

Appendix G-6

Jurisdictional Determination Technical Memorandum



Date: December 13, 2023

To: Bryan Matsumoto | Senior Project Manager
USACE, Regulatory Division, North Branch
450 Golden Gate Avenue, 4th Floor, Room 1111
San Francisco, California 94102-3404

From: Ari Rogers
Ecologist | Project Manager
Sequoia Ecological Consulting, Inc.

RE: **Jurisdictional Determination Technical Memorandum**
Shiloh Resort and Casino Project (SPN-2022-00162)
Windsor/Sonoma County, California

1.0 INTRODUCTION AND BACKGROUND

As contracted by Acorn Environmental on behalf of the Koi Nation of Northern California (Tribe; Property Owner), Sequoia Ecological Consulting, Inc. (Sequoia) is submitting this technical memorandum to the U.S. Army Corps of Engineers (USACE) for the proposed Shiloh Resort and Casino Project (Project) site (SPN-2022-00162), located in Sonoma County, California (Assessor's Parcel Number 059-300-003) (Figures 1 and 2). The Property Owner proposes to acquire the project site into federal trust as the initial reservation for the Koi Nation of Northern California, which will subsequently develop a resort and casino.

Sequoia performed a wetland delineation in February 2022 and provided USACE with the associated report and Preliminary Jurisdictional Determination (PJD) request in April 2022. Sequoia's delineation of "waters of the United States" (WOTUS) followed the USACE's 1987 *Wetlands Delineation Manual* and 2008 *Regional Supplement for the Arid West Region*. At the request of the USACE, Sequoia performed a follow-up site visit in July 2023 to inspect an area that was presenting as a dark spot on aerial imagery; additional data and sample points were collected and the area was determined to be upland based on the absence of positive wetland indicators of all three parameters (hydrology, soil, vegetation) and indicators of ordinary high water mark (OHWM). On October 27, 2023, Sequoia and Acorn Environmental attended a delineation verification site visit with USACE's San Francisco District Senior Project Manager Bryan Matsumoto to review aquatic features identified on site and discuss jurisdiction in light of the 2023 conforming rule issued after the Supreme Court decision in *Sackett v. EPA*.

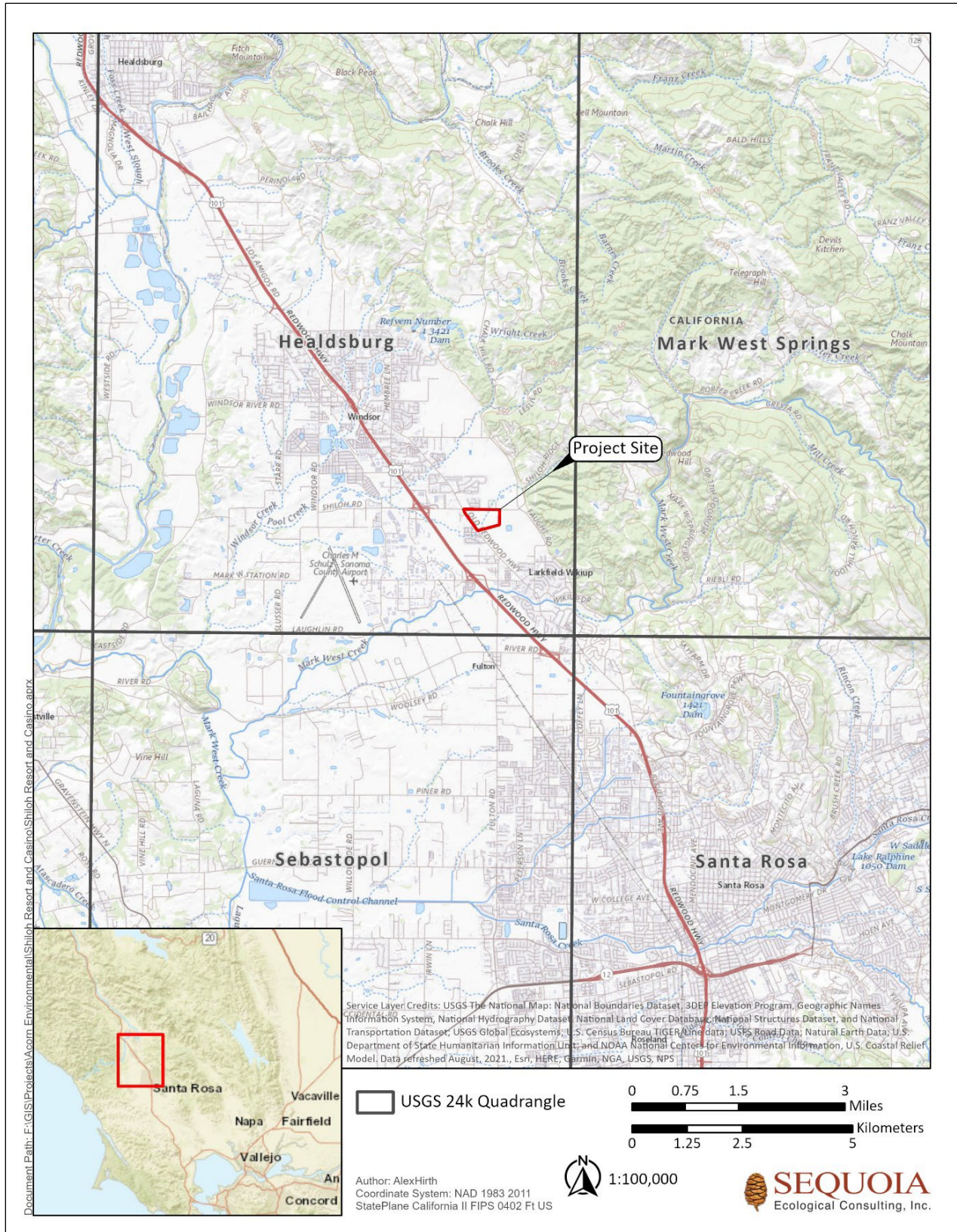


Figure 1. Regional Map of the Shiloh Resort and Casino Project Site

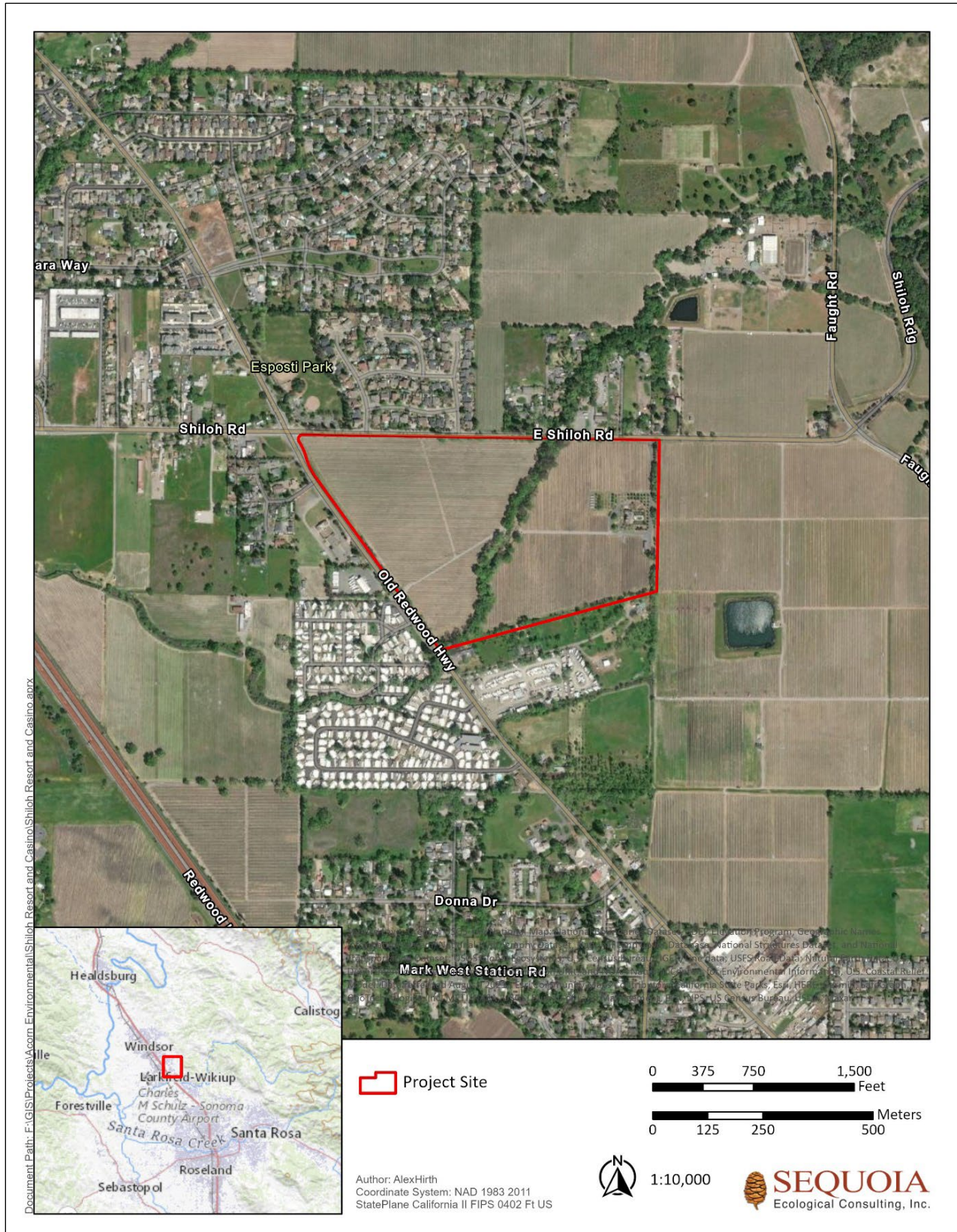


Figure 2. Location Map of the Shiloh Resort and Casino Project Site



This memorandum presents the results of the October 2023 delineation verification site visit and subsequent jurisdictional determinations specified by Mr. Matsumoto. The draft Aquatic Resources Delineation (ARD) map was updated following the site visit and the revised version is included as Appendix A to this memo. Sequoia respectfully requests that USACE confirm the jurisdiction of aquatic features mapped on the project site pursuant to Section 404 of the Clean Water Act (CWA), through the use of an Approved Jurisdictional Determination (AJD), not a PJD as previously requested due to the presence of non-jurisdictional and exempt aquatic features.

2.0 SUMMARY OF SITE VISIT

On October 27, 2023, a delineation verification site visit was performed by Ari Rogers (Sequoia), Bryan Matsumoto (USACE San Francisco District), and Darin Beltran (Koi Nation). The attendees of the site visit are hereafter collectively referred to as surveyors. The surveyors met at 9:30 a.m. and after reviewing the draft ARD map, traversed the property and inspected various aquatic features. The surveyors began with the string of seasonal wetlands (SW-01 through SW-04) and roadside drainage ditches (RD-01 and RD-02) on the western property boundary, then visited the area assessed during Sequoia’s follow-up visit in July 2023. Afterwards, the surveyors viewed the Pruitt Creek channel at the low-flow crossing and the in-stream seasonal wetland (SW-05). Finally, the surveyors inspected several areas where dark spots were observed on aerial imagery, immediately adjacent to the main access road between Pruitt Creek and the existing residence. One new aquatic feature (SW-09) was identified during the site visit and is discussed further below.

3.0 JURISDICTIONAL DETERMINATIONS

The jurisdictional determination provided by Mr. Matsumoto based on the delineation verification site visit are discussed below. The jurisdictional and non-jurisdictional aquatic features within the project site are depicted in the revised ARD map (Appendix A) and summarized in Table 1.

Table 1. Jurisdictional and Non-Jurisdictional Aquatic Features on the Project Site

Aquatic Feature Name	Aquatic Feature Type	Area (sq. ft.)	Area (ac.)	Notes
Jurisdictional Features				
ID-01	Intermittent drainage	28,200	0.648	Pruitt Creek
SW-01	Seasonal wetland	73.4	0.00169	
SW-05	Seasonal wetland	552	0.0127	In-stream wetland
SW-06	Seasonal wetland	119	0.00272	In-stream wetland
SW-07	Seasonal wetland	149	0.00341	In-stream wetland
SW-08	Seasonal wetland	646	0.0148	In-stream wetland
Non-Jurisdictional Features				
RD-01	Roadside drainage	3,110	0.0713	Not relatively permanent
RD-01	Roadside drainage	1,470	0.0339	Not relatively permanent
SW-02	Seasonal wetland	165	0.00378	Non-adjacent
SW-03	Seasonal wetland	193	0.00442	Non-adjacent
SW-04	Seasonal wetland	404	0.00927	Non-adjacent
SW-09	Seasonal wetland	1,780	0.0408	Artificially irrigated



3.1 Jurisdictional Features

No new jurisdictional features were identified during the October 27, 2023 delineation verification field visit; however, four (4) in-channel seasonal wetlands (SW-05 through SW-08) were included in the revised ARD map at the request of Mr. Matsumoto. These features were identified and mapped during Sequoia's initial wetland delineation in February 2022 but because of their location within the Pruitt Creek channel (some at or below OHWM) were previously incorporated into the ID-01 polygon on the draft ARD map, rather than being shown as individual wetland features. Per Mr. Matsumoto's direction, these four in-channel features were separated out from the ID-01 polygon and are depicted as seasonal wetlands in the revised ARD map (Appendix A). SW-01 was confirmed to fall under USACE jurisdiction during the October 2023 site visit based on the presence of all three wetland parameters and direct surface connection to Pruitt Creek via roadside ditch RD-02. Pruitt Creek was also determined to be jurisdictional as a relatively permanent tributary to WOTUS.

3.2 Non-Jurisdictional Seasonal Wetlands

Three (3) seasonal wetlands identified during the initial February 2022 delineation were determined to be non-jurisdictional during the October 2023 verification site visit: SW-02, SW-03, and SW-04. During the verification site visit, the surveyors inspected for signs of hydrologic connectivity between these seasonal wetlands and the nearby roadside drainage ditch, such as drift marks, swales, or flow lines, but none were observed. Accordingly, it was determined that these features, while meeting all three wetland parameters, do not have direct surface connection to WOTUS and are therefore non-adjacent wetlands that are non-jurisdictional pursuant to the CWA and 2023 conforming rule.

During the verification site visit on October 27, 2023, a previously undocumented aquatic feature was identified along the main access road near the existing residence. The feature was determined to be a seasonal wetland (SW-09) based on the presence of hydrophytic indicator plant species such as tall flatsedge (*Cyperus eragrostis*, FACW), and approximately 4 to 6 inches of standing water that extended from the access road into several vineyard rows. These conditions were not seen during Sequoia's initial wetland delineation in February 2022 nor the follow-up visit in July 2023, suggesting that the pooling water was a recent occurrence. The presence of relatively young plants, still in vegetative phenology despite the timing of the site visit (late October), within the seasonal wetland further supported this hypothesis. A small (approximately 6-inch diameter) culvert with an outlet at the edge of SW-09 was also observed, spanning beneath the access road and leading toward the residence. The feature was mapped during the October 2023 site visit and is shown on the revised ARD map (Appendix A). The presence of standing water considering the site visit was timed at the end of the summer dry season, before winter rains had begun, suggested that an artificial water source was feeding the wetland. This was confirmed by the vineyard manager who explained that the area was fed by nuisance irrigation water and sprinkler runoff, via the culvert beneath the access road. For this reason, SW-09 was determined to be excluded from USACE jurisdiction as an artificially irrigated feature that would revert to dry land if irrigation ceased (33 CFR § 328.3 (b)(4) exclusion).



3.3 Roadside Drainage Ditch

The two roadside drainage ditches (RD-01 and RD-02) are non-relatively permanent drainages, meaning they do not meet the definition of WOTUS (33 CFR § 328.3) and are therefore excluded from jurisdiction. Mr. Matsumoto assessed the potential applicability of the roadside ditch exclusion but determined that these features do not meet the criteria; roadside ditches must be features excavated in dry land with a non-relatively permanent flow that drain *only* uplands. Considering the roadside ditch was observed to have direct surface connection to and consequently drain SW-01, it therefore does not drain only uplands. For these reasons, RD-01 and RD-02 were determined to be non-relatively permanent, non-WOTUS features that are excluded from USACE jurisdiction pursuant to the CWA.

4.0 CONCLUSION

This concludes Sequoia's jurisdictional determination technical memorandum for the Shiloh Resort and Casino Project (SPN-2022-00162). Jurisdictional determinations were provided by USACE's Senior Project Manager Bryan Matsumoto and are summarized above and depicted in the revised ARD map (Appendix A). Sequoia respectfully requests that USACE confirm the jurisdiction of aquatic features mapped on the project site pursuant to Section 404 of the CWA, through the use of an AJD. Sequoia did not prepare any additional Arid West data sheets after discussion with USACE but are providing updated ORM Upload Sheet and shapefiles for the final aquatic features and jurisdictional determinations to support this request.

If you have any questions or concerns regarding this report, please do not hesitate to contact me at the email or phone number listed below. Thank you for the opportunity to support you on this Project.

Sincerely,

Ari Rogers | Ecologist and Project Manager

Sequoia Ecological Consulting, Inc.

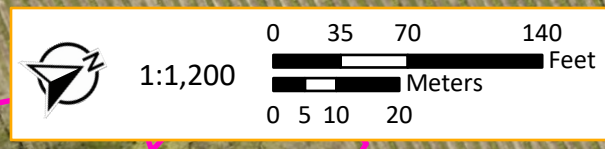
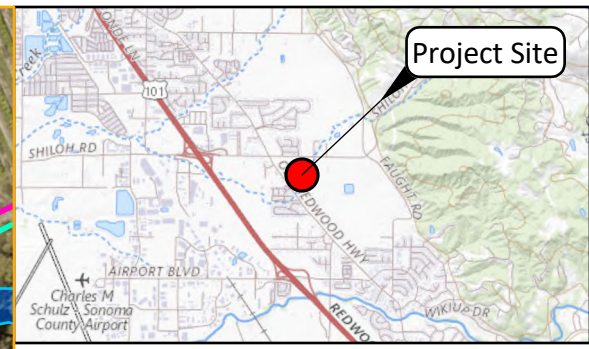
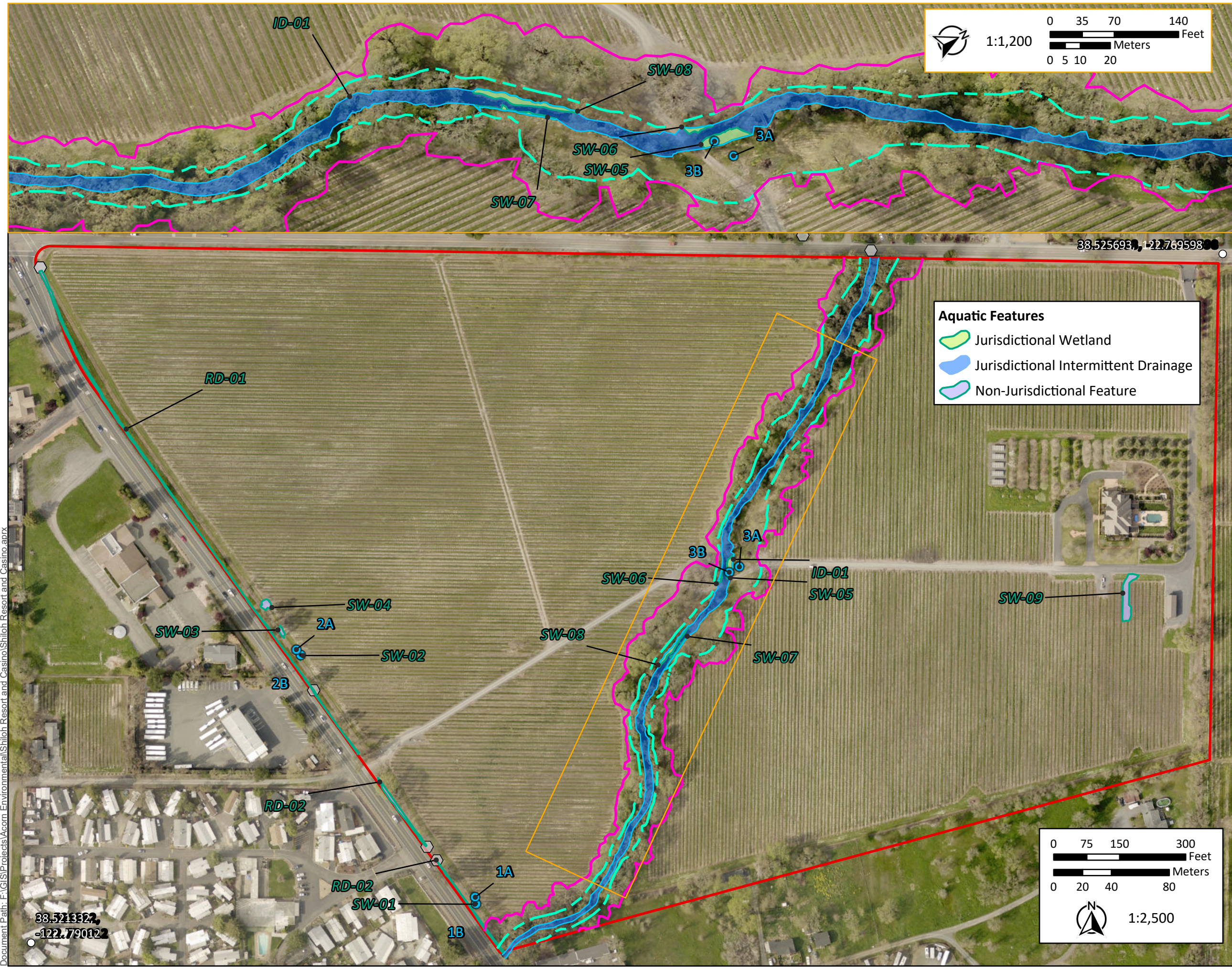
Mobile: 512.940.4049 | Main: 925.855.5500 | Fax: 510.439.1104

arogers@sequoiaeco.com

www.sequoiaeco.com

Appendix A

Revised Aquatic Resources Delineation Map



- Project Site
- Culvert Opening
- Sample Point
- Ordinary High Water Mark
- Top-of-Bank
- Riparian Dripline

- Aquatic Features**
- Jurisdictional Wetland
 - Jurisdictional Intermittent Drainage
 - Non-Jurisdictional Feature

Table 1. Jurisdictional Features

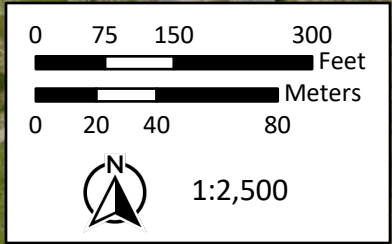
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Table 2. Non-Jurisdictional Features

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Author: AlexHirth
 Date Exported: 12/12/2023
 Coordinate System: NAD 1983 2011
 StatePlane California II FIPS 0402 Ft US

Service Layer Credits: Pictometry International, Maxar, USGS The National Map: National Boundaries Dataset, 3DEP Elevation Program, Geographic Names Information System, National Hydrography Dataset, National Land Cover Database, National Structures Dataset, and National Transportation Dataset; USGS Global Ecosystems; U.S. Census Bureau TIGER/Line data; USFS Road Data; Natural Earth Data; U.S. Department of State Humanitarian Information Unit; and NOAA National Centers for Environmental Information, U.S. Coastal Relief Model. Data refreshed April, 2023.



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