



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

April 23, 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-2023-837

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>2</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>3</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>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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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> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</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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- 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. Wetland A: Is not a water of the U.S.

## 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 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The 3.87-acre review area is located at 24117 and 24121 Locust Way and 24102 Lockwood Road in the Bothell area of unincorporated Snohomish County, Washington at Latitude 47.779354 Longitude -122.257005 Exact Review Area is shown on the AJD Memo.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is Lake Washington located approximately 1.87 miles to the south. Lake Washington is a listed on the Navigable Waters of the United States in Washington State list dated December 31, 2008.<sup>5</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Hydrology within the review area does not connect downstream to a TNW.
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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<sup>5</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.

<sup>6</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.

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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>7</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. 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): 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

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<sup>7</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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within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</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).

Wetland A; Wetland A is 2,000 square feet and is a palustrine scrub shrub wetland. The nearest known tributary is Blueberry Creek which is located approximately 540 feet west upslope. The area between the wetland and the tributary is residential development and an arterial road. Hydrology on the site likely stems from a high ground-water table, precipitation, and stormwater from the residential development to the west of the project site. The NRCS soil survey map two soil series present on the subject property: Alderwood-Urban land complex, 2 to 8 percent slopes (5) and Urban land-Alderwood complex, 5 to 12 percent slopes (3056). Both soils are listed as non-hydric on the NRCS hydric soils list. Wetland A is not located within a mapped floodplain. Wetland A does not abut, is not separated by a natural berm or bank from an a(1) through a(3) water. Wetland A has an intermittent outlet that percolates into the upland landscape downslope to the east of the wetland. Wetland A appears to sheet flow down the landscape as no discernable watercourses were identified during the site visit. Wetland A does not have a continuous surface connection to a water identified in paragraph (a)(1) or to a relatively permanent, standing or continuously flowing body of water identified in paragraph (a)(2) or (a)(3) of the 2023 Rule, as amended. Wetland A is not water of the United States.

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. National Regulatory Viewer Lidar Dataset accessed February 28, 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
- b. National Regulatory Viewer National Hydrography Dataset accessed February 22, 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
- c. USGS Topo View, 1953 Topography Map accessed February 28, 2024: [Get Maps | topoView \(usgs.gov\)](#)

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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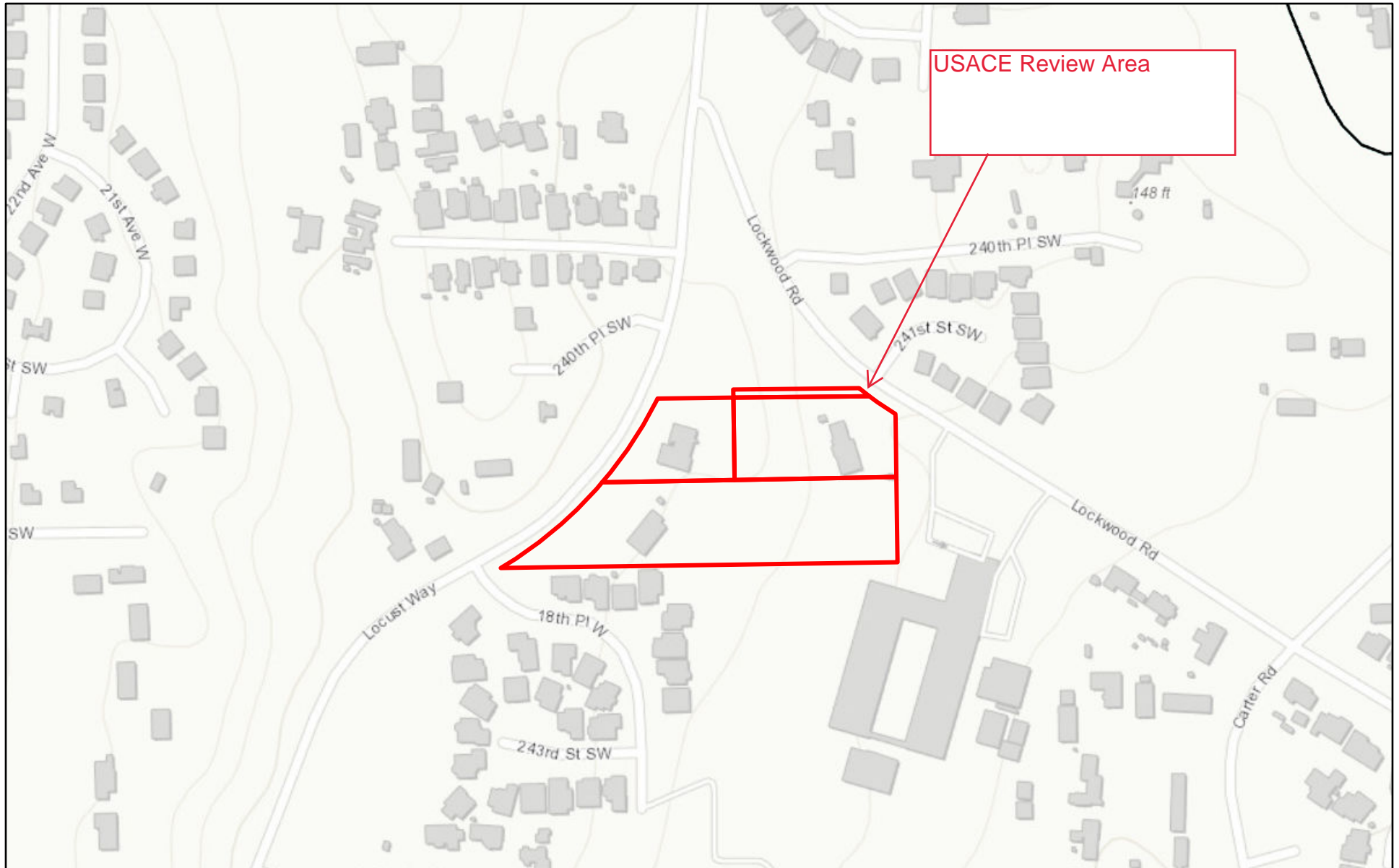
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- d. USFWS National Wetland Index accessed May 15, 2022: [National Wetlands Inventory \(usgs.gov\)](#)
- e. Snohomish County Critical Areas Map accessed May 15, 2022: [PDS Map Portal \(snoco.org\)](#)
- f. WDFW Habitat and Species Map accessed May 15, 2022: [PHS on the Web \(wa.gov\)](#)
- g. WDFW SalmonScape Map accessed May 15, 2022: [WDFW SalmonScape \(wa.gov\)](#)
- h. Snohomish County Drainage Inventory Map accessed March 18, 2024: [SWM DI Webmap \(snoco.org\)](#)

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.

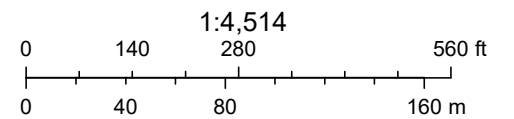
# WDFW SalmonScape Map



5/13/2022, 8:48:40 AM

 Snohomish\_Parcels\_Query result

 All SalmonScape Species

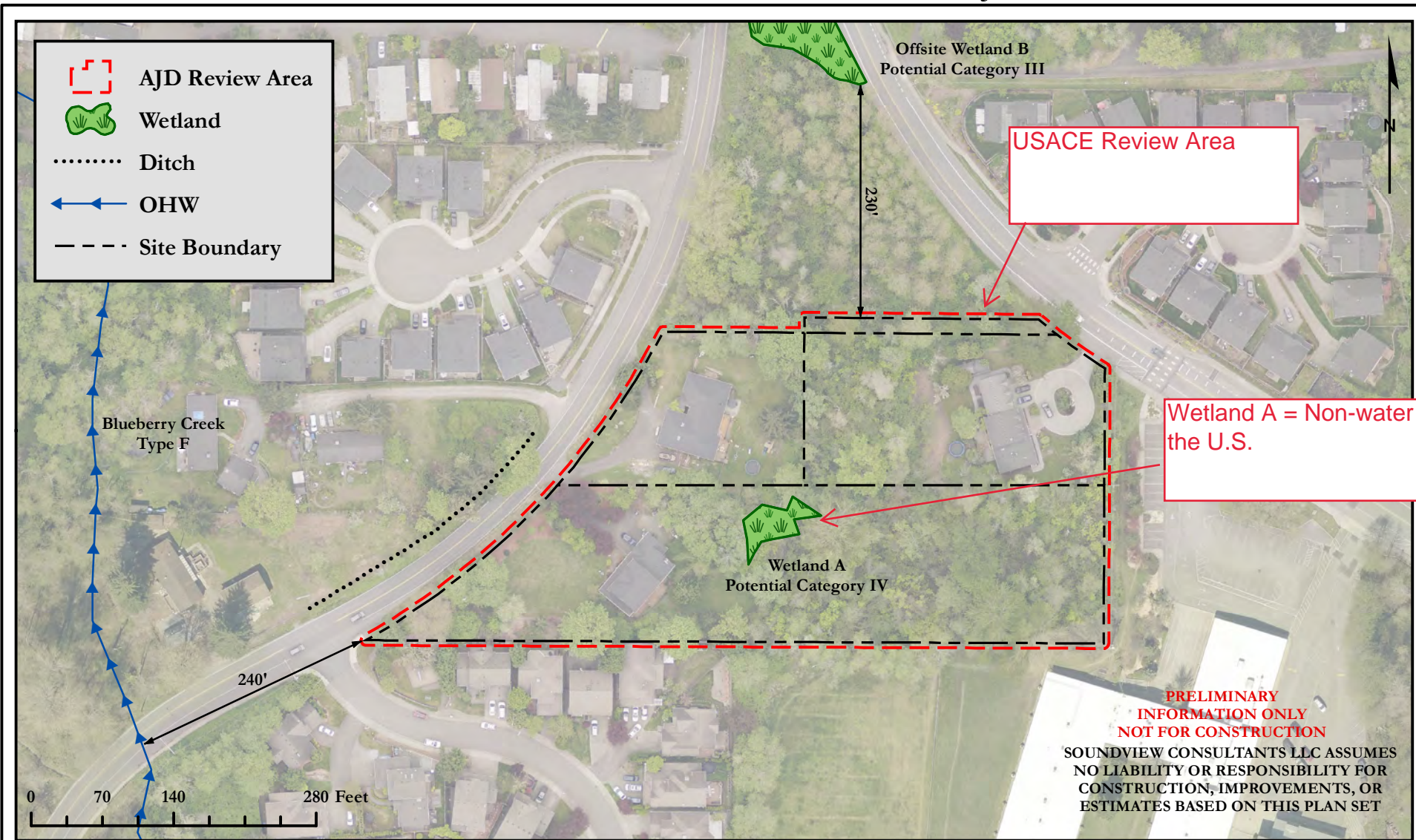


Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri

Soundview Consultants



# AJD REVIEW AREA EXHIBIT




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SNOHOMISH COUNTY PARCEL NUMBERS:  
 00374100600100, 00374100600101,  
 00374100600103, & 00374100600104

DATE: 11/11/2023
JOB: 1155.0061
BY: DDS
SCALE: 1" = 140'
FIGURE NO. <b>1</b>