



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

CESPK-RDC-N

06 February 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (18 January 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),¹ SPK-2022-00433.

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

On 18 January 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On 8 September 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

¹ While the Revised Definition of "Waters of the United States"; Conforming 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. The following is a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identifies whether each feature is/is not a water of the United States and/or a navigable water of the United States). None of the features within the review area are waters of the U.S. or navigable waters of the U.S.

Waters Name	Cowardin Code	Acreage/Linear Feet	Waters of the U.S.	Navigable Waters of the U.S.
WF-A	PAB3	0.01-acre	No	No
WF-B	PAB3	0.003-acre	No	No
WF-5	PEM	0.01-acre	No	No
WF-11	PAB3	0.31-acre	No	No

2. REFERENCES.

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule").

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR No. 173 (September 8, 2023).

c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023).

3. REVIEW AREA. The review area consists of the approximate 7.35-acre survey area located at Latitude 40.43503°, Longitude -122.26634°, within the City of Anderson, Shasta County, California (Enclosure 1). The property is within the United States Geological Survey (USGS) Cottonwood Quadrangle, Township 30N, Range 4W.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream TNW is the Sacramento River (Enclosure 2). The Sacramento River was determined to be a TNW by the United States Congress. The Sacramento River is a TNW from the Suisun Bay, an arm of the San Francisco Bay, to the Keswick Dam, at river mile 301.6. The Sacramento River is an authorized navigation project, originally adopted by the River and Harbor Act of March 3, 1875. On February 15, 1978, the Sacramento River's northern end of navigability was extended from Red Bluff to Keswick Dam Based on the historical evidence of navigation to Clear Creek and the State of California Harbors and Navigation Code which declares the Sacramento River navigable to Reids Ferry near Redding.⁵

⁵ USACE. 1978. Revised District Counsel Opinion Expanded Jurisdiction. Navigability Studies

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. All of the aquatic features lack a discernable flowpath to a downstream TNW, the territorial seas, or interstate water.

a. The Emergent Wetland, WF-A, is a depressional feature that receives seasonal flow from WF-B. The water from WF-A flows southwest for 0.14 mile out of the survey area via a ditch. The flowpath is terminated by an industrial site parking lot outside of the survey area (Enclosure 3). The flow offsite does not connect to an (a)(1) to (a)(3) water.

b. The Emergent Wetland, WF-B, is a remnant of an irrigation canal that ran through the site previously and does not connect to an (a)(1) to (a)(3) water. The irrigation canal is no longer active. The water from WF-B flows into WF-A, which flows southwest out of the survey area through a ditch which is terminated by an industrial site parking lot.

c. The Emergent Wetland, WF-5, was created by a man-made excavation. There is no flow to another aquatic feature from WF-5 to the west, south, or east as the feature is surrounded by lawn or grass and no flow or connection is shown on aerial or LiDAR imagery. In LiDAR imagery (Enclosure 3), a surface connection from WF-5 can be seen with the ditch to the north. The flow eventually connects to WF-B and WF-A. The water from WF-A flows southwest for 0.14 mile out of the survey area via a ditch which is terminated by an industrial site parking lot outside of the survey area. There is no continuous surface connection to an (a)(1) to (a)(3) water.

d. The Pond, WF-11 is a man-made feature and is an (a)(5) water. According to the United States Geological Survey (USGS) 1965 Topographical Map an intermittent stream flowed halfway through the survey area during that time period. At the website, historicaerials.com, the 1955 aerial image and the 1969 aerial image show a stream going halfway through the survey area as well. The stream in the two historic images and the topographical map flows to the north of the site and eventually flows into Anderson Creek, which flows into the Sacramento River, a TNW (Enclosure 2). The specific dates of the historic images are unknown, as a result it is unknown if the images were acquired in the wet or dry season, and they do not help in determining the relative permanence of the stream. In addition, more recent aerial imagery from April 24, 2019, does not show a stream connecting to WF-11. The remnants of the stream flows from the northern edge of the survey area to the north for approximately 0.19 miles before evidence of a stream or water is lost. WF-11 is an (a)(5) water because there is not sufficient evidence of flow directly or indirectly to an (a)(1) water.

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6. SECTION 10 JURISDICTIONAL WATERS⁶: There are no section 10 jurisdictional waters within the review area.

7. SECTION 404 JURISDICTIONAL WATERS: N/A.

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. The 0.31-acre Pond, WF-11, is a man-made feature and was constructed for industrial purposes relating to the adjacent pulp mill. The manmade pond in addition to second pond were constructed in the review area in the 1970s to be used as settling basins. According to the 1965 topographical map, the 1955, and 1969 aerial images, a stream was present in the survey area and flowed through the area where the settling ponds were built and where WF-11 is present today. The 1971 aerial image shows the two settling ponds present and a small earthen horseshoe shaped dam. From 1975 to 1985 the ponds began being filled onsite as a larger pond had been built offsite north of Hawes Road for use rather than the two smaller ponds. By 1985 almost the entirety of both ponds was filled except for a small portion of the eastern pond, the part of the pond remaining today. The 1988 aerial image in the delineation report shows a portion of the review area covered in chips from the pulp mill, and the remaining area of the pond is uncovered. The soils report indicates the soils in the WF-11 area to be drainageways on fan remnants or drainageways on stream terraces, which would be consistent with a stream being present in the area before the ponds were constructed. The stream was present in both the 1955 and 1969 aerial imagery as well as being depicted on the 1965 topographical map and was shown as flowing into the Sacramento River, an (a)(1) water. However, there are no specific dates for the historic images and its unknown if they were taken in the wet or dry season. In addition, the April 24, 2019, imagery does not show a stream connecting to WF-11 and what remains of the stream flows from the northern edge of the site to the north for approximately 0.19 miles before evidence of a stream or water is lost. There is insufficient evidence to classify the stream as relatively permanent water at the time of impoundment and now at the time of assessment. WF-11 does not meet the meaning of an impoundment under 33 CFR 328.3(a)(2). WF-11 is an (a)(5) water because there is no sufficient evidence of flow directly or indirectly to an (a)(1) water.

b. The 0.003-acre Emergent Wetland, WF-B, is a remnant of an irrigation canal that ran through the site previously. The wetland is present in aerial imagery from 1951, however, due to extensive modification of the site through the 1960s to the present only a small part of the feature remains and is now wetland. This aquatic resource is not

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.

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present in USGS Topographical Map or the National Wetlands Inventory (NWI) and National Hydrography Dataset (NHD) datasets. This feature no longer has hydrological connectivity to the surrounding Anderson-Cottonwood Irrigation District (ACID) canals or any other waterways. WF-B flows into WF-A, which flows out of the survey area through a ditch and the flow is terminated by an industrial site parking lot southwest of the survey area. As a result, WF-B does not have connectivity to a TNW, the territorial seas, or an interstate water.

c. The 0.01-acre Emergent Wetland, WF-A, is a man-made depression and receives seasonal flow from WF-B. The creation of this depression cannot be traced back to a specific time due to the site being heavily disturbed from the 1960s to present. This aquatic resource is not present in USGS Topographical Map or the NWI and NHD datasets. The water from WF-A flows southwest for 0.14 mile out of the survey area via a ditch and the flow is terminated by an industrial site parking lot outside of the survey area. The wetland WF-A does not have a continuous surface connection to a paragraph (a)(1) water, (a)(2) impoundment, or relatively permanent jurisdictional tributary (a)(3). As such WF-A is not adjacent to a jurisdictional water and is not jurisdictional.

d. The 0.01-acre Emergent Wetland (WF-5) is a historic man-made excavation created onsite during agricultural or industrial practices. The creation of this depression cannot be traced back to a specific date due to the site being heavily disturbed from the 1960s to present. This aquatic resource is not present in USGS Topographical Map or the NWI and NHD datasets. There is no flow to another aquatic feature from WF-5 to the west, south, or east as the feature is surrounded by lawn or grass and no flow or connection is shown on aerial or LiDAR imagery. In LiDAR imagery (Enclosure 3), a surface connection can be seen with the ditch north of WF-5, which eventually connects to WF-B and WF-A. The water from WF-A flows southwest for 0.14 mile out of the survey area via a ditch and the flow is terminated by an industrial site parking lot outside of the survey area. The wetland WF-5 does not have a continuous surface connection to a paragraph (a)(1) water, (a)(2) impoundment, or relatively permanent jurisdictional tributary (a)(3). WF-5 is not adjacent to a jurisdictional water and is not jurisdictional.

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. U.S. Army Corps of Engineers. July 29, 2022. Field Visit.
- b. U.S. Army Corps of Engineers. October 25 and 26, 2023. Office Evaluation.
- c. VESTRA Resources, Inc. 2022. *Draft Delineation of Waters of the United States & Other Wetlands, Anderson, California, Shasta County APNs 09-150-001 & 090-160-010.*

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d. U.S. Fish and Wildlife Service. (n.d.). National Wetland Inventory. Project area: Mossback 202200433. Source imagery date: 1973. Washington, D.C.: U.S. Fish and Wildlife Service, Dept. of the Interior. Retrieved October 6, 2023, from Wetland Mapper: <https://www.fws.gov/wetlands/data/mapper.html>.

e. Natural Resources Conservation Service. (2020, June 1). Custom Soil Resource Shasta County Area, California Mossback 202200433. Natural Resources Conservation Service, U.S. Dept. of Agriculture. Retrieved October 6, 2023, from <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.html>.

f. Federal Emergency Management Agency. (n.d). FEMA Flood Map Service Center. FEMA Firm Map: 06089C1945G, Effective on March 17, 2011. FEMA, Dept. of Homeland Security. Retrieved October 25, 2023, from <https://msc.fema.gov/portal/home>.

g. U.S. Geological Survey. (1965). USGS 1:24000-scale Quadrangle for Cottonwood, CA: U.S. Geological Survey

h. U.S. Geological Survey. (2022). USGS 1:24000-scale Quadrangle for Cottonwood, CA: U.S. Geological Survey

i. Digital Globe: October 18, 2017 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

j. Digital Globe: April 1, 2018 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 24, 2023. Using ArcGIS Pro.

k. Digital Globe: May 14, 2018 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 24, 2023. Using ArcGIS Pro.

l. Digital Globe: May 14, 2018 Image [map]. 1:700. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

m. Digital Globe: October 17, 2018 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

n. Digital Globe: April 24, 2019 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 24, 2023. Using ArcGIS Pro.

o. Digital Globe: April 24, 2019 Image [map]. 1:700. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

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p. Digital Globe: February 26, 2021 Image [map]. 1:700. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

q. Digital Globe: September 16, 2022 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro.

r. Digital Globe: May 13, 2023 AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 24, 2023. Using ArcGIS Pro.

s. Digital Globe: May 13, 2023 Image [map]. 1:700. Generated by Army Corps of Engineers, October 26, 2023. Using ArcGIS Pro

t. LiDAR: Mossback LiDAR AJD Area [map]. 1:280. Generated by Army Corps of Engineers, October 18, 2023. Using ArcGIS Pro.

u. NHD Flowline (USGS 2023): SPK-2022-00433 National Hydrography Dataset (NHD) [map]. 1:2,640. Generated by Army Corps of Engineers, October 18, 2023. Using ArcGIS Pro.

v. NHD Flowline (USGS 2023): SPK-2022-00433 National Hydrography Dataset (NHD) AR Included [map]. 1:739. Generated by Army Corps of Engineers, October 25, 2023. Using ArcGIS Pro.

w. LiDAR: WF-A LiDAR Flowpath [map]. 1:240. Generated by Army Corps of Engineers, December 6, 2023. Using ArcGIS Pro.

10. OTHER SUPPORTING INFORMATION

There are no jurisdictional waters within the 7.35-acre review area. The wetlands WF-A, WF-5, WF-B, and the pond, WF-11, are not Waters of the United States. WF-A, WF-5, and WF-B are not adjacent to a jurisdictional water because they do not share a continuous surface connection with an (a)(1) to (a)(3) water. WF-11 is not an impoundment pursuant to 33 CFR § 328.3(a)(2). WF-11 is an (a)(5) water because there is not sufficient evidence of flow directly or indirectly to an (a)(1) water in the past or in the present.

The wetlands WF-A, WF-5, and WF-B are not adjacent wetlands pursuant to (a)(4) because they lack a continuous surface connection to an (a)(1) to (a)(3) water. Lack of a connection to an (a)(1) to (a)(3) water can be seen on the April 24, 2019, Digital Globe photo and LiDAR imagery. The October 18, 2017, April 1, 2018, May 14, 2018, October 17, 2018, September 16, 2022, and May 13, 2023, digital globe photos were not helpful or relevant in evaluating the jurisdiction of the aquatic resources because the images were taken during the dry season, when we would not expect to see a surface

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connection in aerial imagery. The Corps' Antecedent Precipitation Tool (APT) shows that the October 18, 2017, imagery was acquired in normal conditions, during the dry season, and with mild drought index. The APT shows that the April 1, 2018, imagery was acquired in normal conditions during the dry season, and with mild drought index. The APT shows that the May 14, 2018, imagery was acquired in normal conditions during the dry season, and mild drought index. The APT shows that the October 17, 2018, imagery was acquired in normal conditions, during the dry season, and moderate drought index. The APT shows that the April 24, 2019, imagery was acquired during wetter than normal conditions, during the dry season, and moderate wetness drought index. The APT shows that the February 26, 2021, imagery was acquired during drier than normal conditions, during the wet season, and severe drought index. The APT shows that the September 16, 2022, imagery was acquired in normal conditions, during the dry season, and moderate drought index. The APT shows that the May 13, 2023, imagery was acquired during wetter than normal conditions, during the dry season, and moderate drought index.

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.

Digitally signed by
ROBERTS.MATTHEW
.JAMES.1248429514
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MATTHEW J ROBERTS
CHIEF, CA NORTH SECTION

4 Encls

1. Aquatic Resource Delineation
Mossback Land Company LLC
Anderson, California Map
2. NHD Flowpath-2022-00433
3. WF-A LiDAR Flowpath
4. 1971 Aerial Photograph and
1988 Aerial Photograph
Mossback Land Company LLC
Anderson California
5. USGS 1965 Topographical Map
6. USGS 2022 Topographical Map

Johnston, Wendy L.

From: SPKRegulatoryMailbox <SPKRegulatoryMailbox@usace.army.mil>
Sent: Tuesday, February 6, 2024 12:10 PM
To: petersonzane100@gmail.com
Cc: Leggieri, Gabriel J CIV USARMY CESPK (USA); Johnston, Wendy L.; Coster, Lynn@Waterboards
Subject: SPK-2022-00433 Mossback Land Delineation site
Attachments: 2024.02.06-AR-Apprvd JD MFR (Amended 2023 Rule) Encls-202300433.pdf; 2024.02.06-AR-Apprvd JD Verify Encl-202200433.pdf; 2024.02.06-AR-Apprvd JD MFR (Amended 2023 Rule)-202200433.pdf; 2024.02.06-AR-Apprvd JD Verify-202200433.pdf

This document is provided on behalf of the Regulatory Division, Sacramento District, U.S. Army Corps of Engineers.

Respectfully,

Regulatory Division

US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1827, Sacramento, CA 95814-2922
916-557-5250 FAX: 916-557-7803

** Our customer service hours are 9am to 3pm Monday through Friday. **

Please send all project related documents and general questions and inquiries about the Regulatory Program or 408 Program to: SPKREGULATORYMailbox@usace.army.mil.

For Information on the Regulatory Program: <http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

For Regulatory Public Notices: <http://www.spk.usace.army.mil/Media/RegulatoryPublicNotices.aspx>

In response to COVID-19, Regulatory Division staff are teleworking from home or other approved location. We will do our best to administer the Regulatory Program in an effective and efficient manner. Priority will be given to health and safety activities and essential infrastructure. Action on your permit application or other request may be delayed during this emergency. We appreciate your patience.



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

February 6, 2024

Regulatory Division (SPK-2022-00433)

Mossback Land Company, LLC
Attn: Mr. Zane Peterson
5197 Deschutes Road, Suite B
Anderson, California 96007-8553
petersonzane100@gmail.com

Dear Mr. Peterson:

We are responding to your September 7, 2022, request for an approved jurisdictional determination for the Mossback Land Delineation site. The approximately 7.35-acre project site is located near Anderson Creek, Latitude 40.43462°, Longitude -122.26792°, within the City of Anderson, Shasta County, California.

Based on available information, we concur with your aquatic resources delineation for the site, as depicted on the enclosed August 18, 2022, *Aquatic Resources Delineation Mossback Land Company LLC Anderson California* drawing(s) prepared by VESTRA Resources, Inc. (enclosure 1). Approximately 0.33-acre of aquatic resources, consisting of 0.02-acre of emergent wetland, 0.31-acre of pond, and 0.003-acre of stream are present within the survey area. 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.

Of these aquatic resources, we have determined that those features WF-A, WF-B, WF-5, and WF-11 totaling 0.33-acre are not waters of the U.S. regulated under Section 404 of the Clean Water Act or under Section 10 of the Rivers and Harbors Act, because these wetlands are not adjacent and do not share a continuous surface connection to a jurisdictional (a)1, a(2), or (a)(3) water.

We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 2).

This approved jurisdictional determination 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 3). 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.

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.

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 appreciate feedback, especially about interaction with our staff and our processes.

Please refer to identification number SPK-2022-00433 in any correspondence concerning this project. If you have any questions, please contact Gabriel Leggieri by email at gabriel.j.leggieri@usace.army.mil, or telephone at 916-557-5120. For program information or to complete our Customer Survey, visit our website at <http://www.spk.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,



Matthew J. Roberts
Chief, CA North Section

Enclosures

cc(w/encls):

Wendy Johnston, VESTRA Resources, Inc., wjohnston@vestra.com
Lynn Coster, Central Valley Regional Water Quality Control Board,
Lynn.Coster@Waterboards.ca.gov

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mossback Land Company, LLC Attn: Mr. Zane Peterson	File No.: SPK-2022-00433	Date: February 6, 2024
Attached is:		See Section below
INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
PERMIT DENIAL	C	
→ APPROVED JURISDICTIONAL DETERMINATION	D	
PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process, you may contact:

Gabriel Leggieri
Project Manager
CA North Section
U.S. Army Corps of Engineers
1325 J Street, Room 1827, Sacramento, CA 95814
Phone: 916-557-5120, FAX 916-557-7803
Email: gabriel.j.leggieri@usace.army.mil

If you only have questions regarding the appeal process, you may also contact:

Travis Morse
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
Phillip Burton Federal Building, Post Office Box 36023
450 Golden Gate Avenue
San Francisco, California 94102
Phone: 970-243-1199x1014, FAX: 971-241-2358
Email: W.Travis.Morse@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

**AJD STUDY AREA
AQUATIC RESOURCES FEATURES
WETLANDS**

Emergent Wetland	
Feature ID	Acreage
WF-5	0.011
WF-A	0.006
	0.017

Pond	
Feature ID	Acreage
WF-11	0.308
	0.308

Other Waters	
Feature ID	Acreage
WF-B	0.003
	0.003

Total 0.328

**AJD Study Area
Aquatic Resources 0.328 acre
Total:**

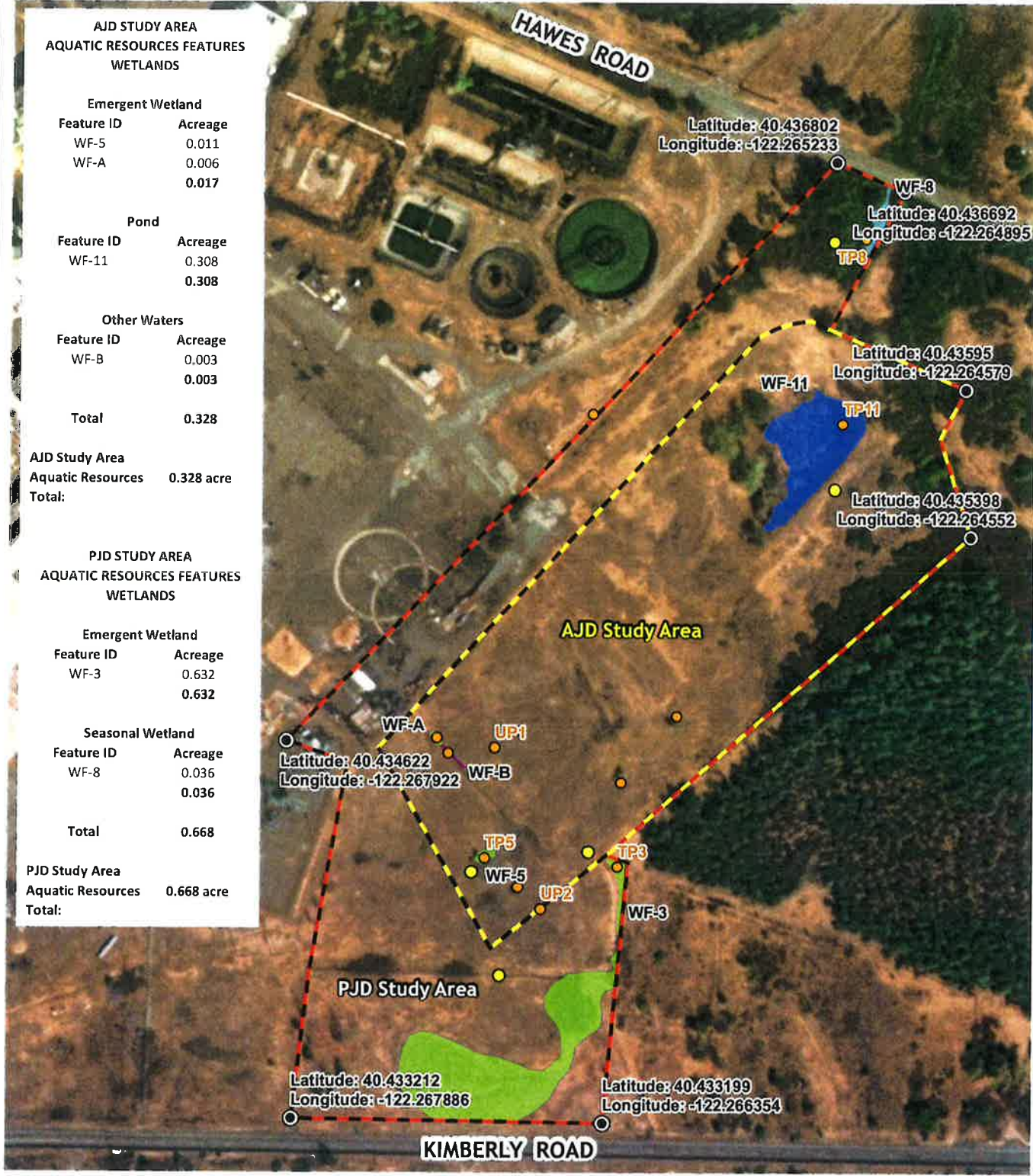
**PJD STUDY AREA
AQUATIC RESOURCES FEATURES
WETLANDS**

Emergent Wetland	
Feature ID	Acreage
WF-3	0.632
	0.632

Seasonal Wetland	
Feature ID	Acreage
WF-8	0.036
	0.036

Total 0.668

**PJD Study Area
Aquatic Resources 0.668 acre
Total:**



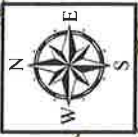
- Data Point
- Photo Point
- Control Point
- PJD Study Area
- Property Boundary
- Emergent Wetland
- Other Water
- Pond
- Seasonal Wetland
- AJD Study Area

Date prepared: April 20, 2022
 Revised: August 18, 2022
 Prepared by: J. Williams,
 VESTRA Resources, Inc.



SOURCE: MAXAR 9/15/2021 AERIAL PHOTOGRAPH 1 inch = 200 feet

**AQUATIC RESOURCES DELINEATION
 MOSSBACK LAND COMPANY LLC
 ANDERSON, CALIFORNIA**

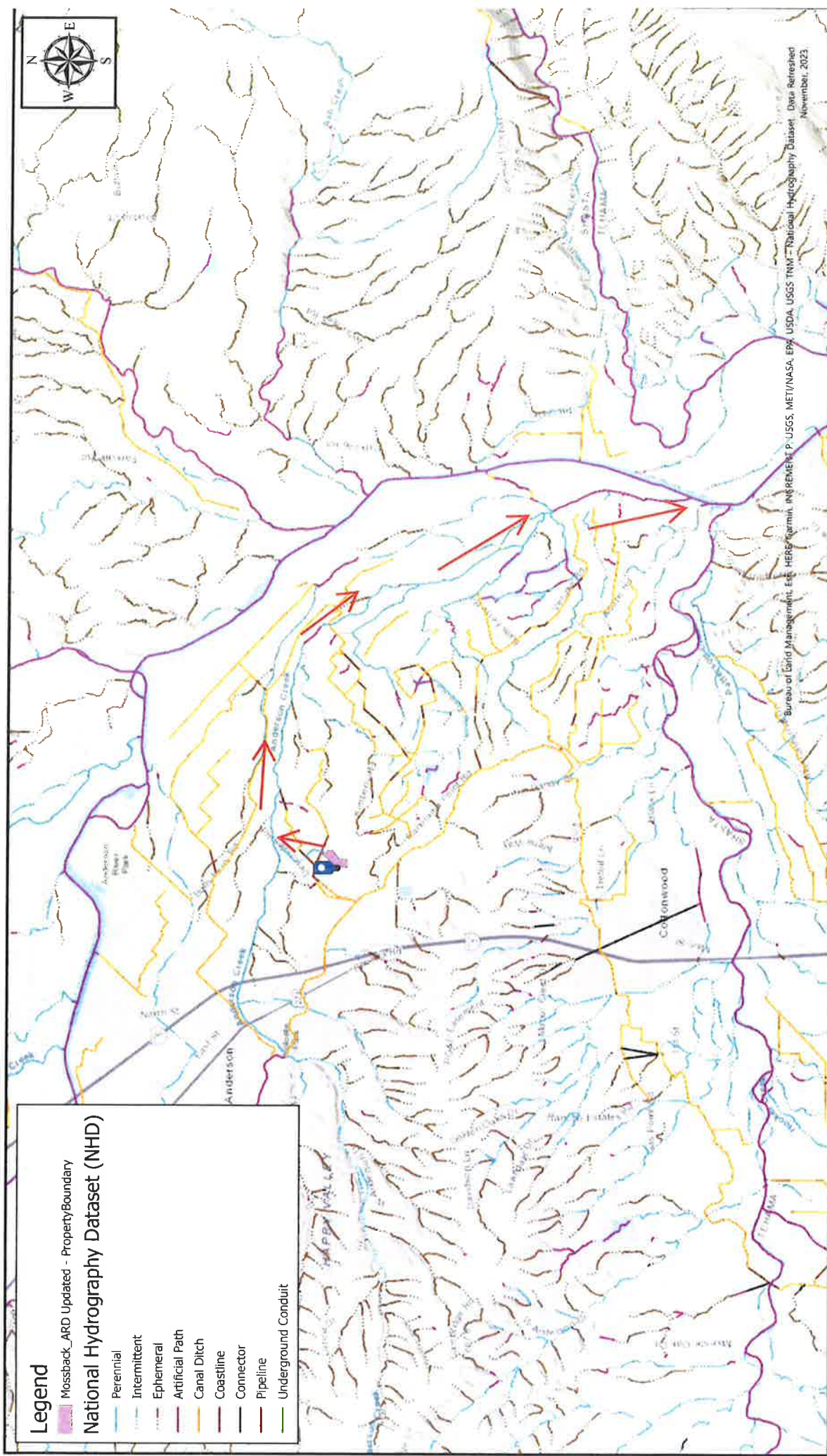


Legend

Mossback_ArD Updated - PropertyBoundary

National Hydrography Dataset (NHD)

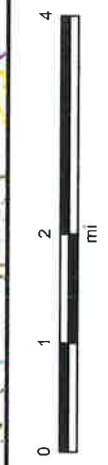
- Perennial
- Intermittent
- Ephemeral
- Artificial Path
- Canal Ditch
- Coastline
- Connector
- Pipeline
- Underground Conduit



Bureau of Land Management, E.E. HERB, Jr. et al., INCREMENT P, USGS, METI/NASA, EPA, USDA, USGS TNM - National Hydrography Dataset, Data Refreshed November, 2023



NHD Flowpath-2022-00433

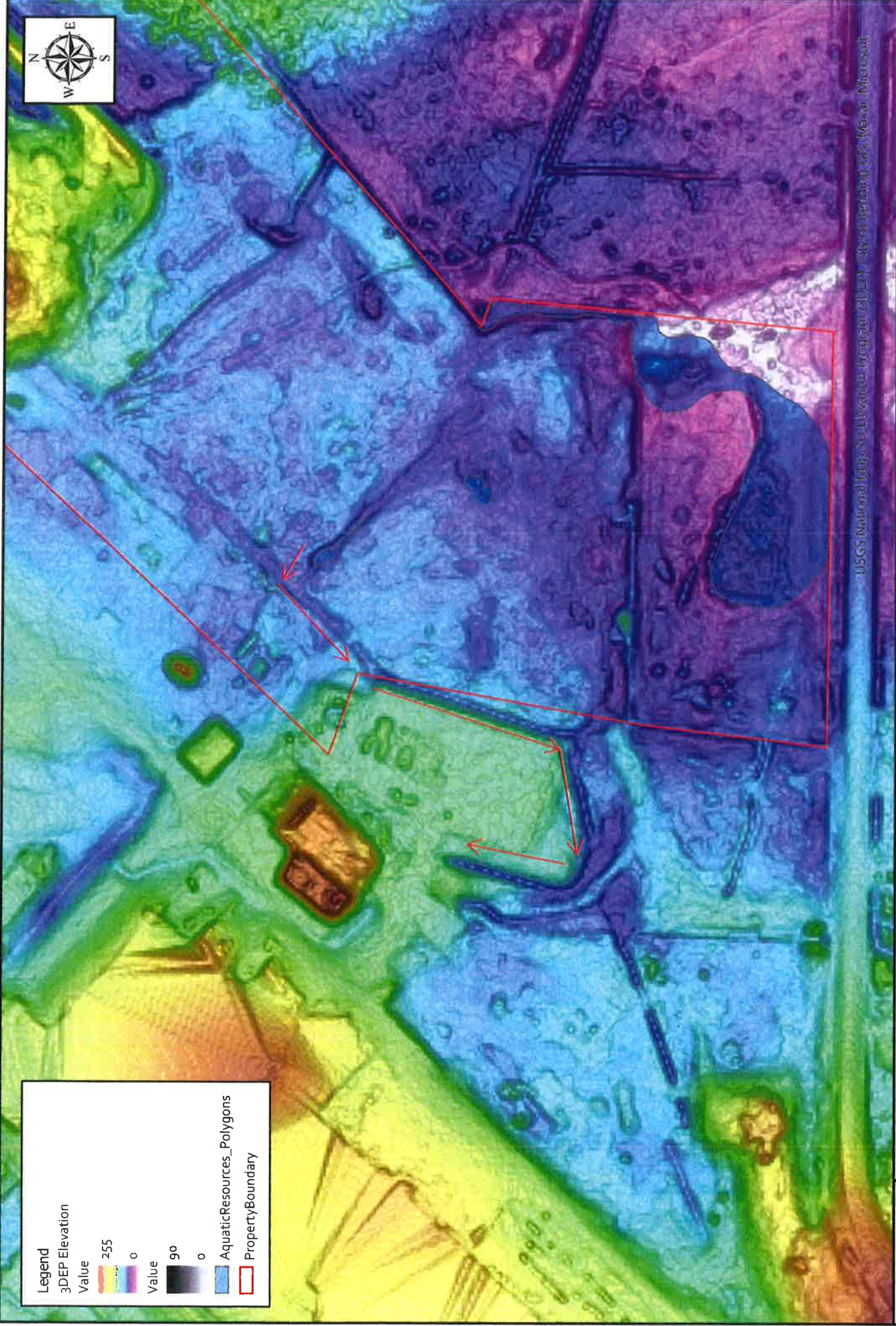


Map Created by: Gabriel Leggieri
Date: 11/17/2023

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

Map Center: 122.241374°W 40.422618°N

ENCLOSURE



Legend

3DEP Elevation
Value

Value	255
Value	0

Value

Value	90
Value	0

AquaticResources_Polygons

PropertyBoundary



USGS National Elevation Dataset (NED) 30m Resolution, (Map: Microsoft)



Map Title/Description
WF-A LIDAR Flowpath

0 60 120 240
Feet

Map Center: 122.267549°W 40.434272°N

Author Name
Gabriel Leggieri

Date: 12/5/2023

Coordinate System: NAD 1983 StatePlane California I
FIPS 0401 Feet



Approximate Property Boundary



SOURCE: 2-26-1971 AERIAL PHOTOGRAPH

1971 AERIAL PHOTOGRAPH
MOSSBACK LAND COMPANY LLC
ANDERSON, CALIFORNIA

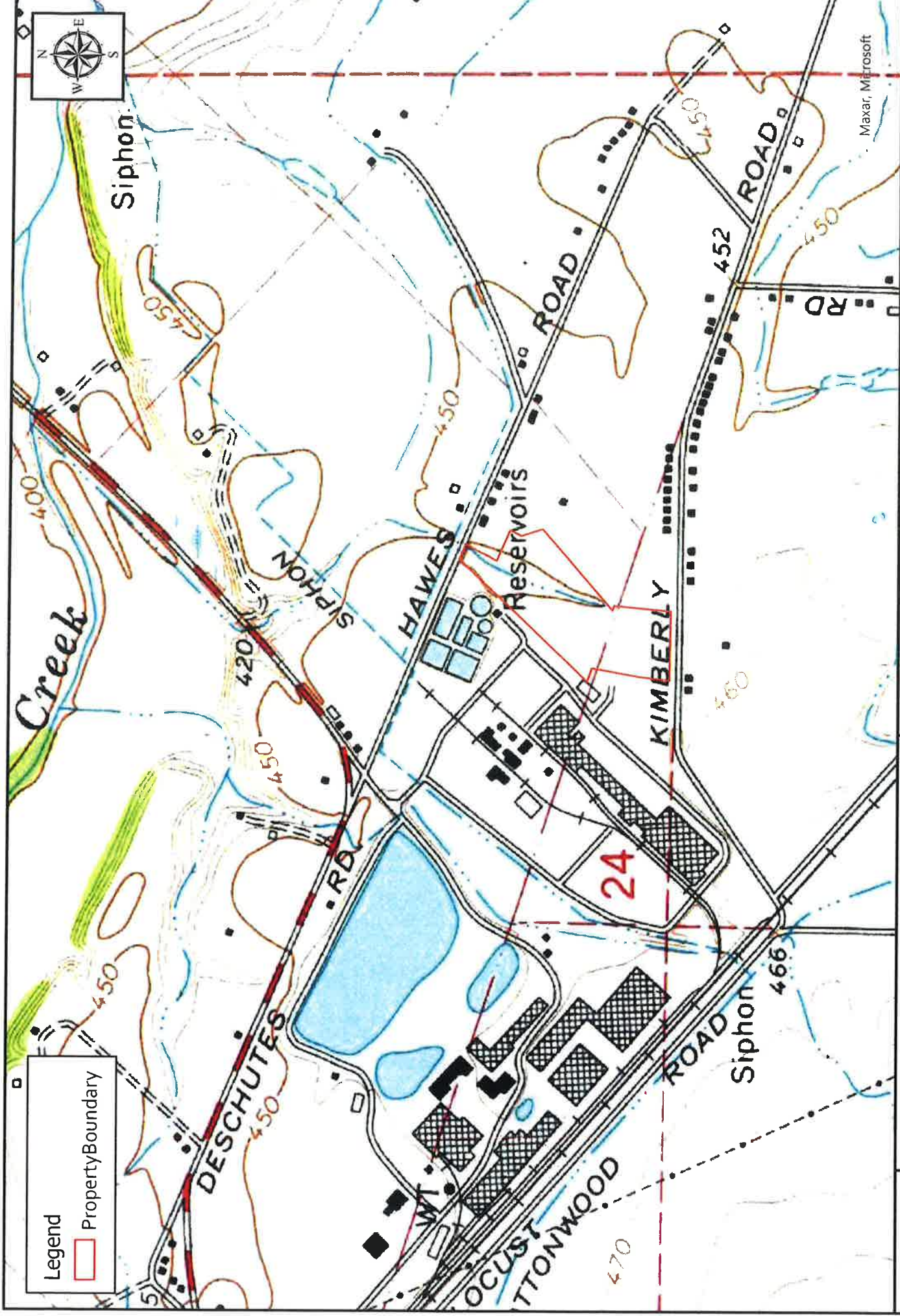


Approximate Property Boundary



SOURCE: 3-2-1988 AERIAL PHOTOGRAPH

1988 AERIAL PHOTOGRAPH
MOSSBACK LAND COMPANY LLC
ANDERSON, CALIFORNIA



Map Title/Description
1965 Topo Map

Author Name
 Gabriel Leggieri

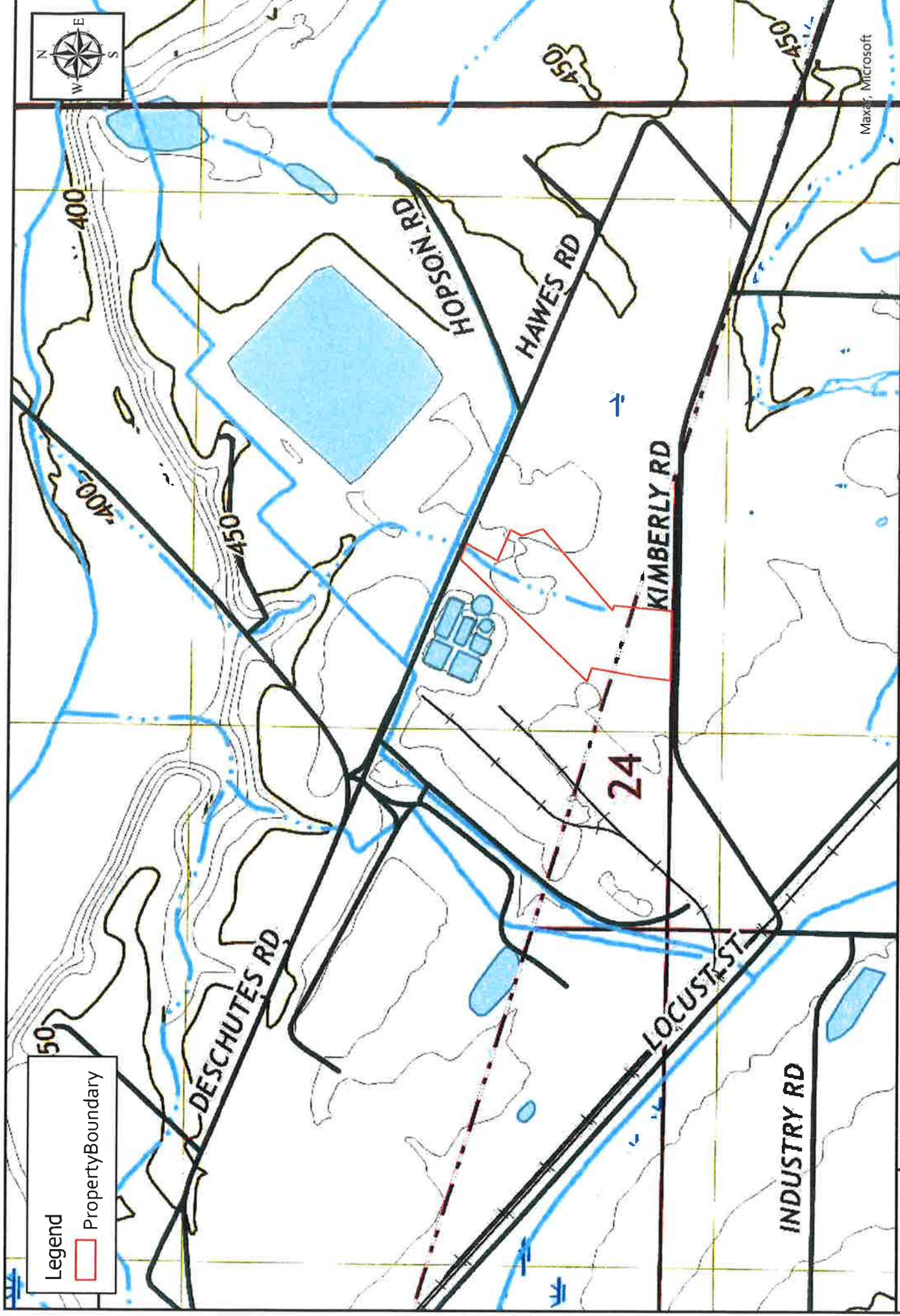
Date: 11/20/2023

Coordinate System: NAD 1983 StatePlane California I
 FIPS 0401 Feet

Map Center: 122.267231°W 40.436843°N

0 355 710 1,420
 Feet





Legend

Property Boundary

Author Name
Gabriel Leggieri

Date: 11/20/2023

Coordinate System: NAD 1983 StatePlane California I
FIPS 0401 Feet



Map Title/Description
2022 Topo Map



**AJD STUDY AREA
AQUATIC RESOURCES FEATURES
WETLANDS**

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Feature ID	Acreage
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WF-A	0.006
	0.017

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Aquatic Resources 0.328 acre
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**PJD STUDY AREA
AQUATIC RESOURCES FEATURES
WETLANDS**

Emergent Wetland

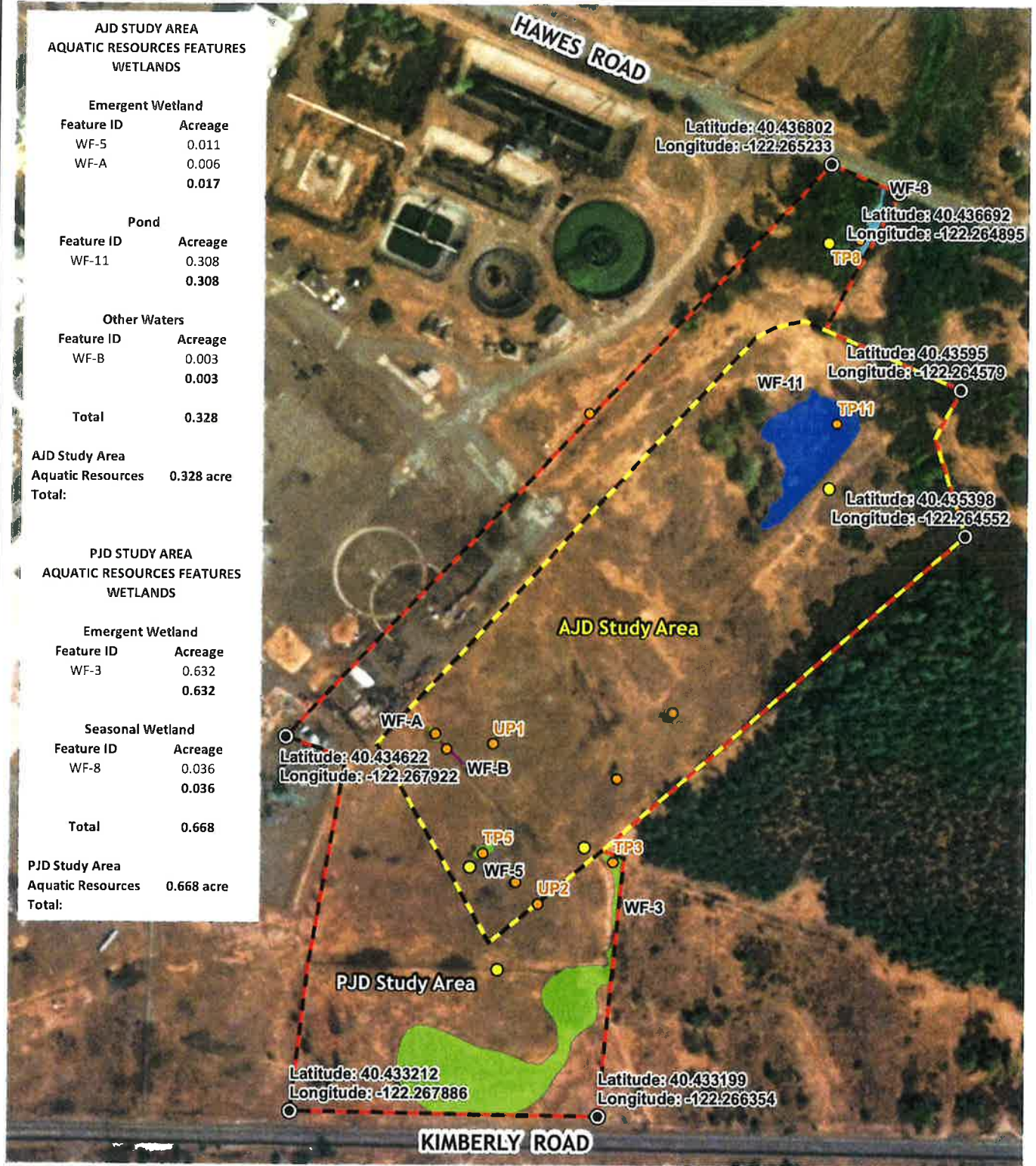
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Seasonal Wetland

Feature ID	Acreage
WF-8	0.036
	0.036

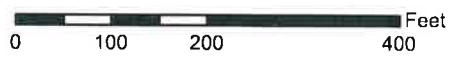
Total 0.668

PJD Study Area
Aquatic Resources 0.668 acre
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- Data Point
- Photo Point
- ⊙ Control Point
- PJD Study Area
- ▭ Property Boundary
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- AJD Study Area

Date prepared: April 20, 2022
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 MOSSBACK LAND COMPANY LLC
 ANDERSON, CALIFORNIA