



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

March 15, 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-2024-55; MFR 1 of 1.

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.

CENWS-ODR

SUBJECT: US Army Corps of Engineers 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) ,¹ NWS-2024-55

a. List of each individual feature within the review area and the jurisdictional status of each one.

i. Trench F 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 61964 (September 8, 2023))

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

3. REVIEW AREA. The review area is located on an approximately 3.71-acre property located adjacent to 28130 Black Diamond-Ravensdale Road Southeast at Black Diamond, King County, Washington (47.335069 N latitude, -121.976475 W longitude). The review area consists of a trench (Trench F) as depicted in the enclosed figure dated January 11, 2024. The subject property is currently located within a Forest (F) zoning designation and within a Forest Production District. There are four wetlands located within 300 feet of the review area; however, these wetlands are separated from Trench F by upland areas and do not have hydrologic connection to Trench F. See attached figures for site location, aerial view, and location of Trench F. No previous jurisdictional determination has been made for the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Green River is a listed navigable waterway 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 would not flow offsite.

CENWS-ODR

SUBJECT: US Army Corps of Engineers 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) ,¹ NWS-2024-55

6. SECTION 10 JURISDICTIONAL WATERS⁵: N/A

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).

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.

CENWS-ODR

SUBJECT: US Army Corps of Engineers 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) ,¹ NWS-2024-55

Trench F: Trench F is a 1.8-acre linear feature approximately 800 feet in length, 100 feet in width, and up to 30 feet in depth. Based on historic aerials and historic topographic maps, Trench F was constructed in uplands. While the feature is a water filled depression created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel, the excavation operation has been abandoned. On January 31, 2024, during normal hydrologic conditions, the Corps conducted a site visit to verify whether the resulting body of water meets the regulatory definition of Waters of the U.S. in accordance with the 2023 Rule.

Ponding was observed within the trench; however, no facultative wetland or obligate species were observed within the inundated areas. Vegetation along the steep slopes of the trench include Western red cedar (*Thuja plicata*; FAC), Douglas fir (*Pseudotsuga menziesii*; FACU), and black cottonwood (*Populus balsamifera*; FAC). Vegetation observed within the trench, at the highest elevation per LIDAR imagery, consists of salmonberry (*Rubus spectabilis*; FAC), trailing blackberry (*Rubus ursinus*; FACU), and non-native invasive Himalayan blackberry (*Rubus bifrons*; FAC). Based on photos provided from prior site visits, Trench F is not vegetated during the year and becomes sparsely vegetated during the wetter seasons. While sparse vegetation in concave surfaces may indicate a long duration of ponding that would limit the establishment of ground-layer vegetation and while soils have developed over time, despite any existing or potential wetland criteria, any ponding within Trench F infiltrates. The nearest known feature that would provide a downstream connection is approximately 330 linear feet from Trench F. The landscape between Trench F and the nearest known feature includes forested uplands at higher elevations. Trench F does not abut and is not separated by only a natural bank nor does Trench F flow directly or indirectly into an (a)(1) water or (a)(2) impoundment as there was no outlet observed. There is no continuous surface connection downstream. In accordance with the 2023 regulatory definition of Waters of the U.S., Trench F is not a water of the U.S under (a)(4) or (a)(5) water.

9. DATA SOURCES.

- a. Technical memorandum including photos, dated January 10, 2024, submitted on behalf of the applicant: Approved Jurisdictional Determination Request – Trench F Ravensdale LLC – South of SE Ravensdale Way, Ravensdale, WA 98051.
- b. Site visit conducted on January 31, 2024.

CENWS-ODR

SUBJECT: US Army Corps of Engineers 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) ,¹ NWS-2024-55

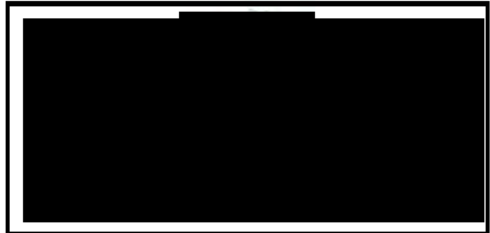
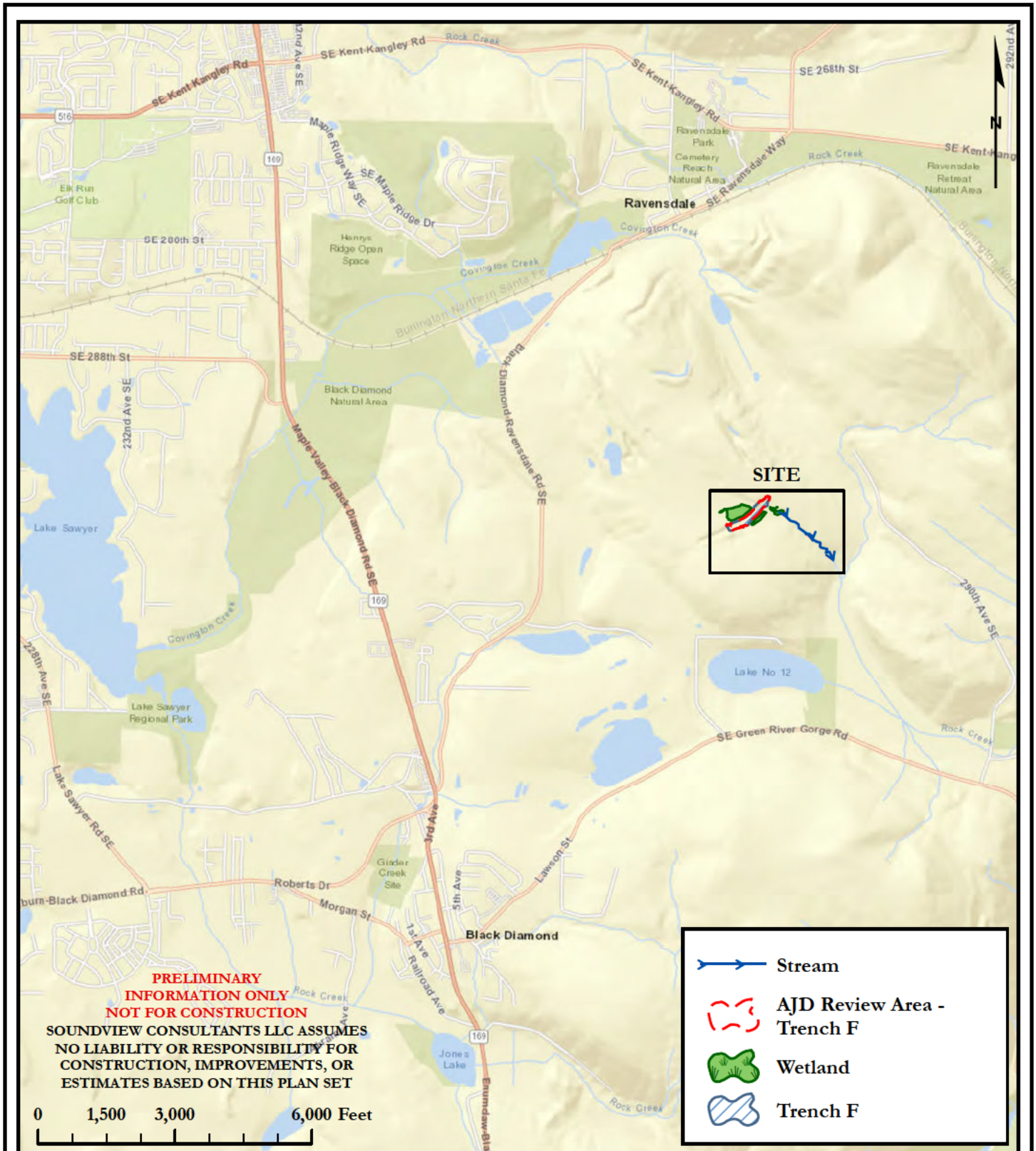
- c. U.S. Geological Survey topo viewer accessed January 29, 2024.
- d. U.S. Geological Survey national map advanced viewer accessed January 29, 2024.
- e. Washington Department of Natural Resources Forest Practices Application Mapping Tool accessed January 29, 2024.
- f. King County iMap web portal accessed January 29, 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.

This MFR was coordinated with EPA on February 2, 2024, and March 8, 2024. On March 12, 2024, the EPA concurred with the Corps determination.

VICINITY MAP

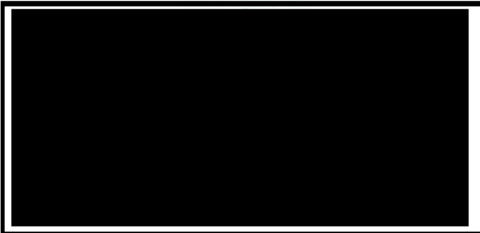
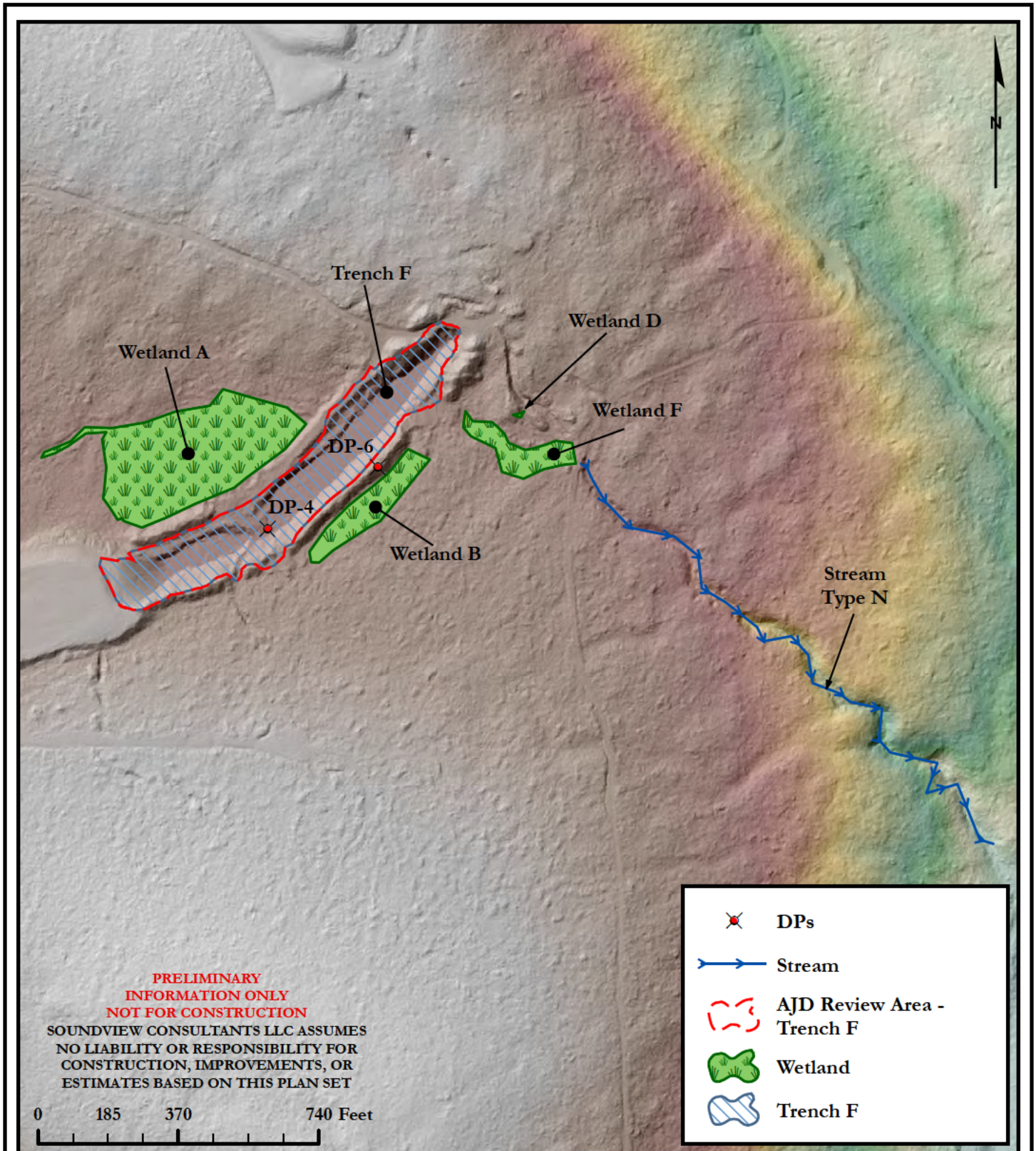


RAVENSDALE
 ADJACENT TO 28130
 BLACK DIAMOND-RAVENSDALE RD SE
 BLACK DIAMOND, WA 98010

KING COUNTY PARCEL NUMBERS:
 0121069004, 0121069005, 0621079032, & 0621079033

DATE: 12/18/2023
JOB: 1042.0005
BY: DDS
SCALE: 1" = 3,000'
FIGURE NO. 1 of 3

AJD REVIEW AREA - LiDAR EXHIBIT

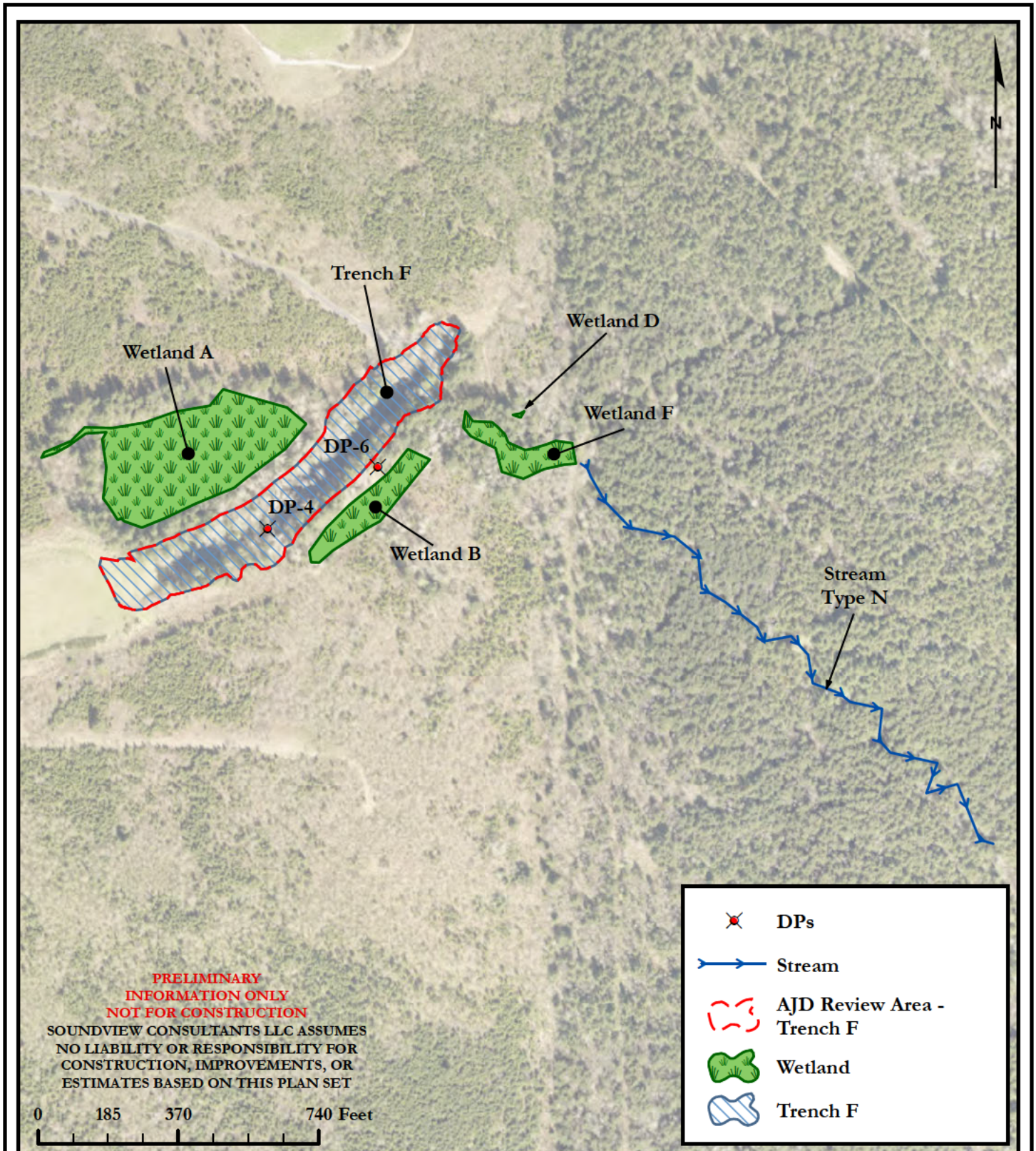


RAVENSDALE
 ADJACENT TO 28130
 BLACK DIAMOND-RAVENSDALE RD SE
 BLACK DIAMOND, WA 98010

KING COUNTY PARCEL NUMBERS:
 0121069004, 0121069005, 0621079032, & 0621079033

DATE: 12/18/2023
 JOB: 1042.0005
 BY: DDS
 SCALE: 1" = 360'
 FIGURE NO. 2 of 3

AJD REVIEW AREA - AERIAL IMAGERY EXHIBIT



RAVENSDALE
 ADJACENT TO 28130
 BLACK DIAMOND-RAVENSDALE RD SE
 BLACK DIAMOND, WA 98010

KING COUNTY PARCEL NUMBERS:
 0121069004, 0121069005, 0621079032, & 0621079033

DATE: 12/18/2023
JOB: 1042.0005
BY: DDS
SCALE: 1" = 360'
FIGURE NO. 3 of 3