



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY, SOUTH BLDG 1202  
SEATTLE, WA 98134-2388

CENWS-Seattle District

14 November 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 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,<sup>1</sup> NWS-2023-655<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

On January 18, 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 September 8, 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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> 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, the territorial seas, or interstate water 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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).
  - i. Ditch 1, non-jurisdictional
  - ii. Ditch 2, non-jurisdictional
  - iii. Ditch 3, non-jurisdictional
  - iv. Ditch 4, non-jurisdictional
  - v. Ditch 5, non-jurisdictional
  - vi. Ditch 6, jurisdictional, Section 404
  - vii. Ditch 7, non-jurisdictional
  - viii. Ditch 8, non-jurisdictional
  - ix. Ditch 9, jurisdictional, Section 404
  - x. Ditch 10, non-jurisdictional
  - xi. Swale 1, non-jurisdictional
  - xii. Swale 2, non-jurisdictional
  - xiii. Swale 3, non-jurisdictional
  - xiv. Swale 4, non-jurisdictional
  - xv. Wetland AA, non-jurisdictional
  - xvi. Wetland BB, non-jurisdictional
  - xvii. Wetland CC, non-jurisdictional

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- xviii. Wetland DD, non-jurisdictional
- xix. Wetland E, non-jurisdictional
- xx. Wetland F, non-jurisdictional
- xxi. Wetland HH, non-jurisdictional
- xxii. Wetland JJ, non-jurisdictional
- xxiii. Wetland 16a, jurisdictional, Section 404
- xxiv. Wetland 16c, non-jurisdictional
- xxv. Wetland 16d, non-jurisdictional
- xxvi. Wetland 17, jurisdictional, Section 404
- xxvii. Wetland 19, non-jurisdictional
- xxviii. Wetland 20a, non-jurisdictional
- xxix. Wetland 20b, non-jurisdictional
- xxx. Wetland 29, jurisdictional, Section 404
- xxxi. Wetland 30, non-jurisdictional
- xxxii. Wetland 37, jurisdictional, Section 404
- xxxiii. Wetland 48b, non-jurisdictional
- xxxiv. Wetland 50, non-jurisdictional

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 61964 (September 8, 2023))

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

3. REVIEW AREA. The 57-acre review area is located at Bellingham, Whatcom County Washington, Lat: 48.776739; Long: -122.437297. The review area consists of undeveloped areas, multiple single family residences, and some commercial development. Undeveloped portions of the review area consist of a mix of forest, scrub-shrub habitat, and grassy open areas. A north to south oriented mowed utility easement is located within the eastern portion of the review area. The review area is bounded by Woburn Street to the west, East Sunset Drive to the north, undeveloped forest to the east, and Barkley Boulevard to the south.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Bellingham Bay, approximately 3.7 miles west and downstream, which is a part of the Puget Sound. The Puget Sound is listed as a navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There are four distinct flowpaths located outside of the review area that provide hydrologic flow paths from aquatic resources within the review area to a TNW. These flowpaths were identified using the Northwest Ecological Services (NES) report, on site observations, Whatcom County aerial imagery from 2019 and 2022, stormwater, stream and wetland data from Bellingham CityIQ, and 2013 LiDAR from DNR.

Flowpath 1: Fever Creek is located outside of the AJD review area and flows south through the eastern portion of Wetland 37. Fever Creek flows approximately 2 miles from the review area southwest to Whatcom Creek. Whatcom Creek flows approximately 1.5 miles west to Bellingham Bay. Fever Creek is mapped by the City of Bellingham and the National Hydrography Dataset as a stream originating in Wetland 37 north of Barkley Boulevard. Fever Creek was identified by NES as a seasonal, non-fish-bearing stream. Channelized flow in Fever Creek was identified by NES in the eastern portion of Wetland 37. The Corps has determined that Fever Creek meets the relatively permanent standard and indirectly connects downstream to a TNW.

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<sup>6</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

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Flowpath 2: Ditch 7, Ditch 9, Ditch 10, and Wetland 17 flow to catch basins that drain to underground stormwater pipes. These pipes drain northwest approximately 750 feet and outlet to an unnamed stream that flows northwest approximately 200 feet to Squalicum Creek. Squalicum Creek flows west approximately 3.7 miles to Bellingham Bay.

Flowpath 3: Wetland 30 drains to a catch basin that drains to underground stormwater pipes. These pipes drain southwest approximately 400 feet and outlet to a wetland. This wetland drains northwest to an unnamed stream that flows northwest approximately 340 feet to wetlands adjacent to Squalicum Creek. Squalicum Creek flows west approximately 3.8 miles to Bellingham Bay.

Flowpath 4: Ditch 3 flows west into a catch basin that drains to underground stormwater pipes. These pipes drain northwest 0.24 miles to an unnamed stream that flows 312 feet north to Squalicum Creek. Squalicum Creek flows west approximately 3.6 miles to Bellingham Bay.

6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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 2023 Rule as amended, 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 2023 Rule as amended. 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.

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<sup>7</sup> 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.

<sup>8</sup> 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.

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Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3):

Ditch 6: Ditch 6 is 27 feet within the review area and flows from Wetland 29 to Wetland 37. Water in Wetland 37 flows to Fever Creek as described above (Flowpath 1). According to the NES, Ditch 6 is approximately 1 foot deep and 1 foot wide. Water was observed flowing within Ditch 7 by NES during a February 2024 site visits. According to the APT, there were normal precipitation conditions at the site during this time. The channel is unvegetated. The ditch is not mapped by USGS or NHD. Water is visible in Ditch 6 in 2016, 2019, and 2022 Whatcom County aerial imagery (the exact dates of these aerials is not known). Water is also visible in Ditch 6 in Google Earth aerial imagery from April 2023 and 2024. According to APT, there were drier than normal conditions at the site in April 2023 and normal conditions at the site in April 2024. Based on the above information, Ditch 6 experiences flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 6 meets the relatively permanent standard and indirectly connects downstream to a TNW.

Ditch 9: Ditch 9 is 182 feet within the review area and flows into a catch basin as described above (Flowpath 2). Ditch 9 is densely vegetated with reed canary grass and European speedwell (*Veronica beccabunga* – OBL). Drainage patterns in the vegetation and a clear topographic break on the banks were observed during the September 2024 site visit. Standing water was observed in Ditch 9 during the November 2023 and October 2024 site visits. NES observed approximately three inches of flow within Ditch 9 during site visits in February 2024. According to the APT, there were normal conditions at the site during the site visits in November 2023 and February and September 2024. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site prior to the October 2024 site visit and conditions were wetter than normal. Water is visible in Ditch 9 in Whatcom County aerial imagery from 2019 and 2022 (the exact dates of these aerials are not known). The ditch is

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not mapped by USGS or NHD. Based on the above information, Ditch 9 experiences flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 9 meets the relatively permanent standard and indirectly connects downstream to a TNW.

f. Adjacent Wetlands (a)(4):

Wetland 16a: Wetland 16a is a 6.3 acre palustrine forested and emergent depressional wetland. Swale 1 flows west through Wetland 16a and then northwest into Ditch 9. Wetland 16a has a continuous surface connection to Ditch 9, a relatively permanent tributary as documented above. Based on this, the Corps has determined that Wetland 16a meet the definition of an (a)(4) adjacent wetland and is a water of the United States.

Wetland 17: Wetland 17 is a 0.32 acre palustrine scrub shrub and forested slope wetland in the northwestern portion of the review area. Wetland 17 is located approximately 100 feet north of Wetland 16a. Wetland 17 is not divided from Wetland 16a by any structure such as a road, path or berm. Ditch 9 flows north through the central portion of Wetland 17. Wetland 17 is adjacent to Ditch 9, a relatively permanent tributary as documented above. Based on this, the Corps has determined that Wetland 17 meets the definition of an (a)(4) adjacent wetland and is a water of the United States.

Wetland 29: Wetland 29 is a 0.46 acre palustrine forested and emergent slope wetland in the southeastern portion of the review area. Ditch 6 flows out of the southeast corner of the wetland. Wetland 29 is adjacent to Ditch 6, a relatively permanent tributary as documented above. Based on this, the Corps has determined that Wetland 29 meets the definition of an (a)(4) adjacent wetland and is a water of the United States.

Wetland 37: Wetland 37 is 11.35 acre palustrine forested, scrub shrub and emergent, depressional and slope wetland. In the southeastern portion of the review area. As documented in the 2024 delineation report, Fever Creek flows through the eastern portion of Wetland 37. Ditch 6 flows into the southwestern corner of the wetland. Wetland 37 is adjacent to Fever Creek and Ditch 6, relatively permanent tributaries as documented above. Based on this, the Corps has determined that Wetland 37 meets the definition of an (a)(4) adjacent wetland and is a water of the United States.

g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>9</sup> N/A
- b. 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 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Ditch 1: Ditch 1 is 100 feet within the northwest portion of the review area. The western portion of Wetland 16a drains into Ditch 1. Ditch 1 drains to Wetland 16c which does not have an outlet. Ditch 1 does not have a defined bed and bank. No ordinary high water mark indicators were observed in Ditch 1. Portions of Ditch 1 are vegetated with Himalayan blackberry and snowberry. No surface water was observed in Ditch 1 during a site visit on 30 October 2024. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to this site visit and conditions were wetter than normal. Ditch 1 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 1 does not meet the relatively permanent standard, does not connect downstream to a TNW and is therefore not a water of the U.S.

Ditch 2: Ditch 2 is 420 feet within the northwest portion of the review area. Portions of Ditch 2 are located within 16a. Ditch 2 does not have a defined bed and bank. Ditch 2 is vegetated with snowberry and Himalayan blackberry. No flow within Ditch was observed during the site visits on 9 November 2023 or 30 October 2024. According to the APT, there were normal precipitation conditions at the site during the 2023 site visit. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to the 2024 site visit and conditions were wetter than normal. The ditch is not mapped by USGS or NHD. Water is not visible in Ditch 2 in Google Earth or Whatcom County aerial imagery. Ditch 2 does not experience flowing or standing water continuously during certain times of the year that is more than

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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only a short duration in direct response to precipitation. The Corps has determined that Ditch 2 does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch 3: Ditch 3 is 235 feet within the review area and flows west to a catch basin as described above (Flowpath 4). Marks of ponding and cracked soils were observed in portions of the low gradient ditch during a site visit on 16 September 2024. No water was observed during the site visit on 30 October 2024. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to the 2024 site visit and conditions were wetter than normal. Ditch 3 has a low gradient and is vegetated primarily with reed canary grass (*Phalaris arundinacea* – FACW), creeping buttercup (*Ranunculus repens* – FAC), soft rush (*Juncus effusus* – FACW), and twinberry (*Lonicera involucrate* – FAC). The banks are vegetated with Himalayan blackberry (*Rubus armeniacus* – FAC) and snowberry (*Symphoricarpos albus* – FACU). The ditch is not mapped by the United States Geological Survey (USGS) or the National Hydrography Dataset (NHD). Overhanging vegetation prohibits determining whether water can be observed in the ditch in aerial imagery. Based on the above information, Ditch 3 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 3 does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch 4: Ditch 4 is 660 feet within the southern portion of the review area. No outlet from Ditch 4 was observed. Ditch 4 does not connect to any other aquatic features or stormwater infrastructure. Ditch 4 does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 5: Ditch 5 is 50 feet within the southern portion of the review area. No outlet from Ditch 5 was observed. Ditch 5 does not connect to any other aquatic features or stormwater infrastructure. Ditch 5 does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 7: Ditch 7 is 330 feet within the review area and flows north to a catch basin as described above (Flowpath 2). Ditch 7 is narrow and incised and vegetated with reed canary grass, Himalayan blackberry, soft rush and fringed willowherb (*Epilobium ciliatum* – FACW). The ditch was full of leafy debris and no water flow was observed during site visits on 9 November 2023, 16 September 2024 or 30 October 2024. According to NES, in February 2024, Ditch 7 contained one inch of puddling, but not flowing water. According to the APT, there were normal conditions at the site during the November 2023, September 2024 and February

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2024 site visits. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to the October 2024 site visit and conditions were wetter than normal. NES posited that water flows in Ditch 7 during storm events, but not continuously. The ditch is not mapped by USGS or NHD. Water is not visible in Ditch 7 in Google Earth or Whatcom County aerial imagery. Ditch 7 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 7 does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch 8: Ditch 8 is 200 feet within the review area and flows west to Ditch 7. Ditch 8 is approximately 2 feet wide and less than one foot deep. Ditch 8 is vegetated with reed canary grass and fringed willowherb. No water flow was observed in Ditch 8 during site visits on 9 November 2023, 16 September 2024 and 30 October 2024. According to the APT, there were normal conditions at the site during the November and September site visits. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to the October 2024 site visit and conditions were wetter than normal. The ditch is not mapped by USGS or NHD. Water is not visible in Ditch 8 in Google Earth or Whatcom County aerial imagery. Ditch 8 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 8 does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch 10: Ditch 10 is 317 feet within the review area and flows north to a catch basin as described above (Flowpath 2). Ditch 10 is approximately 4 to 5 feet wide and 1 foot deep. Ditch 10 is vegetated with reed canary grass, knotweed (*Reynoutria japonica* – FACU), and Himalayan blackberry. No water flow was observed in Ditch 10 during a site visit on 9 November 2023 or 16 September 2024. NES observed approximately 1 inch of flow within Ditch 10 during February 2024 site visits. According to the APT, there were normal conditions at the site on these dates. The Corps observed standing water in the northern portion of the ditch at the culver inlet during the site visit on 30 October 2024. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site in the five days prior to this site visit and conditions were wetter than normal. The ditch is not mapped by USGS or NHD. Water is not visible in Ditch 10 in Google Earth or Whatcom County aerial imagery. Ditch 10 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation.

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The Corps has determined that Ditch 10 does not meet the relatively permanent standard and is therefore not a water of the U.S.

Swale 1: Swale 1 flows 200 feet north and northwest through Wetland 16a and into Ditch 9. Ditch 9 flows into a catch basin as described above (Flowpath 2). Swale 1 is vegetated with mixed grasses, Himalayan blackberry and snowberry and does not have a defined bed and bank. No ordinary high water mark indicators were observed in Swale 1. Water is not visible in Swale 1 in Whatcom County aerial imagery. Based on the above information, Swale 1 only experiences flowing or standing water in direct response to precipitation. The Corps has determined that Swale 1 indirectly connects downstream to a TNW, but does not meet the relatively permanent standard.

Swale 2: Swale 2 flows 220 feet northwest through Wetland 16a and into Swale 3. Swale 3 drains west into Ditch 7. Ditch 7 flows into a catch basin as describe above (Flowpath 2). Swale 2 is vegetated with mixed grasses and snowberry and does not have a defined bed and bank. No ordinary high water mark indicators were observed in Swale 2. Based on the above information, Swale 2 only experiences flowing or standing water in direct response to precipitation. The Corps has determined that Swale 2 indirectly connects downstream to a TNW, but does not meet the relatively permanent standard.

Swale 3: Swale 3 flows 180 feet west through Wetland 16a and into Ditch 7. Swale 3 drains west into Ditch 7. Ditch 7 flows into a catch basin as describe above (Flowpath 2). Swale 3 is vegetated with mixed grasses and does not have a defined bed and bank. No ordinary high water mark indicators were observed in Swale 2. Based on the above information, Swale 2 only experiences flowing or standing water in direct response to precipitation. The Corps has determined that Swale 2 indirectly connects downstream to a TNW, but does not meet the relatively permanent standard.

Swale 4: Swale 4 flows west 78 feet to Ditch 1 which flows to Wetland 16c which does not have an outlet as described above. Swale 4 does not have a defined bed and bank. No ordinary high water mark indicators were observed in Swale 4. Swale 4 is vegetated with Himalayan blackberry, creeping buttercup and snowberry. No surface water was observed in Swale 4 during a site visit on 30 October 2024. According to data collected at the Bellingham International Airport, there was approximately 2.58 in of rain at the site prior to this site visit and conditions were wetter than normal. Swale 4 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has

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determined that Swale 4 does not meet the relatively permanent standard, does not connect downstream to a TNW and is therefore not a water of the U.S

Wetland AA: Wetland AA is a 0.05 acre palustrine forested depressional wetland. Wetland AA ponds seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is approximately 530 feet northwest of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland AA does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland AA does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland BB: Wetland BB is a 0.01 acre palustrine scrub shrub depressional wetland. A small portion of Wetland BB ponds seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is approximately 510 feet northwest of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland BB does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland BB does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland CC: Wetland CC is a 0.11 acre palustrine forested depressional wetland. Small interior portions of Wetland CC pond seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is approximately 400 feet northwest of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland CC does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland CC does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland DD: Wetland DD is a 0.01 acre palustrine scrub shrub depressional wetland. Small interior portions of Wetland DD pond seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is approximately 680 feet northwest of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland DD does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland DD does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

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Wetland E: Wetland E is a 0.02 acre palustrine emergent depressional wetland. Small portions of Wetland E pond seasonally. The nearest known tributary, Ditch 3, is located approximately 10 feet north of the wetland. The wetland is separated from the ditch by an upland slope vegetated with Himalayan blackberry and snowberry. No swale, ditch or culvert was observed connecting Wetland E to Ditch 3. Wetland E does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland E does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland F: Wetland F is a 0.03 acre palustrine emergent and scrub shrub depressional wetland. A small portion of Wetland F seasonally ponds. Wetland F is located approximately 64 feet west of Wetland 37, 52 feet southwest of Wetland HH, and 48 feet northeast of Wetland 29. No surface connection between the wetlands was observed. Wetland F is not divided from Wetlands 37, HH or 29 by any structure such as a road, path or berm. No hydrologic connection between these separate wetlands was observed. No outlet from Wetland F was observed. Upland areas downslope of Wetland F are vegetated with bracken fern (*Pteridium aquilinum* - FACU), snowberry, and English hawthorn (*Crataegus monogynya* - FACU). The nearest known tributary, Fever Creek, is located approximately 1,150 feet east of the wetland. The wetland is separated from Fever Creek by undeveloped forested and scrub shrub upland and other wetlands. Wetland F does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland F does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland HH: Wetland HH is a 0.02 acre palustrine scrub shrub slope wetland. A small portion of Wetland HH seasonally ponds. Wetland HH is located approximately 36 feet northwest of Wetland 37 and 52 feet northeast of Wetland F. No surface connection between the wetlands was observed. Wetland HH is not divided from Wetlands 37 or F by any structure such as a road, path or berm. No hydrologic connection between these separate wetlands was observed. No outlet from Wetland HH was observed. Upland areas downslope of Wetland HH are vegetated with dense snowberry. The nearest known tributary, Fever Creek, is located approximately 1,140 feet east of the wetland. The wetland is separated from Fever Creek by undeveloped forested and scrub shrub upland and other wetlands. Wetland HH does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland HH does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

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Wetland 16c: Wetland 16c is a 0.01 acre palustrine forested depressional wetland. Wetland 16c ponds seasonally. Swale 4 and the western portion of Wetland 16a drain to Ditch 1 which drains to Wetland 16c. Wetland 16c is located approximately 35 feet northwest of Wetland 16a and 44 feet west of Wetland 16d. Wetland 16c is not divided from Wetlands 16a or 16d by any structure such as a road, path or berm. Wetland 16c does not have an outlet. The nearest known tributary, Ditch 9, is located approximately 600 feet east of the wetland. The wetland is separated from the ditch by undeveloped forested upland and other wetlands. Wetland 16c does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 16c does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 16d: Wetland 16d is a 0.02 acre palustrine forested slope wetland. Small portions of Wetland 16d pond seasonally. Wetland 16d drains to Swale 4, which drains to Ditch 1, which drains to Wetland 16c, which does not have an outlet as described above. Wetland 16d is located approximately 33 feet northwest of Wetland 16a and 44 feet east of Wetland 16c. Wetland 16d is not divided from Wetlands 16a or 16c by any structure such as a road, path or berm. The nearest known tributary, Ditch 9, is located approximately 480 feet east of the wetland. The wetland is separated from the ditch by undeveloped forested upland and other wetlands. Wetland 16d does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 16d does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 19: Wetland 19 is a 0.42 acre palustrine emergent slope wetland. Small portions of Wetland 19 pond seasonally. Wetland 19 is located approximately 28 feet north of Wetland 16a and 30 feet north of Swale 3. No surface connection was observed between Wetland 19 and 16a. Swale 3 is located wholly outside of and does not drain Wetland 19. Upland vegetated with snowberry and English hawthorn separate Wetland 19 from Swale 3. Wetland 19 is not divided from Wetland 16a by any structure such as a road, path or berm. No hydrologic connection between these separate wetlands was observed. The nearest known tributary, Ditch 9, is located approximately 260 feet north of the wetland. The wetland is separated from the ditch by an upland slope vegetated with Himalayan blackberry and snowberry. Wetland 19 does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 19 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

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Wetland 20a: Wetland 20a is a 0.16 acre palustrine forested depressional wetland. Wetland 20a ponds seasonally. The nearest known tributary, Ditch 6, is located approximately 570 feet southeast of the wetland. The wetland is separated from the ditch by undeveloped forested upland and other wetlands. Wetland 20a does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 20a does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 20b: Wetland 20b is a 0.02 acre palustrine scrub shrub depressional wetland. Wetland 20b ponds seasonally. The nearest known tributary, Ditch 6, is located approximately 560 feet southeast of the wetland. The wetland is separated from the ditch by undeveloped forested upland and other wetlands. Wetland 20b does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 20b does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 30: Wetland 30 is a 2.60 acre palustrine forested and emergent slope, depressional wetland. Small portions of Wetland 30 pond seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is located approximately 490 feet west of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland 30 does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 30 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 48b: Wetland 48b is a 0.10 acre palustrine scrub shrub depressional wetland. Portions of Wetland 48b pond seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is located approximately 900 feet northwest of the wetland. The wetland is separated from the tributary by upland forest, residential development and Mount Baker Highway. Wetland 48b does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 48b does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

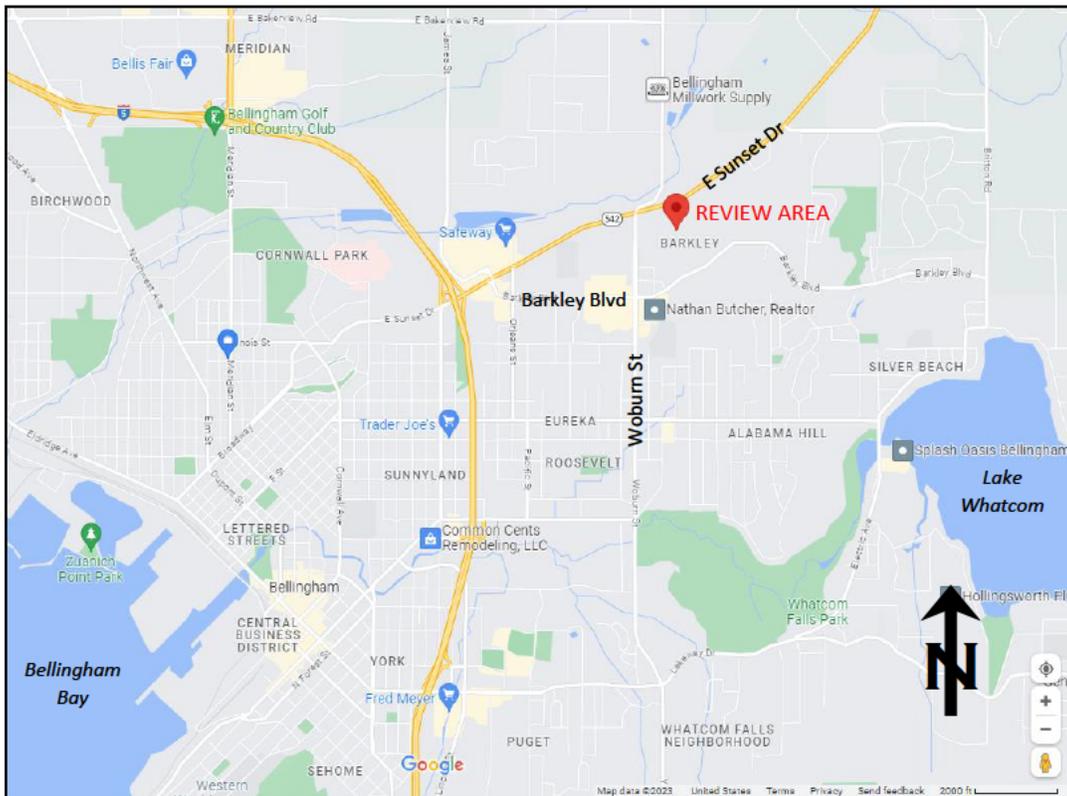
Wetland 50: Wetland 50 is a 0.01 acre palustrine scrub shrub depressional wetland. Wetland 50 ponds seasonally. The nearest known tributary, an unnamed tributary to Squalicum Creek, is located approximately 940 feet northwest of the wetland. The wetland is separated from the tributary by upland

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forest, residential development and Mount Baker Highway. Wetland 50b does not abut, is not separated by a natural berm or bank, or connected via a discrete conveyance to an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 50 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

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. Site visits conducted on 19 October 2023, 9 November 2023, 16 September 2024, and 30 October 2024.
  - b. USGS TopoView accessed on 7/9/24 at:  
<https://ngmdb.usgs.gov/topoview/viewer/#4/40.01/-100.06>
  - c. USDA Web Soil Survey accessed on 7/9/24 at  
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
  - d. Bellingham CityIQ accessed on 7/9/24 at:  
<https://maps.cob.org/geviewer/Html5Viewer/Index.html?viewer=cityiq>
  - e. National Hydrography Dataset (NHD) accessed on 7/9/24 at:  
[https://www.arcgis.com/apps/mapviewer/index.html?url=https://hydro.nationalmap.gov/arcgis/rest/services/NHDPlus\\_HR/MapServer&source=sd](https://www.arcgis.com/apps/mapviewer/index.html?url=https://hydro.nationalmap.gov/arcgis/rest/services/NHDPlus_HR/MapServer&source=sd)
  - f. Northwest Ecological Services (April, 2024). Critical Areas Assessment (Revised)
10. OTHER SUPPORTING INFORMATION. N/A
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Vicinity Maps  
(Google Maps)

Barkley Village  
Critical Areas Assessment Supplement

Figure 1 of 3

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JUNE 2024



