



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

September 6, 2024

Regulatory Division (SPK-2017-00109)

E&H Land Ltd. Property
Attn: Mr. Zachary Hartman
2265 E. Murray Holladay Road
Holladay, Utah 84117
zhartman@landadvisors.com

Dear Mr. Hartman:

This is in reference to the approved jurisdictional determination for the E&H Land LTD. property which was remanded by the Commander of the U.S. Army Corps of Engineers South Pacific Division to the Sacramento District for reconsideration. The approximately 54.7-acre property is located at 1202 West Park Lane, Latitude 40.9856°, Longitude -111.9154°, Farmington City, Davis County, Utah (enclosure 1).

We are in the process of reconsidering the information in the administrative record and assessing the information you provided to this office on August 19, 2024. In the next two months, the Sacramento District will be collecting additional data and other information, as well as seeking assistance from the Corps' research and development center to fully respond to the remand. In light of the delay, we have divided the property (the original review area) into four review areas (enclosure 2). This letter responds to two of the review areas where there is no dispute as to jurisdiction under Section 404 of the Clean Water Act.

Based on available information, we have determined that Review Area 1 and Review Area 2, totaling 33.2 acres, contain no aquatic resources and are comprised entirely of uplands. As such, no Department of the Army (DA) permit is required for any discharge of dredged or fill material within these two areas. We are enclosing a copy of the Memorandum for Record prepared to support this Approved Jurisdictional Determination (AJD; enclosure 3). This AJD is valid for five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. A *Notification of Appeal Process (NAP) and Request for Appeal (RFA) Form* is enclosed (enclosure 4). If you request to appeal this determination, you must submit a completed RFA form to the South Pacific Division Office at the following address: Administrative Appeal Review Officer, Army Corps of Engineers, South Pacific Division, CESPDPDO, 1455 Market Street, 2052B, San Francisco, California 94103-1399, Telephone: 415-503-6574, FAX: 415-503-6646.

In order for an RFA to be accepted by the Corps, we must determine that the form is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that the form was received by the Division Office within **60 days** of the date of the NAP. It is not necessary to submit an RFA form to the Division Office unless you object to the determination in this letter.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work. We recommend that you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

We will conduct further investigation of the boundaries of aquatic resources within the remainder of the site (Review Area 3 and 4) over the next two months. We intend to conduct fieldwork in early October to gather additional information for the approved jurisdictional determination. It is our desire to complete the approved jurisdictional determination for Review Areas 3 and 4 by **November 30, 2024**. However, we may need to gather additional data in the spring to fully assess hydrology and early season vegetation communities.

Please refer to identification number SPK-2017-00109 in correspondence concerning this AJD. If you have any questions, please contact Jason Gipson at 533 West 2600 South, Suite 150, Bountiful, Utah 84010, by email at Jason.A.Gipson@usace.army.mil, or telephone at (801) 295-8380 ext. 8314. For program information or to complete our Customer Survey, visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,



Michael Jewell
Chief, Regulatory Division

Enclosures

cc:

Mr. Lance Evans, E&H Land Ltd. Property, lancelevans@gmail.com

Ms. Susan Kegel, Kegel Environmental, LLC, susan@kagelenvironmental.com



Kagel Environmental, LLC
Wetlands, Wildlife and Permitting Specialists

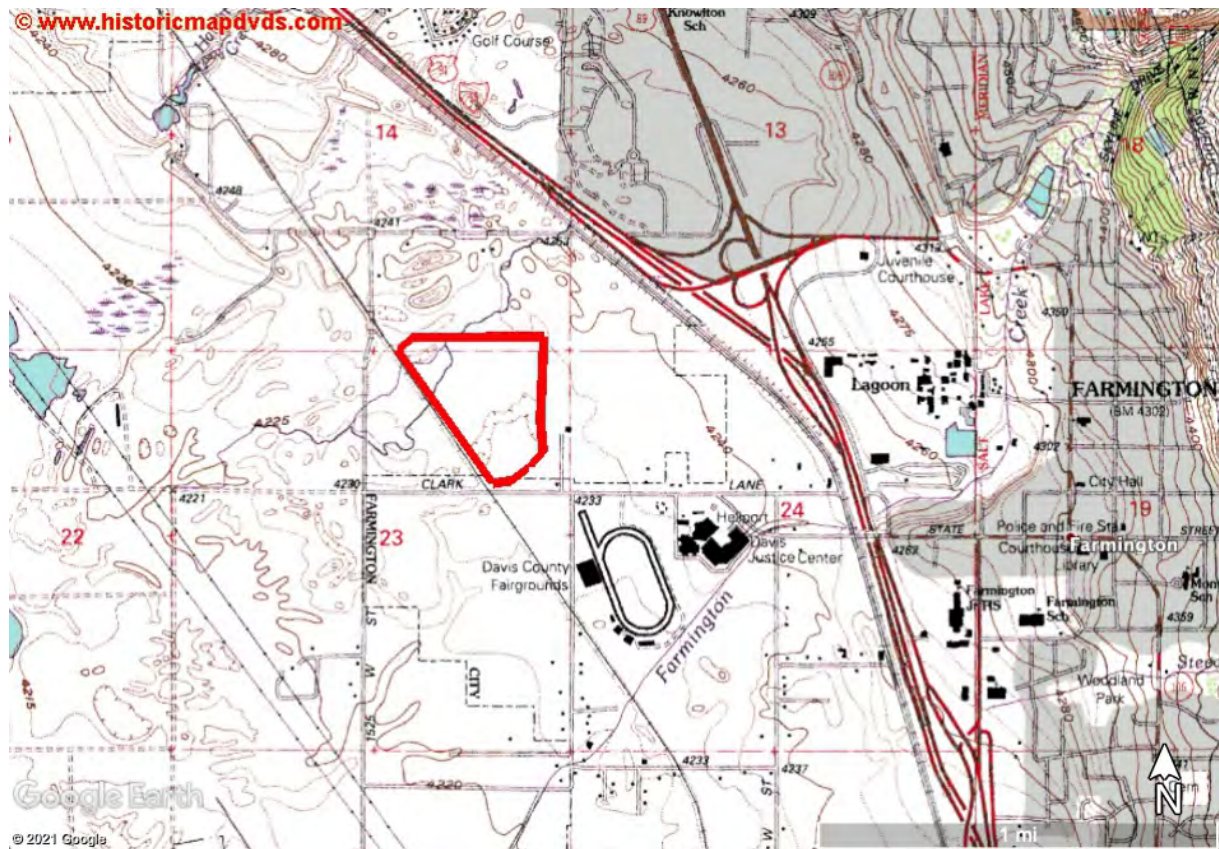
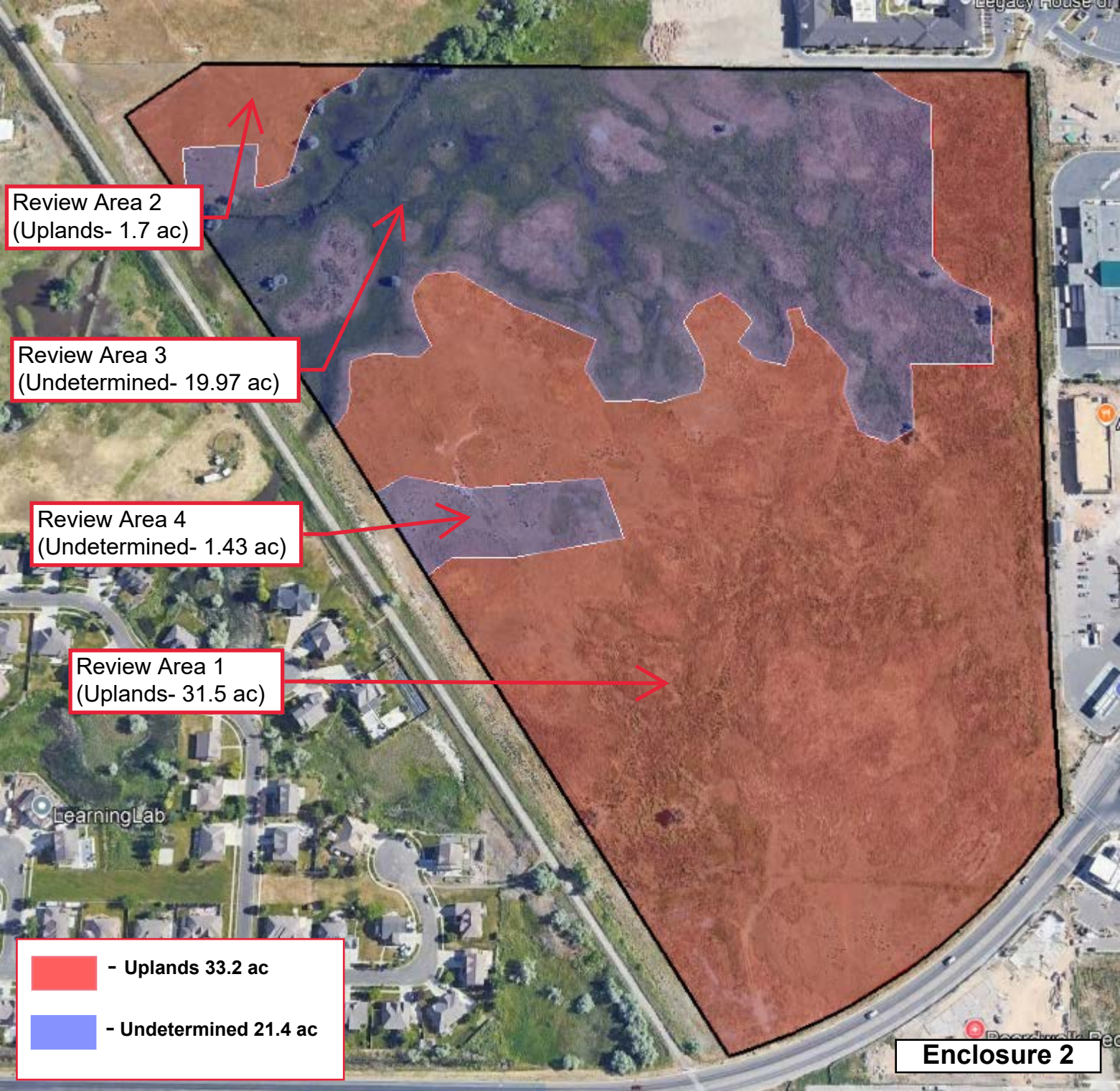


FIGURE 3. TOPOGRAPHY OF THE E&HS.

The map is derived from the Farmington, Utah USGS quadrangle (1998). The scale is 1:24,000. The property is outlined in red.





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

CESPK-RD

5 September 2024

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-2017-00109 (MFR 1 of 2)]²

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.³ 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.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ 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 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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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-2017-00109

1. SUMMARY OF CONCLUSIONS.

a. The two review areas within the property are comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

Area 1 and Area 2, totaling 33.2 acres, are subdivisions of the original survey area for the property and were determined to have no aquatic resources. A separate MFR assessing the potential for jurisdictional waters will be completed for the remaining portion of the property (Review Areas 3 and 4) at a later date.

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 33.2-acre review area is located adjacent to Shepards Creek, Latitude 40.9856°, Longitude -111.9154°, in Farmington City, Davis County, Utah.

The site is currently the subject of an AJD appeal on remand to reassess the results of the District's 23 December 2022, AJD and AR boundary determination. Two aquatic resource delineations and AJDs have been verified for this site, in 2017 and 2022. This memo addresses the portions of the property that are not in dispute between the District and the requestor, as it contains no potential aquatic resources.

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, since it was determined to be navigable in federal court, *Utah v United States*, 402 U.S. 9 (1971).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. No aquatic resources are located within Review Areas 1 and 2.

CESPK-RDI-U

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SPK-2017-00109

6. SECTION 10 JURISDICTIONAL WATERS⁶: 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 10.⁷ 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

⁶ 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.

⁷ 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-2017-00109

“preamble waters”).⁸ 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

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. June 2017 report entitled Wetland and Waters of the U.S. Delineation, Evans Farmington Parcel, Farmington, Utah

b. 13 May 2021 report entitled Aquatic Resources Delineation Report, E&H Land Ltd. Property

⁸ 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-2017-00109

c. GoogleEarth ver. 7.3.3.7786. (Aerial Imagery). Davis County, Utah. Latitude 40.985986°, Longitude 111.915329°, Retrieved August 16, 2024. Dates (June 2022, May 2022, August 2021, May 2021, September 2020, June 2020, May 2020, July 2019, September 2018, June 2017, July 2016, June 2015, June 2013).

d. USACE National Regulatory View LiDAR data, dated 4 August 2020, retrieved 19 August 2024.

10. OTHER SUPPORTING INFORMATION.

a. It is our longstanding interpretation that parcels can be split into more than one review area for purposes of evaluating approved jurisdictional determinations. We do so here because there is sufficient information in the record now to reach a jurisdictional determination on the review areas covered by this MFR, because no aquatic resources (i.e. areas that either have an ordinary high water mark or meet the definition of wetland) have been identified in these review areas by the requestor/appellant or any other delineation covering these areas in the past, and because our review of aerial imagery and topography indicates that there are no signatures consistent with potential aquatic resources in these review areas. For these reasons we have determined that on-site inspection is unnecessary in the review areas covered by this MFR, pursuant to a Level 1 Routine Determination. (See p. 45 of the 1987 Wetland Delineation Manual).

b. We cannot reach the same conclusion, at this time, concerning areas not covered by these review areas. A subsequent MFR will characterize our determination for these areas after fully evaluating and documenting the sufficiency of information currently in the record, and if necessary, gathering additional on-site information consistent with a Level 2 or a Level 3 Routine Determination pursuant to the 1987 Wetland Delineation Manual and/or an OHWM delineation consistent with guidance and procedures.

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.



JASON GIPSON
CHIEF, UTAH REGULATORY SECTION

2 Encls
Enclosure 1- Vicinity Map
Enclosure 2- Upland Review Area Maps



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

October 9, 2024

Regulatory Division (SPK-2017-00109)

E&H Land Ltd. Property
Attn: Mr. Lance Evans
2265 East Murray Holladay Road
Holladay, Utah 84117-5379
lancelevans@gmail.com

Dear Mr. Evans:

We are responding to your October 4, 2024 request for a preliminary jurisdictional determination (JD) for the E&H Land Ltd. Property site. The approximately 55.2-acre project site is located adjacent to Shepards Creek, at approximately 1202 West Park Lane, Latitude 40.985608°, Longitude -111.9154388°, in Farmington City, Davis County, Utah (enclosure 1).

Based on available information, the Corps has determined the extent of aquatic resources located within the property as depicted on the enclosed September 30, 2024, SPK-2017-00109 Aquatic Resources Overview drawing(s) prepared by the U.S. Army Corps of Engineers (enclosure 2). The approximately 2.74 acres of wetlands, 0.2 acres/635 linear feet of stream channel present within the survey area are potential jurisdictional aquatic resources ("waters of the United States") regulated under Section 404 of the Clean Water Act. This letter verifies that the location and boundaries of wetlands were delineated consistent with the wetland definition at 33 CFR §328.3(c)(16), the 1987 *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1) and the applicable regional supplements; and the location and boundaries of non-tidal waters conform with the ordinary high water mark definition at 33 CFR §328.3(c)(7), Regulatory Guidance Letter 05-05, and any applicable regional guide.

At your request, we have completed a preliminary JD for the site. Enclosed find a copy of the *Preliminary Jurisdictional Determination Form* (enclosure 3). Please sign and return the completed form to the address listed below within 30 days of the date of this letter. If you do not return the signed form within 30 days, we will presume concurrence and finalize the preliminary jurisdictional determination.

We recommend you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

You may request an approved JD for this site at any time prior to starting work within waters, including after a permit decision is made. To request an approved JD for this site, complete the attached *Request for Aquatic Resources Delineation or Jurisdictional Determination Form* (enclosure 4) and return it to this office at the address listed below. A *Notification of Appeal Process and Request for Appeal Form* is enclosed to notify you of your options with this determination (enclosure 5).

We appreciate feedback, especially about interactions with our staff and processes.

Please refer to identification number SPK-2017-00109 in any correspondence concerning this project. If you have any questions, please contact me at 533 West 2600 South, Suite 150, Bountiful, Utah 84010, by email at Jason.A.Gipson@usace.army.mil, or telephone at (801) 295-8380 ext. 8314.

Sincerely,

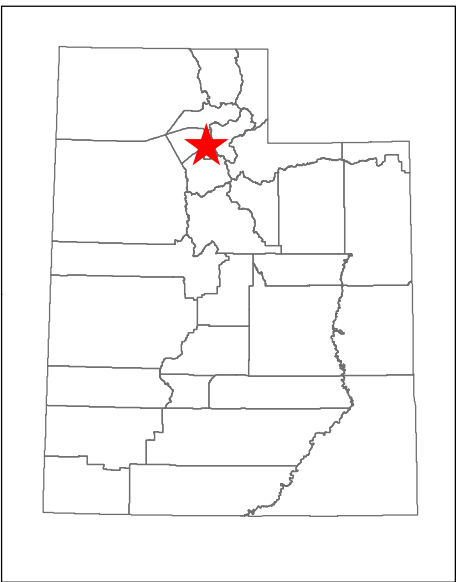


Jason Gipson
Chief, Utah Section

Enclosures

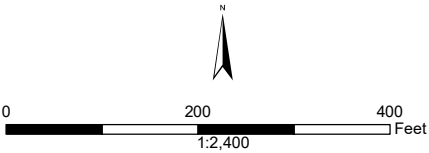
cc:

Susan Kagel, Kagel Environmental, susan@kagelenvironmental.com
Zachary Hartman, E&H Land Ltd. Property, zhartman@landadvisors.com



- Legend**
- Wetlands (2.74 ac)
 - Stream (0.20 ac)
 - Parcel Boundary
 - Review Area 1
 - Review Area 2
 - Review Area 3
 - Review Area 4

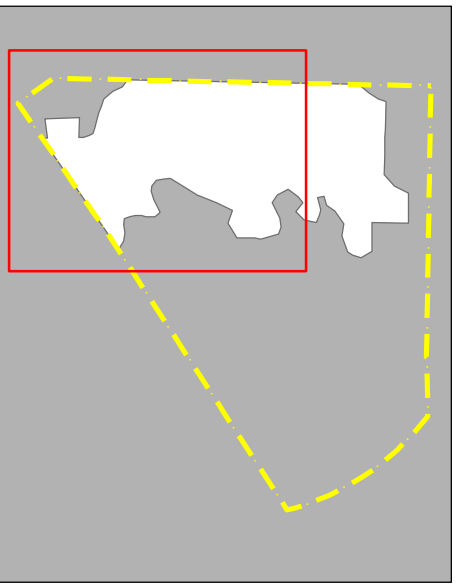
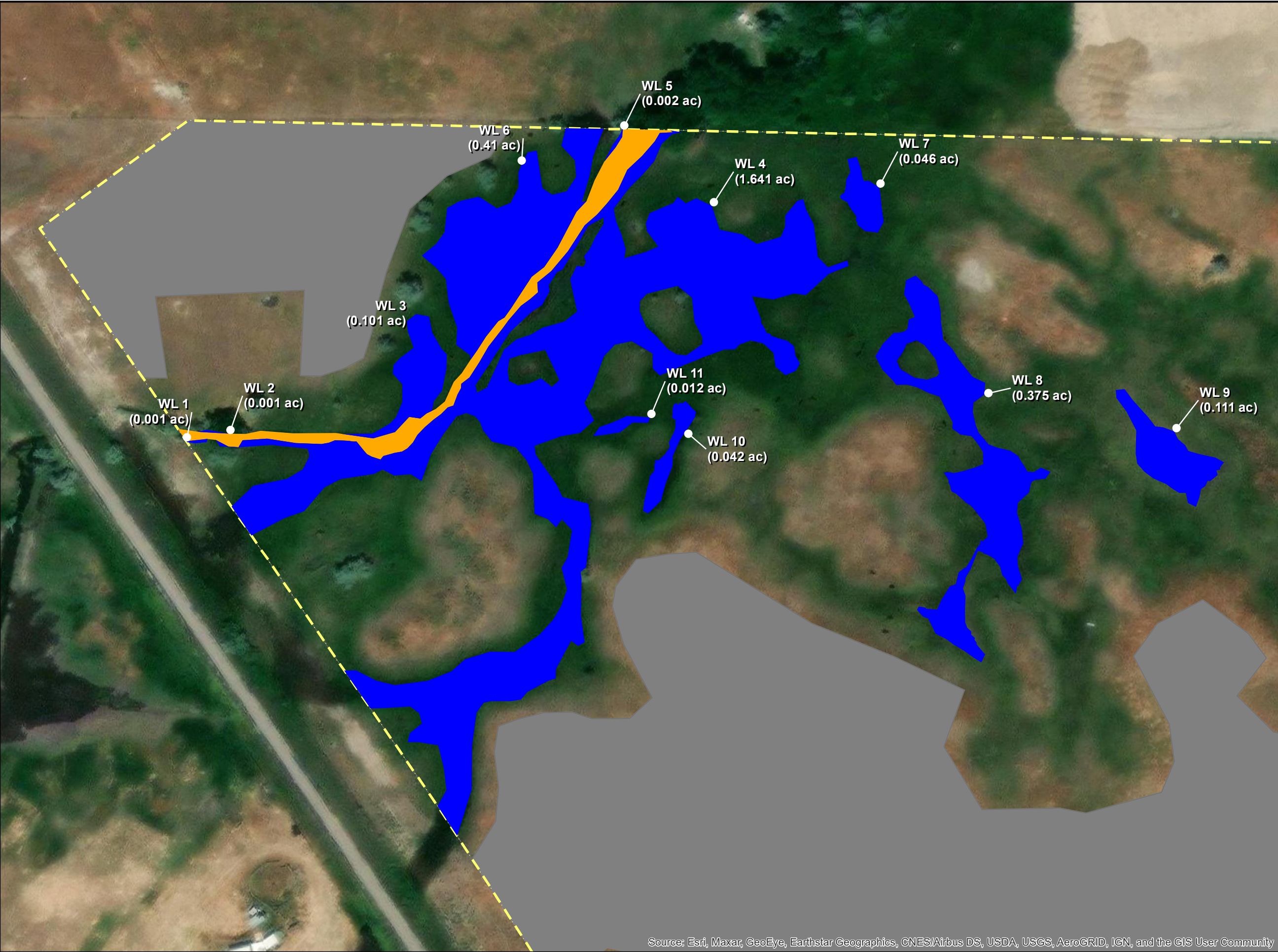
Data Source: ShapeFiles provided by Agent on 19 August 2024 and saturation mapping performed by SPK September 2024.
Coordinate System: NAD_1983_UTM_Zone_12N



SPK-2017-00109
Aquatic Resources
Overview



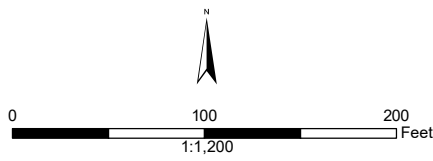
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



- Legend**
- Wetlands (2.74 ac)
 - Stream (0.20 ac)
 - Parcel Boundary
 - Review Area 1
 - Review Area 2
 - Review Area 3

Data Source: ShapeFiles provided by Agent on 19 August 2024 and saturation mapping performed by SPK September 2024.

Coordinate System: NAD_1983_UTM_Zone_12N



SPK-2017-00109
Aquatic Resources
Review Area 3 Detail



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: September 7, 2024

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: E&H Land Ltd. Property Attn: Mr. Lance Evans, 2265 East Murray Holladay Road Holladay, Utah 84117-5379

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: E&H Land LTD. Property, SPK-2017-00109

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: UT County/parish/borough: Davis County City: Farmington

Center coordinates of site (lat/long in degree decimal format):

Lat.: 40.9856084 Long.: -111.9154388

Universal Transverse Mercator: 422992.99, 4537562.97

Name of nearest waterbody: Shepards Creek

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: September 7, 2024

☐ Field Determination. Date(s):

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
WL 1	40.986822	-111.919199	0.001 ac	Wetland	Section 404
WL 2	40.986889	-111.918551	0.001 ac	Wetland	Section 404
WL 3	40.987144	-111.918149	0.101 ac	Wetland	Section 404

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource “may be” subject (i.e., Section 404 or Section 10/404)
WL 4	40.987316	-111.917162	1.641	Wetland	Section 404
WL 5	40.987726	-111.917362	0.002	Wetland	Section 404
WL 6	40.987543	-111.917982	0.41	Wetland	Section 404
WL 7	40.987577	-111.916812	0.046	Wetland	Section 404
WL 8	40.987178	-111.916063	0.375	Wetland	Section 404
WL 9	40.986763	-111.915328	0.111	Wetland	Section 404
WL 10	40.987119	-111.916974	0.042	Wetland	Section 404
WL 11	40.987199	-111.917168	0.012	Wetland	Section 404
Shepards Creek	40.987324	-111.917697	0.20 ac/635 ln ft	Stream	Section 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “pre-construction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD

constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:

Map: .

☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.

☐ Office concurs with data sheets/delineation report.

☒ Office does not concur with data sheets/delineation report. Rationale: Survey was conducted at the wrong time of year. Hydrology indicators determined present.

☒ Data sheets prepared by the Corps: .

☐ Corps navigable waters' study: .

☐ U.S. Geological Survey Hydrologic Atlas: .

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: Farmington.

☒ Natural Resources Conservation Service Soil Survey. Citation: Davis County Web Soil Survey.

☐ National wetlands inventory map(s). Cite name: .

☐ State/local wetland inventory map(s): .

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: . (National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): Google Earth: 20 June 2022, 24 May 2022, 28 August 2021, 16 May 2021, 11 September 2020, undated (possibly June 2020), 15 May 2020, 31 May 2020, 18 July 2019, 10 September 2018, 17 June 2017, 8 July 2016, 16

June 2015, 4 June 2013, 14 September 2011, 17 June 2010, 22 June 2009, 31 December 2005, 12 July 2006, 31 July 2006, 21 August 2005, 17 April 2005, 27 February 2005, 24 August 2004, 31 August 2003, 18 August 2003, 12 June 2003, 3 May 2002, 7 September 2002, 3 October 1997, and 13 August 1993.

Maxar: Water years 2019 through 2023

Or ☐ Other (Name & Date):

☒ Previous determination(s). File no. and date of response letter: SPK-2017-00109 8/31/2017 AJD.

☐ Other information (please specify): .

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.