



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

April 2, 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-2023-835

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 D: Non-Jurisdictional

- ii. Stream Y: 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))
- c. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is located adjacent to Archie Avenue West, Bremerton, Washington. Latitude / Longitude: 47.554497, -122.709193. Exact review area is shown on the AJD Review Figures.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Puget Sound. Puget Sound is listed on the Navigable Waters of the United States in Washington list 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 north within Stream Y which flows through a culvert under the Kitsap Quarry service road and dissipates into Wetland E (located outside the review area). Wetland E is connected to Kitsap Creek (Stream X) (located outside the review area), a tributary to Kitsap Lake approximately 0.7 miles from the review area. Kitsap Creek continues through Kitsap Lake and flows to the Puget Sound approximately 1.8 miles downstream from the lake.

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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): N/A
- f. Adjacent Wetlands (a)(4): N/A
- 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).

Stream Y: Stream Y is a 435 linear-foot ephemeral stream that originates adjacent to gravel mining operations, continues downslope, is conveyed beneath a service road for the Kitsap Quarry/UTF site via culvert, and disperses and

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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infiltrates near the boundary of Wetland E. Scoured areas and indicators of bed and/or bank features are minimal and not contiguous along the stream, suggesting that any surface water in the erosional stream is ephemeral in nature and dissipates into the ground surface near the stormwater outlet locations. The primary stormwater runoff sources into the stream include the active gravel mining operations east of the stream and the Kitsap Quarry/UTF service road that crosses the stream. East of the stream, sheet flow generated from a heavily compacted gravel area and associated access road is directed towards the upgradient section of the vegetated stream. Flow is also directed from an excavated settlement pit on the edge of the gravel mining operations. This artificially concentrated, overland stormwater flow is evidenced by drainage patterns exhibiting the erosion of finer sediments; however, no indications of exposed gravel is present, nor has a distinct channel formed. Immediately downgradient of the existing culvert crossing, a short section of incised channel exists that is approximately 16 inches deep and 20 inches wide on average. This brief section of channeling disappears approximately 10 feet downgradient of the culvert outlet, suggesting the erosional channel was formed from stormwater blowout from the culvert. Soundview Consultants LLC (SVC) visited the site November 3, 2023, and did not observe surface water in the stream. Per the Antecedent Precipitation Tool, conditions were normal, and according to Kitsap Public Utility District rain gauge, located approximately 14.6 miles from the review area, 1.48 inches of rain fell between 1 November 2023 and 3 November 2023. This lack of surface water under normal conditions within Stream Y is indicative of a non-relatively permanent flow that would only flow in short duration during high precipitation events and does not interact with the ground water. The Corps has determined that Stream Y does not meet the relatively permanent standard and therefore is not a water of the U.S.

Wetland D: Wetland D is 0.47 acre and is a forested depressional wetland. The primary source of hydrology is precipitation, sheet flow, and ground water. The nearest known tributary (Kitsap Creek) is approximately 365 linear feet away at its nearest point to the east, as measured on Google Earth. The wetland is separated from the tributary by gravel quarry development and roadway. The topography in the vicinity of Wetland D generally slopes down to the northwest and during extreme conditions, the wetland is unlikely to overtop its boundary. The soil indicator identified in the field in the wetland was Depleted Matrix, F3, indicating hydric soils are present. The soil indicator identified in the field was Depleted Matrix, F3, indicating hydric soils are present. There is no evidence of outflow features or discrete conveyance from the wetland to the nearest tributary. Based on the above information Wetland D does not abut, is not separated by a

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natural berm or bank, nor does Wetland D have a discrete conveyance to an impoundment or tributary. Therefore, Wetland D does not have a continuous surface to an a(1) through a(3) water and is not considered a water of the U.S.

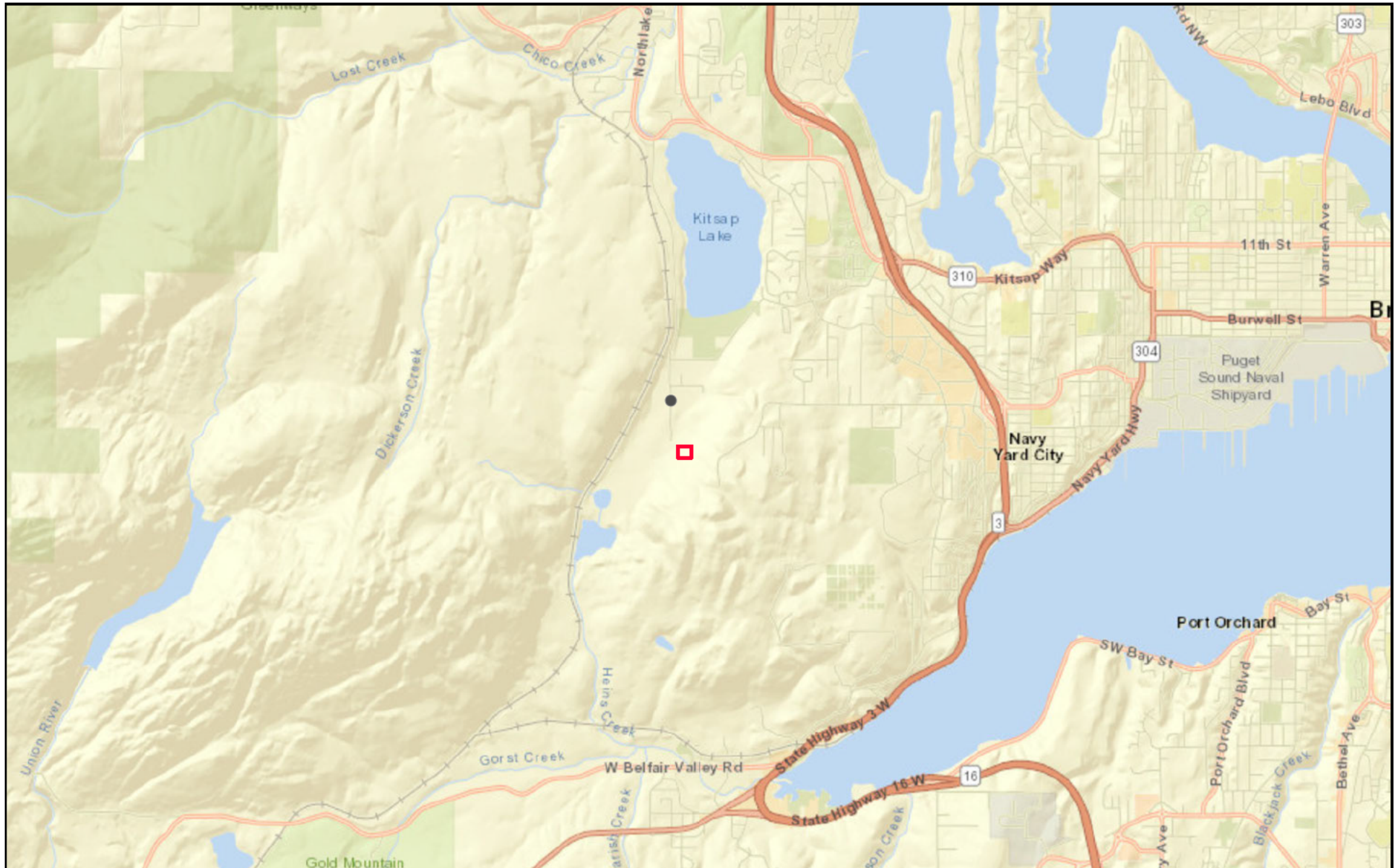
9. DATA SOURCES.

- a. Technical Memorandum to Tenaska for Approved Jurisdictional Determination Request Kitsap Quarry, Bremerton, Washington, dated November 10, 2023
- b. Technical Memorandum to Tenaska for Approved Jurisdictional Determination Request Kitsap Quarry, Bremerton, Washington, dated December 5, 2023
- c. Washington Lidar accessed November 15, 2023 (<https://lidarportal.dnr.wa.gov/>)
- d. Natural Resource Conservation Service Web Soil Survey accessed November 15, 2023. (<https://websoilsurvey.nrcs.usda.gov/app/>)
- e. United States Geological Survey Topoviewer 2023 topographic map accessed November 15, 2023. (<https://ngmdb.usgs.gov/topoview/viewer/#4/40.00/-100.00>)
- f. National Regulatory Viewer National Hydrography Dataset accessed November 15, 2023
- g. Antecedent Precipitation Tool accessed February 1, 2024
- h. Kitsap County Public Utility District Rain Gauge 1 Data accessed February 1, 2024


10. OTHER SUPPORTING INFORMATION.

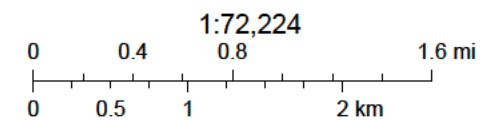
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR’s structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Vicinity Map

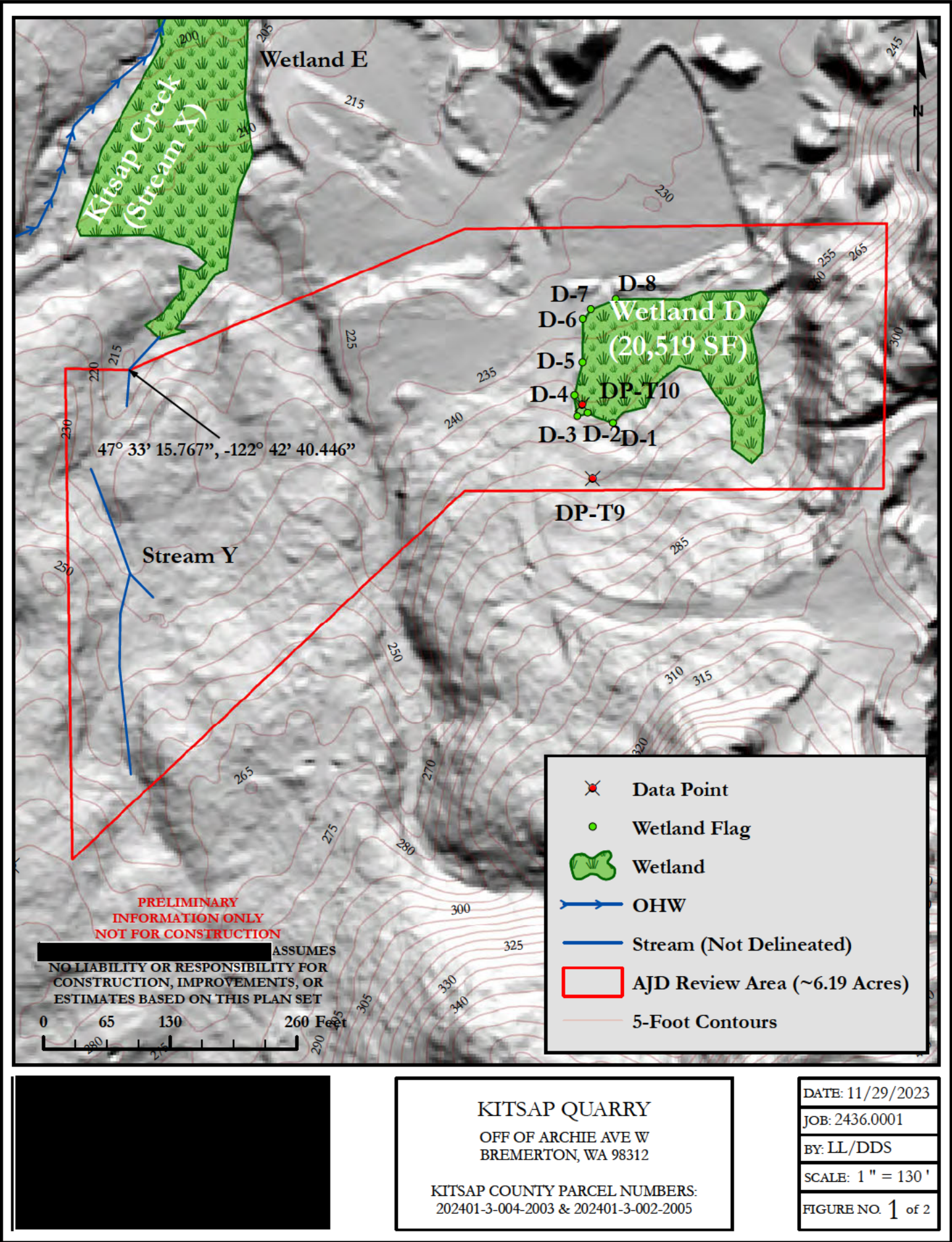


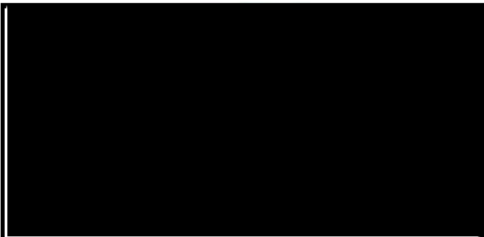
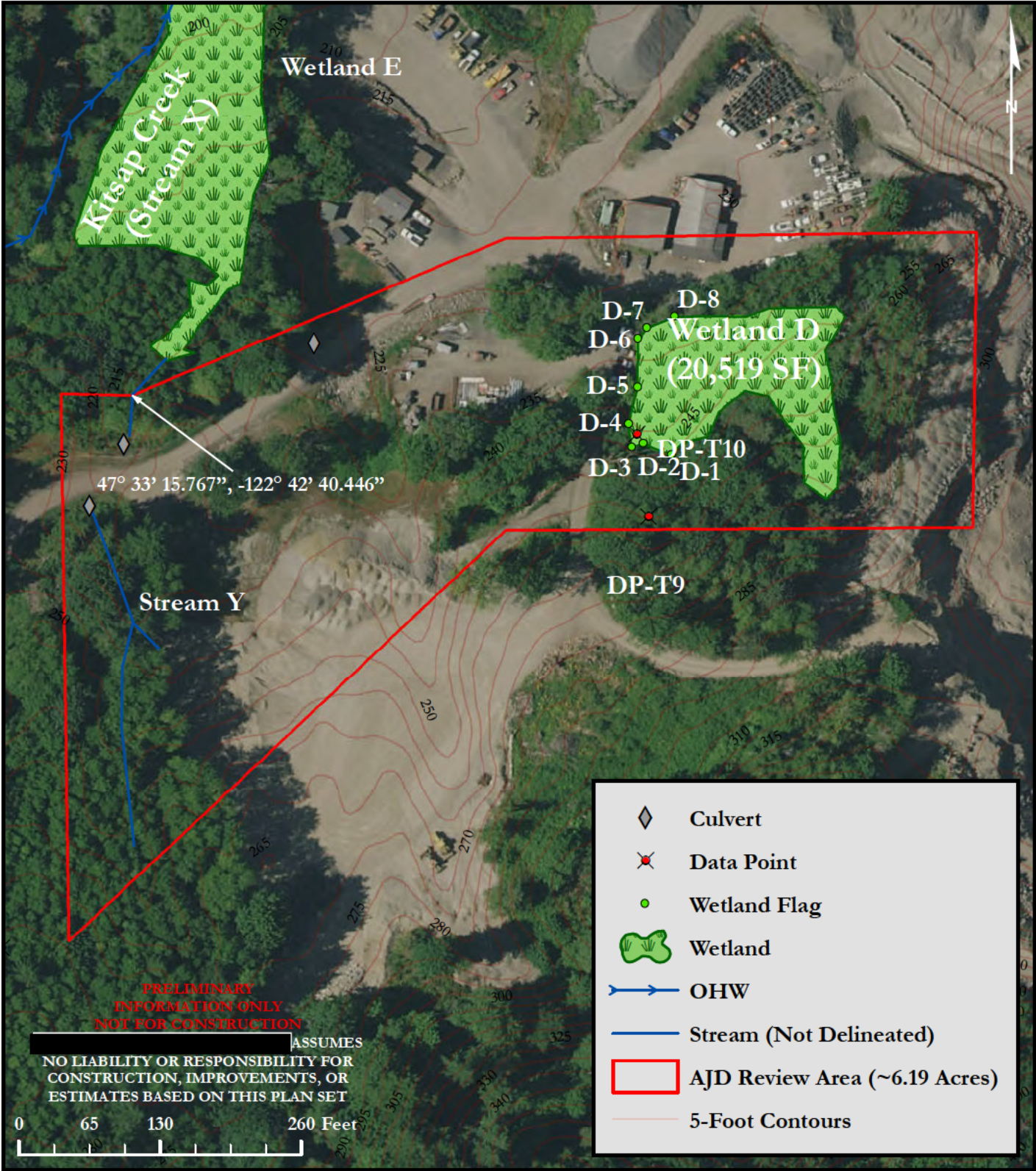
11/17/2023, 8:48:26 AM

 Approximate AJD Review Area Location



County of Kitsap, Bureau of Land Management, Esri, HERE, Garmin, NGA, USGS, NPS





KITSAP QUARRY

OFF OF ARCHIE AVE W
BREMERTON, WA 98312

KITSAP COUNTY PARCEL NUMBERS:
202401-3-004-2003 & 202401-3-002-2005

DATE: 11/29/2023
JOB: 2436.0001
BY: LL/DDS
SCALE: 1" = 130'
FIGURE NO. 2 of 2