



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

CENWS-ODR

July 24, 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination (JD) 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) ,¹ NWS-2023-824.

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 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),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the Clean Water Act (CWA), and no effect on any waters covered under the Rivers and Harbors Act (RHA), all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ The Corps 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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- a. List of each individual feature within the review area and the jurisdictional status of each one.
 - i. Wetland B: Jurisdictional water of the U.S., Section 404.
 - ii. Mullis Street roadside ditch: Jurisdictional water of the U.S., Section 404.
 - iii. Northern Wetland B ditch: Jurisdictional water of the U.S., Section 404.
 - iv. Southern Wetland B ditch: Jurisdictional water of the U.S., Section 404.

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

3. REVIEW AREA. The 8.8-acre review area is located on San Juan Island in San Juan County, Washington (48.525111, -123.02271). The review area is bound by Mullis Street to the west, commercial development to the north, and single-family residences to the south and east. Existing developments in the review area include a garden retail store and parking lot within the northern parcel. The southern parcel contains a gravel pad for parking and equipment storage. A single-family residence exists to the east of the gravel pad. A gravel parking lot for a nearby dog park is located in the southwest corner of the southern parcel. A portion of the dog park also extends onto the site. On-site topography generally slopes southwest towards Mullis Street. The northern parcel is relatively flat. Surface runoff from the site drains into the roadside ditch along Mullis Street. See attached figures for site location, delineated wetland boundaries, topographic and aerial views. No previous jurisdictional determination has been made for wetlands onsite.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.

Argyle Lagoon is located approximately 0.6 miles downstream from the review area. Argyle Lagoon is a part of the Puget Sound which is listed on the Navigable Waters of the United States in Washington State dated December 31, 2008.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER.

Hydrology within the review area flows south via a ditch located on the eastern side of Mullis Street. The Mullis Street ditch flows for approximately 264 feet from the northwest corner of Parcel No. 351444005000 until intersecting a catch basin that conveys water approximately 700 feet into the Mullis Street Detention Pond (located outside the review area). Any remaining water within the Mullis Street ditch flows approximately 950 feet to intersect a ditch and then flows approximately 225 feet into the Mullis Street Detention Pond.

The base of the detention pond (located outside the review area) is characterized by an approximately 10-foot-deep layer of sand material. In addition to the quarry spall spillway and associated underground piping that is used during 100-year storm events, a concrete vault with a flow control aperture is located within the southeastern portion of the detention pond. The bottom of the vault is buried approximately three feet below the bottom of the pond. Water enters the concrete vault structure through the inlet when 100-year overflow is present (not common), and by infiltration through the open bottom of the vault (primary source of water). Water in the pond mostly infiltrates through the thick sand layer. When there is sufficient water in the pond, water in the sand layer is drawn up via hydrostatic pressure through the bottomless concrete vault. The vault then outlets to a pipe that flows south to underground piping. This stormwater infrastructure flows approximately 0.25 miles southeast under Argyle Avenue and multiple private parcels and outlets to Argyle Lagoon. Argyle Lagoon is part of the Puget Sound, which is listed as a navigable water in the Navigable Waters of the United States in Washington State dated December 31, 2008.

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6. SECTION 10 JURISDICTIONAL WATERS⁵: None.

7. SECTION 404 JURISDICTIONAL WATERS:

- a. Traditional Navigable Waters (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):

The Mullis Street ditch is located along the western edge of the review area. The ditch measures approximately 595 linear feet long within the review area. In an email dated January 23, 2024, the agent stated the Mullis Street ditch bankfull width was “approximately 2 to 3 feet wide”. Flow within the ditch travels south and east to eventually reach Argyle Lagoon (Puget Sound) as documented in Section 5 above. This reach of the roadside ditch is characterized by an artificially incised bed and banks and vegetated by mowed grass. Photographs provided by the agent from a site visit on November 17, 2023, show flowing water within the Mullis Street ditch. No rainfall occurred between November 14th and 17th, 2023, and the most recent rainfall was 0.019 inches on November 13th, 2023, four days prior to the site visit. According to the antecedent precipitation tool, precipitation conditions were wetter than normal at the site on this date; however, the tool also reports that there has been severe drought in this area in 2023. Google StreetView captures flow in the ditch in January 2016. The APT identifies precipitation conditions for the majority of January 2016 as drier than normal or normal conditions. No rainfall occurred between December 29-31, 2015, 0.02 inches occurred on December 28, 2015, no rainfall occurred between December 24-27, and 0.13 inches occurred between December 21-23, 2015. San Juan County Parcel Viewer shows the Mullis Street ditch flowpath to outlet at Argyle Lagoon. The USGS StreamStats tool maps a 0.14 square mile basin draining to Mullis Street ditch at the review area.

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

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During a site visit conducted on June 20, 2024, Corps staff observed the northern section of the Mullis Street ditch (between the Northern Wetland B outlet and the identified catch basin north of the dog park) to have indicators of relatively permanent waters. Algal stains, wrack lines, and standing water were present in the ditch and the channel had a defined bed and bank. No rainfall occurred between June 17th and 20th, 2024, and the most recent rainfall was 0.03 inches on June 16th, 2024, five days prior to the site visit.

Within the Mullis Street Detention Pond, Port of Friday Harbor staff confirmed water flows from the concrete vault in the pond to adjacent underground piping for approximately six months in most years. The surface of the pond appears dry up to nine months out of most years, but the underlying sand may be saturated during some of this time. During the site visit on June 20th, 2024, Corps staff heard water flowing underground onsite at the outlet area. Port staff stated it was either the piped water flowing through the concrete vault and leaving the facility, or groundwater entering the system through incomplete connections of pipe sections below ground that then entered the same flow path downstream to Argyle Lagoon. Under the 2023 Revised definition of WOTUS, the preamble states “The agencies will assess any discontinuity in the OHWM and, consistent with pre-2015 practice, a natural or human-made discontinuity in the OHWM does not necessarily sever jurisdiction upstream. A discontinuity may exist where the stream temporarily flows underground. Tributaries may temporarily flow underground in regions with karst geology or lava tubes, for example, maintaining similar flow characteristics underground and at the downstream point where they return to the surface.” Based on the above information, the roadside ditch 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 Mullis Street ditch is a relative permanent waterway that indirectly connects downstream to a TNW and is a water of the United States.

The northern Wetland B ditch (approximately 48.525305, -123.02306) is a ditch located on the northern edge of Wetland B. The ditch conveys water from the culvert outlet at the northeast corner of Wetland B, along the northern edge of the wetland for approximately 163 feet, through approximately 44 feet of upland and outlets into the Mullis Street ditch along the western property boundary. In an email dated January 4, 2024, the agent stated the observed northern ditch “ranges from 5 ft to 2 ft wide where it connects to the Mullis St ditch” and that “The majority ditch is located within the wetland”. In the same email, the agent stated “~3” of water was observed flowing through the berm into the ditch” during the site visit conducted on November 17, 2023. No rainfall occurred between November 14th and 17th, 2023, and the most

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recent rainfall was 0.019 inches on November 13th, 2023, four days prior to the site visit. According to the antecedent precipitation tool, precipitation conditions were wetter than normal at the site on this date; however, the tool also reports that there has been severe drought in this area in 2023. During the site visit conducted on June 20, 2024, Corps staff observed the northern Wetland B ditch was connected to the Mullis Street ditch, and surface water was present in the channel. No rainfall occurred between June 17th and 20th, 2024, and the most recent rainfall was 0.03 inches on June 16th, 2024, five days prior to the site visit. Based on the above information, the ditch 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 northern Wetland B ditch is a relative permanent waterway that indirectly connects downstream to a TNW and is a water of the United States.

The southern Wetland B ditch (approximately 48.524968, -123.02306) is a ditch located at the southwestern corner of Wetland B. The ditch initiates at the corner of Wetland B, flows 15 feet from the wetland through the existing upland berm and outlets into the Mullis Street ditch along the western property boundary. In the same email dated January 4, 2024, the agent stated the outlet "is a narrow swale ~1ft wide and 10" deep excavated through the upland berm along mullis street. ~1" of flowing water was observed flowing from Wetland B into the Mullis St ditch" during the site visit conducted on November 17, 2023. No rainfall occurred between November 14th and 17th, 2023, and the most recent rainfall was 0.019 inches on November 13th, 2023, four days prior to the site visit. According to the antecedent precipitation tool, precipitation conditions were wetter than normal at the site on this date; however, the tool also reports that there has been severe drought in this area in 2023. During the site visit conducted on June 20, 2024, Corps staff observed the southern Wetland B ditch was connected to the Mullis Street ditch. Based on the above information, the ditch 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 southern Wetland B ditch is a relative permanent waterway that indirectly connects downstream to a TNW and is a water of the United States.

f. Adjacent Wetlands (a)(4):

Wetland B: Wetland B is a 0.64-acre Category IV palustrine emergent and forested depressional wetland located in the northwest corner of the southern parcel in the review area. Wetland B experiences seasonal saturation and inundation with depths generally less than six inches, although deeper ponding exists in an excavated pond in the northwestern corner of the wetland. In addition to the culvert in the northeast corner of the wetland, sources of hydrology include surface runoff, direct

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precipitation, and potentially seasonally high or perched groundwater. The western edge of Wetland B is located approximately 15 feet from the Mullis Street ditch, an (a)(3) water as documented above. The wetland abuts the northern Wetland B ditch along the northern wetland boundary and abuts the southern Wetland B ditch at the point of initiation located at the southwest corner of the wetland. According to the Antecedent Precipitation tool (APT), precipitation conditions were wetter than normal at the site on this date; however, the tool also reports that there has been severe drought in this area in 2023. The soil within the Review Area is mapped by the USDA Web Soil Survey as 2004—Mitchellbay gravelly sandy loam, 0 to 5 percent slopes, and is considered a hydric soil. Ponding is observed within Wetland B throughout Google Earth imagery taken in June 2008 (Normal to wetter than normal conditions), May 2015 (Drier than normal), April 2016 (Normal to drier than normal), and July 2017 (Normal to drier than normal). Saturation onsite is observed in Google Earth imagery within Wetland B in August 2011 (Normal to drier than normal) and May 2015 (Drier than normal conditions). During the site visit conducted on June 20th 2024, Corps staff observed the wetland abuts the north Wetland B ditch along the northern boundary, and the wetland abuts the southern Wetland B ditch at the southwest corner of the wetland. Based on multiple factors listed above, the Corps has determined Wetland B abuts the northern and southern Wetland B Ditches. Wetland B has a continuous surface water connection to both the northern and southern ditches (determined to be a(3) waters above) 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). 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). N/A

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9. DATA SOURCES.

- a. “Wetland Delineation and Critical Areas Update – Mullis Street, San Juan Island, Washington (Parcels 351492 017000 & 3514440 050000)” by NW Ecological Services dated December 18, 2023.
- b. USGS TopoView accessed on January 24, 2024 at <https://ngmdb.usgs.gov/topoview/viewer/#15/48.7969/-122.5169>
- c. “Critical Areas Assessment – Parcels #351492017 & 351444005, Mullis Street, San Juan Island, Washington” by NW Ecological Services dated March 2018.
- d. National Wetland Inventory accessed on January 24, 2024 at <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper>
- e. Washington DNR LiDAR Portal accessed on January 24, 2024 at <https://lidarportal.dnr.wa.gov/>
- f. USGS National Hydrography Dataset accessed on January 24, 2024 at https://hydro.nationalmap.gov/arcgis/rest/services/NHDPlus_HR/MapServer
- g. USDA Web Soils Survey accessed on January 24, 2024 at <https://websoilsurvey.nrcs.usda.gov/app>
- h. San Juan County Parcel Viewer accessed on January 24, 2024 at <https://www.sanjuancountywa.gov/288/GIS-Links>
- i. ‘Design Report for the Construction of the Mullis Detention Pond Expansion and Snow Plow Procurement – Carrier Vehicle with Dump Bed and Plow; Airport Improvements Program’. Precision Approach Engineering, dated August 2019.

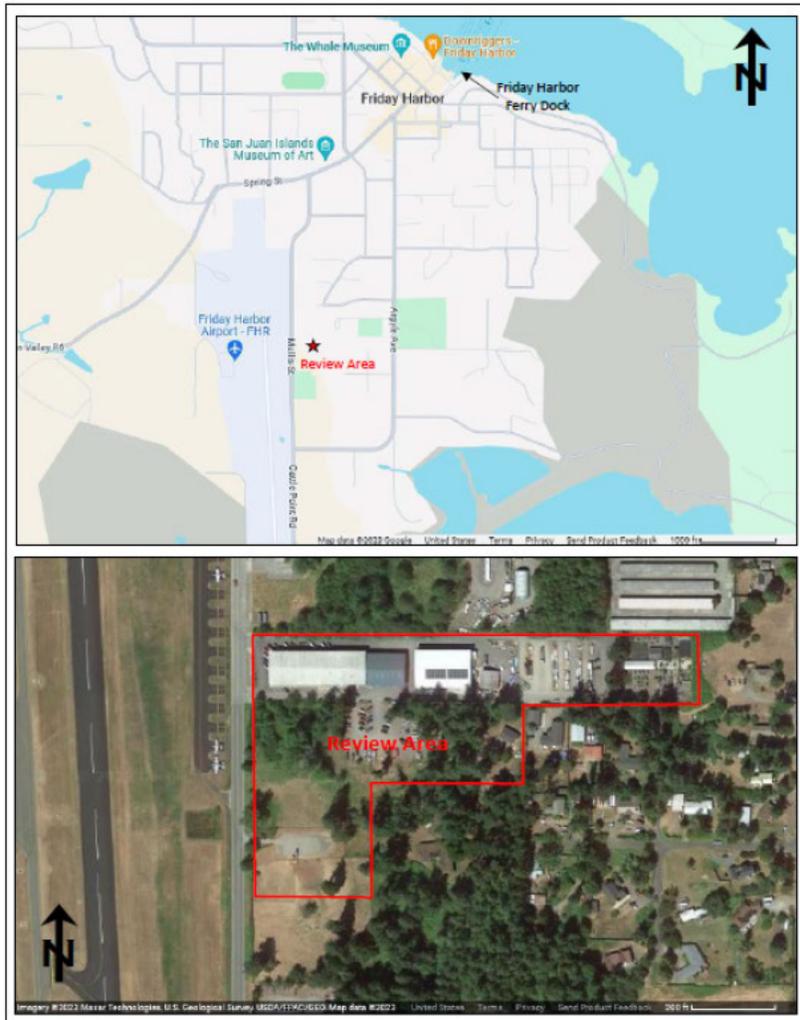
10. OTHER SUPPORTING INFORMATION. N/A

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

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additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



	Vicinity Maps (Google Maps)	Figure 1
	Mullis Street (Parcels 351492 017000 & 3514440 050000) Critical Areas Report Update	DEC 2023

Figure 1. Vicinity Maps.

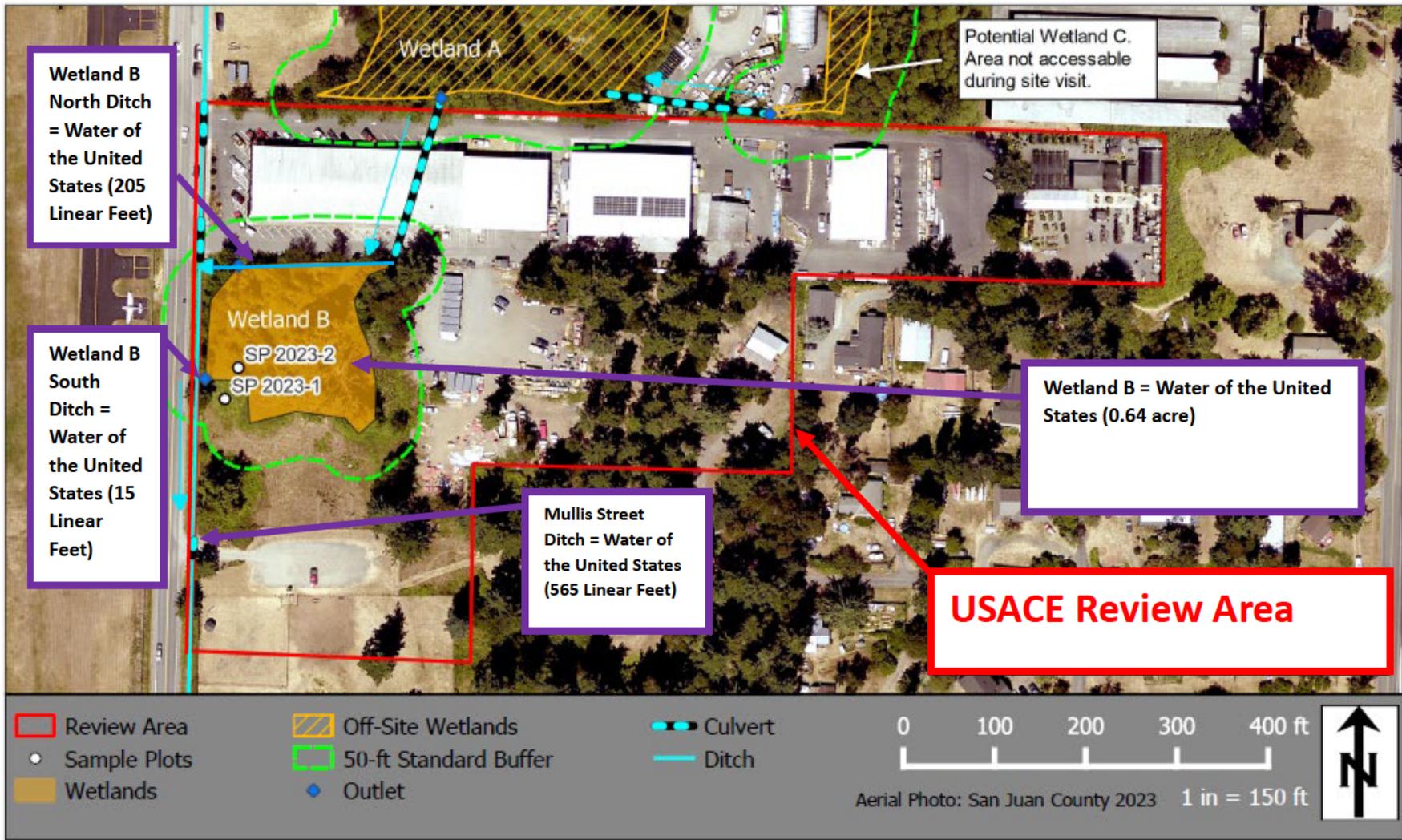


Figure 2. Review area.



Figure 3 USGS TopoView: Topographic map of site, 2023 Edition.



Figure 4. Flow path from Review Area to Argyle Lagoon. (San Juan County Parcel Viewer Accessed 1/24/24).