjacent property where it abuts an RPW ditch that flows into C-1 and eventually a TNW, as documented in a 2025 AJD (SPK-2024-00180).

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.

OW-2 (0.014 acre) is an isolated stormwater detention pond excavated in uplands. Pond overflow would exit via a drainage swale northeast of the pond. Based on the information submitted with the aquatic resources delineation report, the drainage swale does not exhibit ordinary high water mark indicators or the definition of a wetland.

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.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2008-01558]

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 0.37 acre of wetland (W-1a and W-1b) does not meet the definition of Waters of the U.S. under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (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 The Colony HOA” prepared by [REDACTED] and dated December 24, 2023 (SPK-2008-01558).

b. Aquatic resources delineation report titled “Aquatic Resources Delineation The Homestead” prepared by [REDACTED] and dated October 2023, revised May 25, 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.

c. Aquatic resources delineation report titled “Wetlands Delineation and Inventory Investigation Ivers Property” prepared by [REDACTED] and dated August 20, 2018, updated January 3, 2019 (SPK 2018-00726).

d. Photographs: Aerial images dated July 2024, May 2023, May 2022, August 2021, September 2020, July 2019, September 2018, May 2017, July 2015, June 2015, and June 2013. Summit County, Latitude 40.675421, -111.553581. Retrieved 22 December 2025 from <http://www.earth.google.com> (MFR Enclosure 4).

e. LiDAR: National layer in the National Regulatory Viewer for the South

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2008-01558]

Pacific Division (MFR Enclosure 5).

10. OTHER SUPPORTING INFORMATION.

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.

Enclosures:

5 Encls

Encl 1: Location map

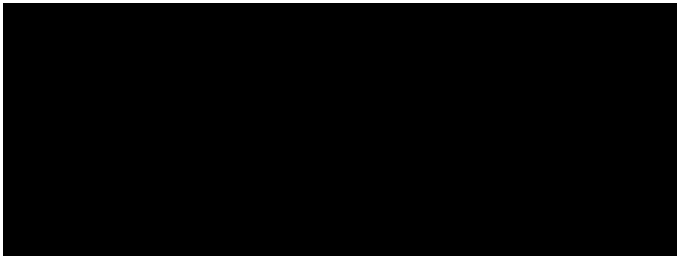
Encl 2: Flow path map

Encl 3: AR map

Encl 4: Aerial images

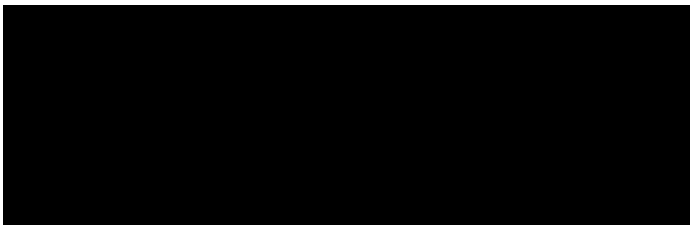
Encl 5: LiDAR map

PREPARED BY:

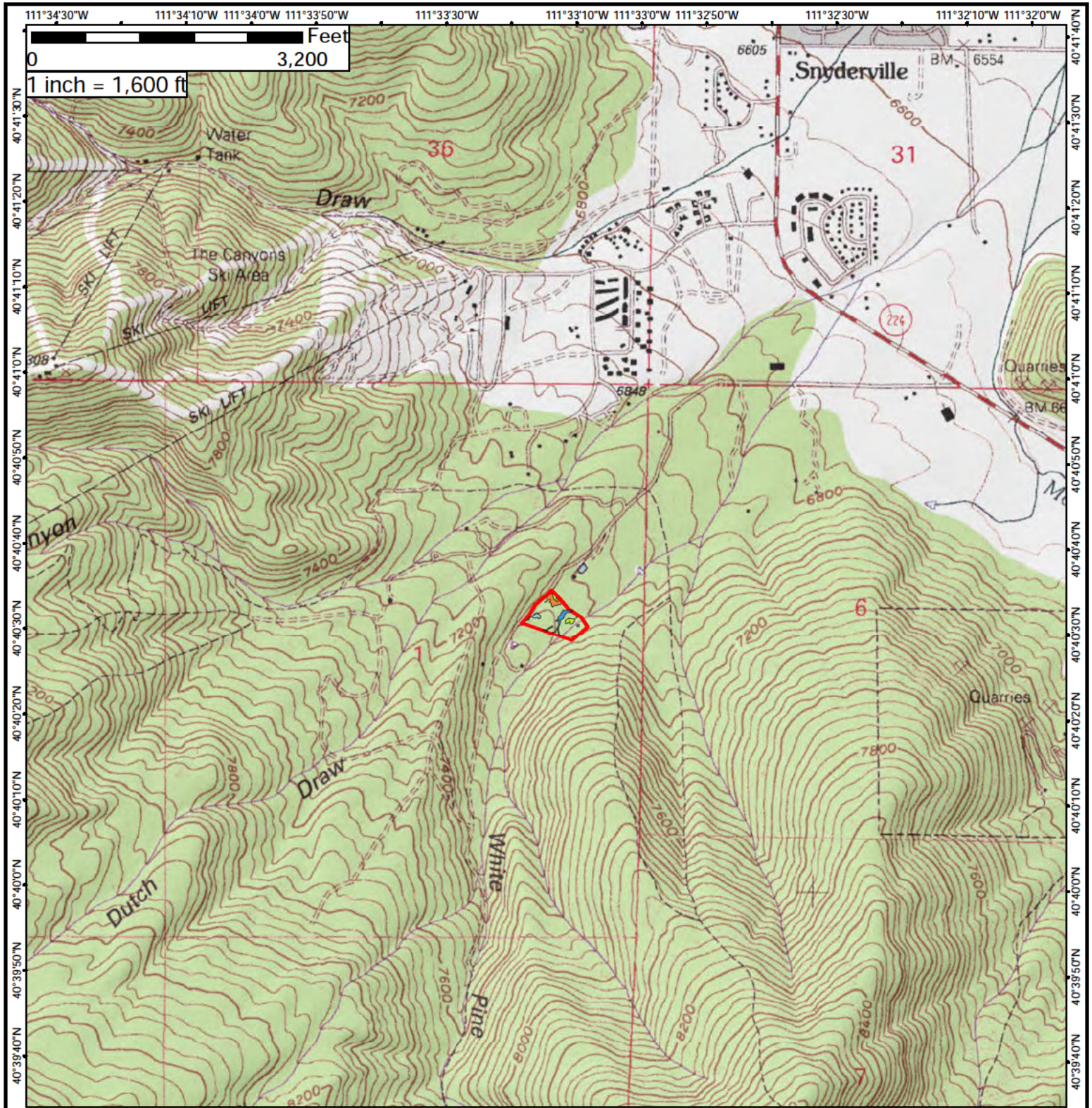


Date: 05 January 2026

REVIEWED AND APPROVED BY:



Date: 07 January 2026



Topographic Overview
The Colony HOA

Section 1 in
T.2S, R.3E., S.L.B.&M.

Legend

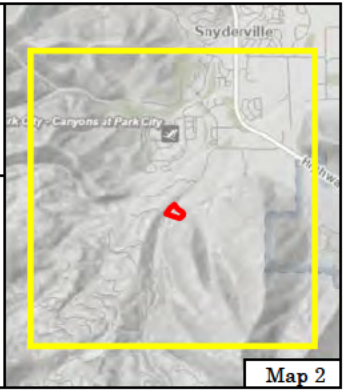
- Project Area
- Open Water
- Stream with OHWM
- Palustrine Emergent Wetlands
- Palustrine Forested Wetlands

Projection:
NAD 83 UTM Zone 12N

Source:
USGS 7.5' TopoQuad
Park City West

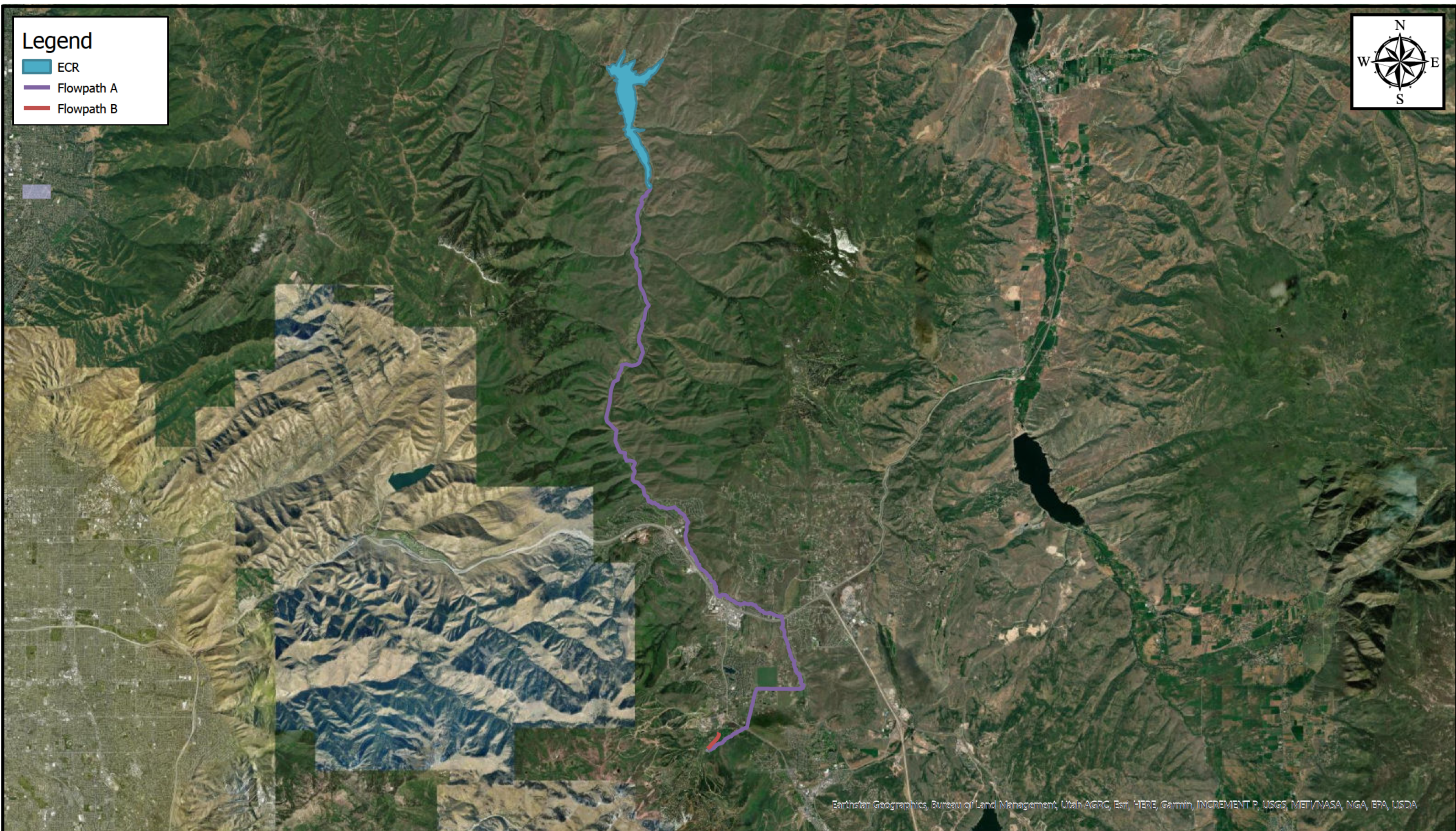
Survey Performed by
[REDACTED]

Created: 12/24/2023
Author: [REDACTED]



Legend

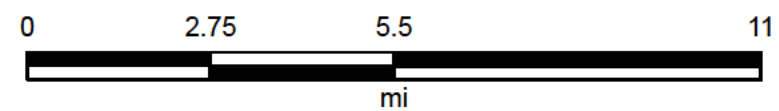
- ECR
- Flowpath A
- Flowpath B



Earthstar Geographics, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, USGS, MET/NASA, NGA, EPA, USDA



SPK-2008-01558





Map Center: 111.543054°W 40.793888°N

Map Created by: [REDACTED]

Date: 12/22/2025

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

Legend

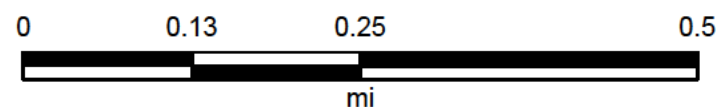
-  Flowpath A
-  Flowpath B
-  Wetlands
-  Stream
-  Open Water
-  Project Area



Microsoft, Vantor, Bureau of Land Management, Utah AGRC, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



SPK-2008-01558

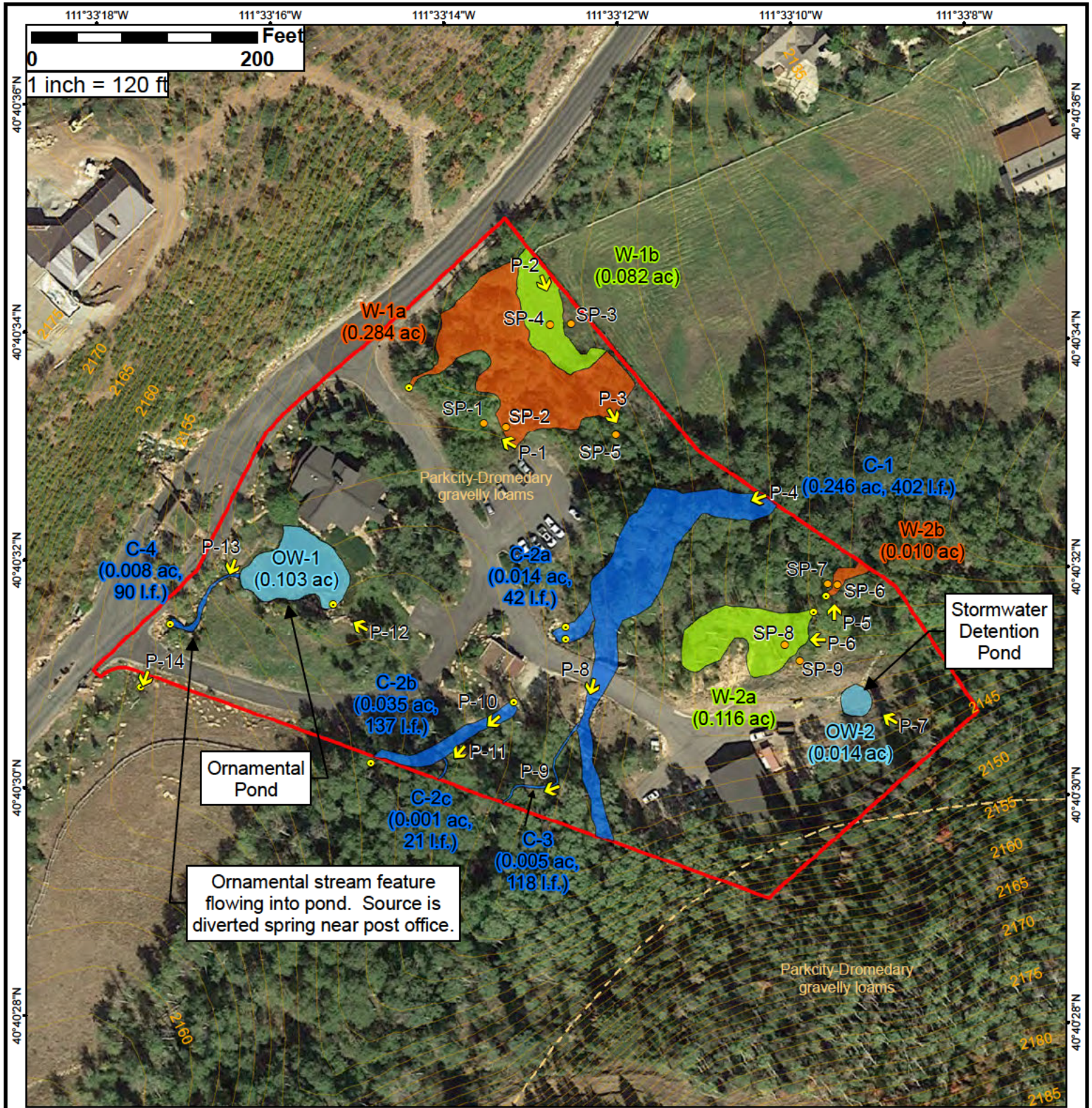


Map Center: 111.54256°W 40.67993°N

Map Created by: [REDACTED]

Date: 12/22/2025

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



Delineation Detail
The Colony HOA

Project Dimensions:
Note: dimensions include features w/in project area

Project area = 5.357 ac
Wetlands = 0.492 ac
Stream w/ OHWM = 0.309 ac; 810 l.f.
Open Water = 0.117 ac

- Legend**
- Project Area
 - ↑ Directional Photo Points (P)
 - Sample Points (SP)
 - Culverts
 - Open Water
 - Stream with OHWM
 - Palustrine Emergent Wetlands
 - Palustrine Forested Wetlands
 - Soils
 - Contours (1m height interval)

Projection:
NAD 83 UTM Zone 12N

Source:
UGRC Basemap Hybrid Imagery 8/13/21

Survey Performed by:
[Redacted]

Created: 12/24/2023
Author: [Redacted]

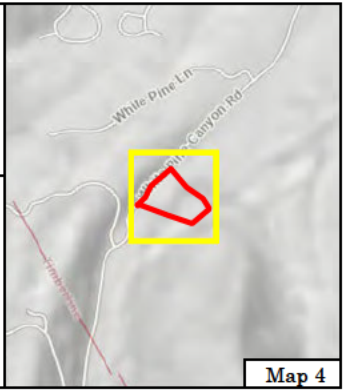




Image © 2025 Airbus

Google Earth

lat 40.675973° lon -111.553912° elev 7071 ft eye alt 7873 ft

1985

5/2023
1985 2024

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

Drag the slider or click the buttons to zoom in or out



Image © 2025 Airbus

Google Earth

Imagery Date: 5/29/2023 lat 40.675568° lon -111.553590° elev 7035 ft eye alt 7873 ft

5/2022



Google Earth

Imagery Date: 5/24/2022 lat 40.676048° lon -111.552435° elev 7009 ft eye alt 7873 ft

8/2021
1985 2024



9/2020
1985 2024



1985 7/2019 2024



9/2018
1985 2024

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



1985 6/2017 2024



Google Earth

Imagery Date: 6/17/2017 lat 40.676399° lon -111.552212° elev 6994 ft eye alt 7873 ft

1985 7/2016 2024

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



6/2015



Google Earth

Imagery Date: 6/16/2015 lat 40.676362° lon -111.552679° elev 6997 ft eye alt 7873 ft

1985 6/2013 2024



+

-

Find address or place

🔍



60ft

40.676089 -111.554363 Degrees

USGS National Map 3D Elevation