



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

8 May 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-2024-395

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. Wetland A, non-jurisdictional
  - ii. Wetland B, 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 1-acre review area is located in Bellingham, Whatcom County, Washington Lat: 48.793196 Long; -122.491993. The review area consists of an undeveloped, flat grassy field. The review area is bounded by Calluna Court to the south, a sidewalk to the west, a parking lot to the north and Cordata Parkway to the east.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Bellingham Bay, approximately 3 miles downstream, which is 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.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. During extreme precipitation events, surface water may sheetflow across uplands out of Wetlands A and B to the surrounding roads which drain to stormwater infrastructure. This infrastructure extends south approximately 0.2 miles and outfalls to the West Fork of Spring Creek. The West Fork of Spring Creek flows southeast approximately 0.3 miles feet to Spring Creek. Spring Creek flows approximately 0.2 feet south to Baker Creek. Baker Creek flows approximately 0.7 feet southwest to Squalicum Creek. Squalicum Creek flows approximately 1.3 feet southwest to Bellingham Bay.

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6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: N/A

7. SECTION 404 JURISDICTIONAL WATERS:

- 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 within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>6</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 a 9,910 square foot (SF) palustrine emergent depressionnal wetland. Small interior portions of the wetland pond seasonally; the majority of the wetland is seasonally saturated. The nearest known tributary is approximately 1,000 linear feet away. The wetland is separated from the tributary

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<sup>5</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>6</sup> 88 FR 3004 (January 18, 2023)

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by roads, parking lots, and commercial development. There is no evidence of a discrete conveyance outlet within Wetland A. The soils are mapped by the USDA Web Soil Survey as Whatcom silt loam, 3 to 8 percent slopes. Whatcom silt loam is not on the national hydric soils list, but does contain minor components that are on the hydric soils list. Wetland A 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 A 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 B: Wetland B is a 3,070 square foot (SF) palustrine emergent and forested depressional wetland. Small interior portions of the wetland pond seasonally; the majority of the wetland is seasonally saturated. The nearest known tributary is approximately 1,000 linear feet away. The wetland is separated from the tributary by roads, parking lots, and commercial development. There is no evidence of a discrete conveyance outlet within Wetland B. The soils are mapped by the USDA Web Soil Survey as Whatcom silt loam, 3 to 8 percent slopes. Whatcom silt loam is not on the national hydric soils list, but does contain minor components that are on the hydric soils list. Wetland B 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 B 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.

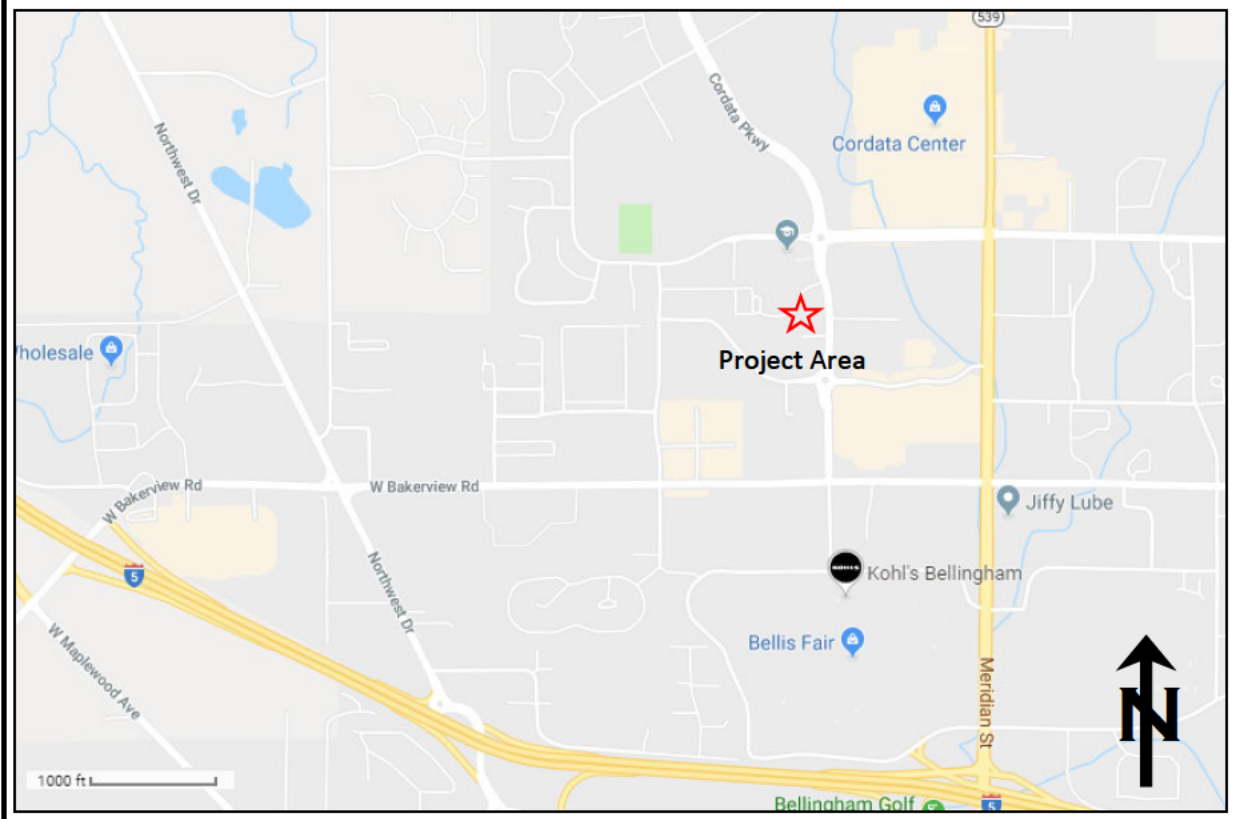
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
  - a. Bellingham CityIQ accessed on 5/6/2024 at <https://maps.cob.org/geviewer/Html5Viewer/Index.html?viewer=cityiq>
  - b. USGS TopoView accessed on 5/6/24 at <https://ngmdb.usgs.gov/topoview/viewer/#4/40.01/-100.06>
  - c. National Wetland Inventory accessed on 5/6/24 at <https://www.fws.gov/program/national-wetlands-inventory/wetlandsmapper>
  - d. USDA Web Soil Survey accessed on 5/6/24 at <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
  - e. Northwest Ecological Services. (April, 2024). Critical Areas Report for the Calluna Court Pedestrian Path.

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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.

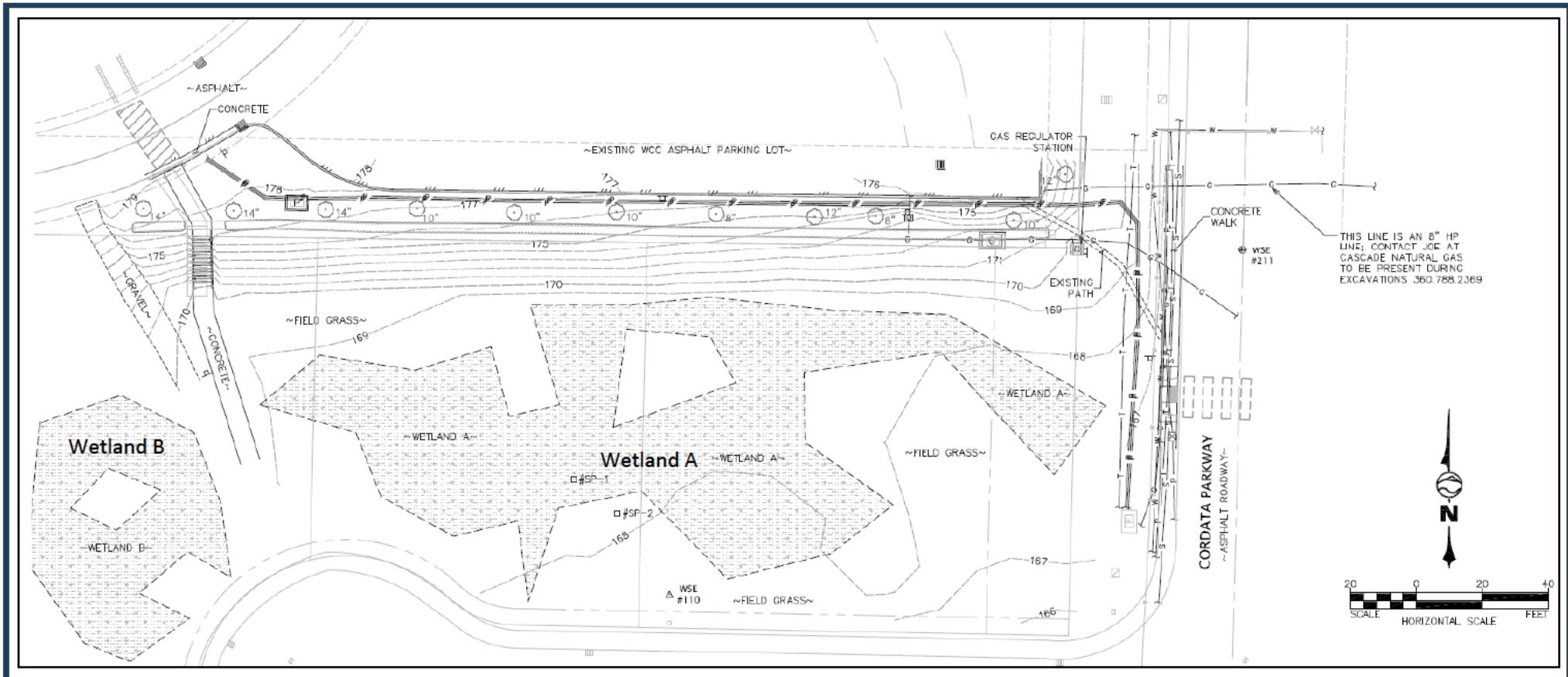


**Purpose:** Institutional  
**Applicant:** Curtis Lawyer-Bellingham School District  
**Project #:** NWS-  
**Adjacent Prop. Owners:** See JARPA  
**Date:** 04/03/24

**Community Transitions Facility**  
**Vicinity Map**

**In:** Wetlands  
**Location:** Calluna Court, Bellingham  
**Sec/Twp/Rng:** 12/38N/02E  
**County:** Whatcom      **State:** WA  
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<p><b>Purpose:</b> Institutional  <b>Applicant:</b> Curtis Lawyer-Bellingham School District  <b>Project #:</b> NWS-  <b>Adjacent Prop. Owners:</b> See JARPA  <b>Date:</b> 04/03/24</p>	<p><b>Community Transitions Facility</b>   <b>Wetland Survey Map</b></p>	<p><b>In:</b> Wetlands  <b>Location:</b> Calluna Court, Bellingham  <b>Sec/Twp/Rng:</b> 12/38N/02E  <b>County:</b> Whatcom      <b>State:</b> WA  <span style="float: right;"><b>Sheet 2 of 5</b></span></p>
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