



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

23 October 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) ,¹ NWS-2024-552.

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 CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ 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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OR

- 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 B, non-jurisdictional

- ii. Wetland D, 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 1.25 acre review area is located at Bothell, King County, Washington, Lat: 47.7742, Long: -122.2201. The address of the property, which includes the review area is 20207 Bothell Way NE, Bothell, WA 98011. The review area is within Water Resources Area (WRIA) 8, Cedar-Sammamish Watershed. The parcel, containing the review area, includes a derelict single story house, barn, several outbuildings, and a gravel driveway to the east. The western one third of the parcel, which includes the review area, consists of steep (greater than 30%) undeveloped slopes dominated by deciduous and evergreen forest. The review area is bounded to the north by wooded open space and a single-family dwelling, to the east by a single-family dwelling and several outbuildings, to the south by a single-family dwelling and forest, and to the west by a single-family residential development and Northeast 202nd Place.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Sammamish River, approximately 1.3 miles southeast and downstream of the review area. The Sammamish River is listed as a navigable

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waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁵

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no flowpath from the subject aquatic resources to a TNW, the territorial seas, or interstate waters. The nearest known tributary is Horse Creek, 789 feet east of the review area (see Enclosure 1, Figure 3). Horse Creek flows south into the Sammamish River, a Navigable Water of the United States.
6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with 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 10.⁷ 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

⁵ 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.

⁶ 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.

⁷ 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.

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).⁸ 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 B: Wetland B is a 2,044 square feet (SF) palustrine, forersted, depressional wetland. There are no surface drainage features between the wetland and the nearest known tributary (Horse Creek to the east). Horse Creek is located 776 feet east of and 108 feet below Wetland B. There are no berms (natural or man-made) between the wetland and Horse Creek; the area between Wetland B and Horse Creek consists of a steep slope (>30%) characterized by forest, which transitions, lower and to the east, to scrub-shrub and emergent vegetation. The source of hydrology for Wetland B is a stormwater pipe from an adjacent residential development, located directly west of the review area. Mapped soil, in Wetland B consists of Alderwood gravelly sandy loam, a non-hydric soil. Wetland B is not located within a floodplain. Wetland B is not abutting, separated by a natural berm or bank, or connected via a discrete conveyance to

⁸ 88 FR 3004 (January 18, 2023)

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.

Wetland D: Wetland D is a 1,738 square feet (SF) palustrine, forersted, depressional wetland. There are no surface drainage features between the wetland and the nearest known tributary (Horse Creek to the East). Horse Creek is located 797 feet east of and 212 feet below Wetland D. There are no berms (natural or man-made) between the wetland and Horse Creek; the area between Wetland D and Horse Creek consists of a steep slope (>30%) characterized by forest which transitions, lower and to the east, to scrub-shrub and emergent vegetation. The source of hydrology for Wetland D is a stormwater runoff from an adjacent residential development, directly to the west. Mapped soil, in the Wetland D consists of Alderwood gravelly sandy loam, a non-hydric soil. Wetland D is not located within a floodplain. Wetland D is not abutting, 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 D 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. August 29, 2024, Corps PM conducted a site visit and found no surface connection between Wetlands B & D to any water of the U.S.
 - b. EnCo Environmental Corp. (October 2022), Wetland & Watercourse Delineation for Sunrise Meadows Residential Development
 - c. King County iMap, accessed on 10/7/2024 at <https://gismaps.kingcounty.gov/iMap/>
 - d. USGS TopoView accessed on 10/7/2024 at <https://ngmdb.usgs.gov/topoview/viewer/#15/47.7742/-122.2197>
 - e. National Wetland Inventory accessed on 10/7/2024 at <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>
 - f. USDA Web Soil Survey accessed on 10/7/2024 at <https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

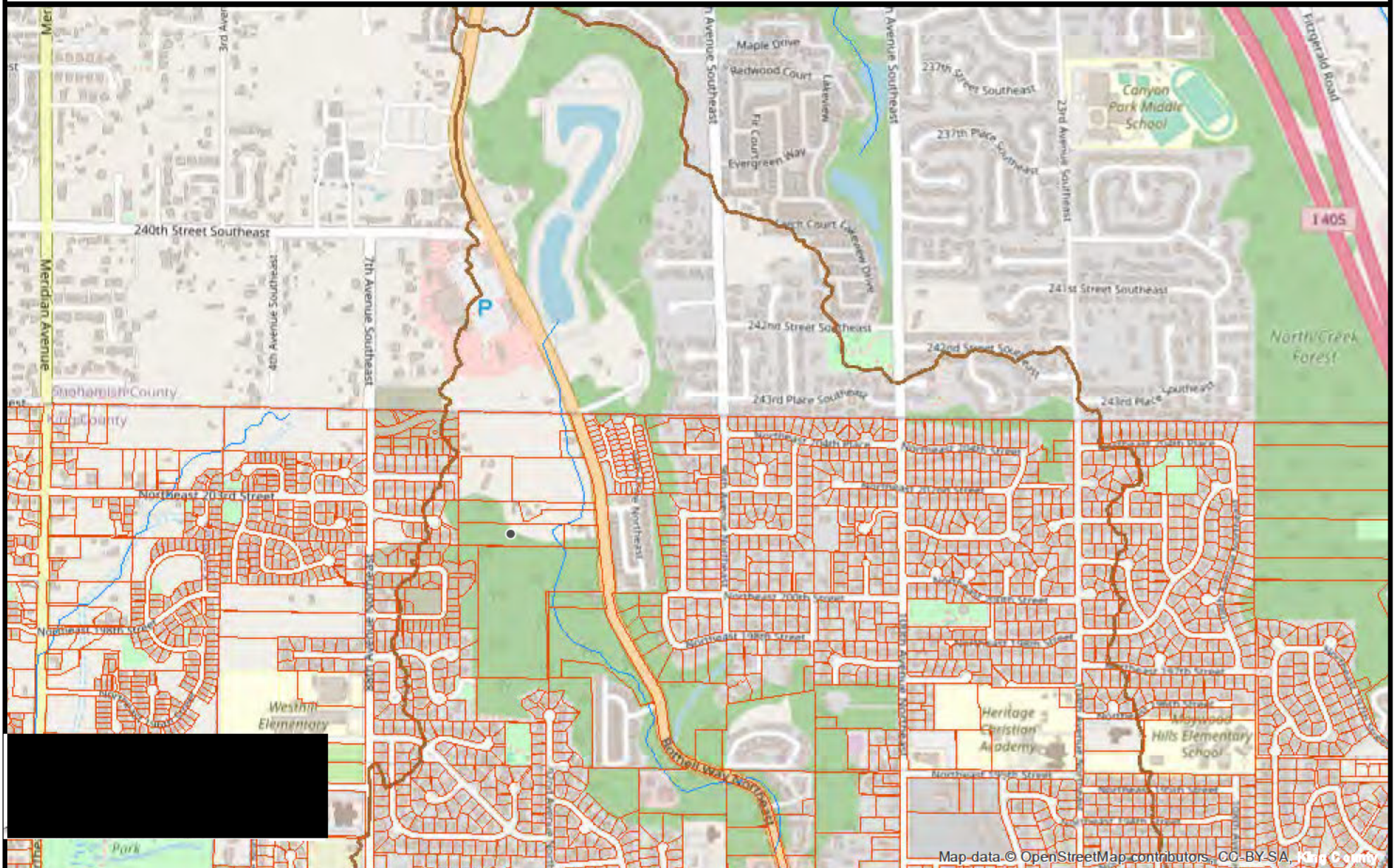
10. OTHER SUPPORTING INFORMATION. N/A

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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.

King County iMap



Map data © OpenStreetMap contributors, CC-BY-SA, Imagery © King County

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Date: 11/28/2021

Notes:

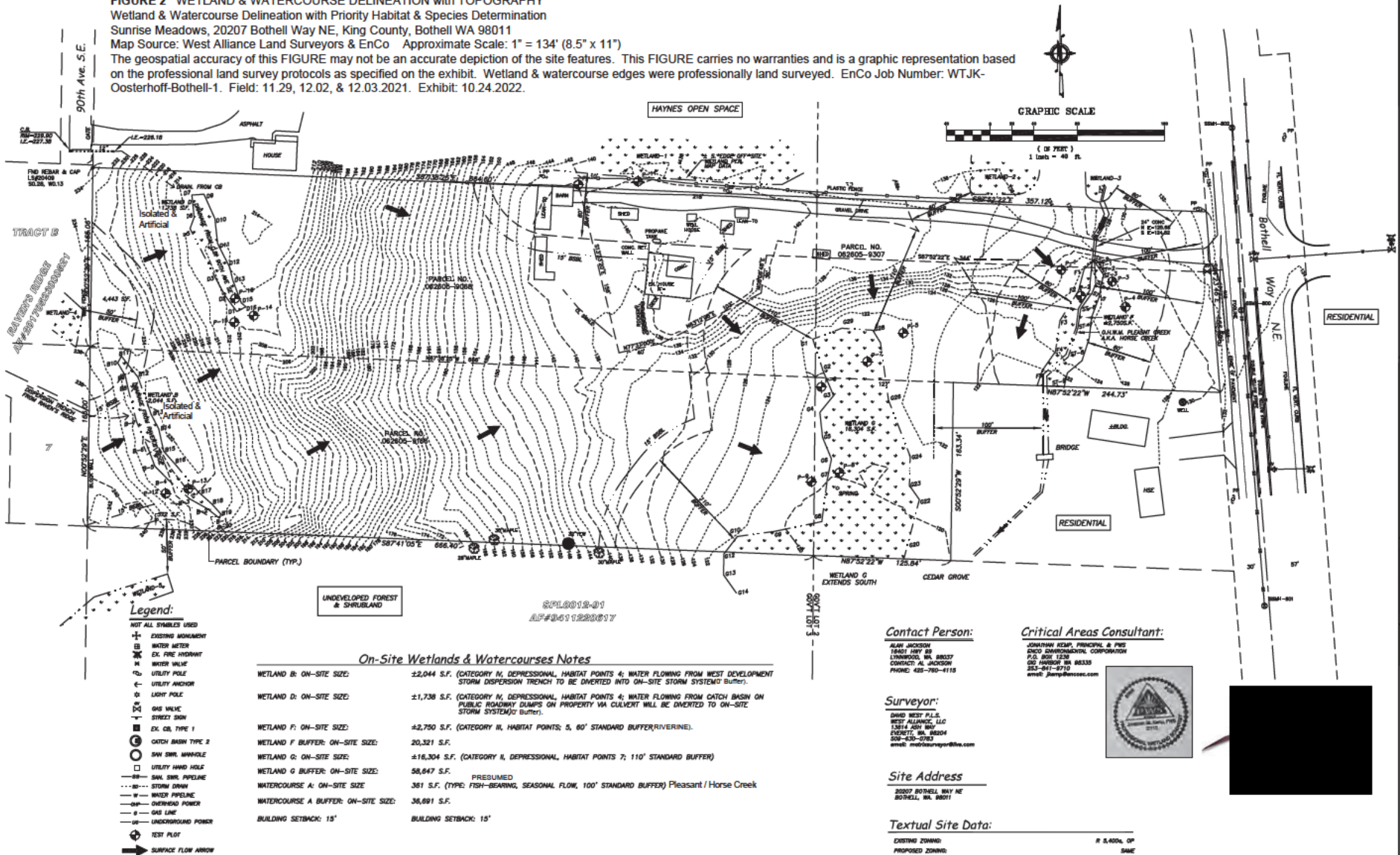


King County

FIGURE 2 WETLAND & WATERCOURSE DELINEATION with TOPOGRAPHY
Wetland & Watercourse Delineation with Priority Habitat & Species Determination
Sunrise Meadows, 20207 Bothell Way NE, King County, Bothell WA 98011

Map Source: West Alliance Land Surveyors & EnCo Approximate Scale: 1" = 134' (8.5" x 11")

The geospatial accuracy of this FIGURE may not be an accurate depiction of the site features. This FIGURE carries no warranties and is a graphic representation based on the professional land survey protocols as specified on the exhibit. Wetland & watercourse edges were professionally land surveyed. EnCo Job Number: WTJK-Oosterhoff-Bothell-1. Field: 11.29, 12.02, & 12.03.2021. Exhibit: 10.24.2022.



REVISIONS

DATE: 10/17/2022

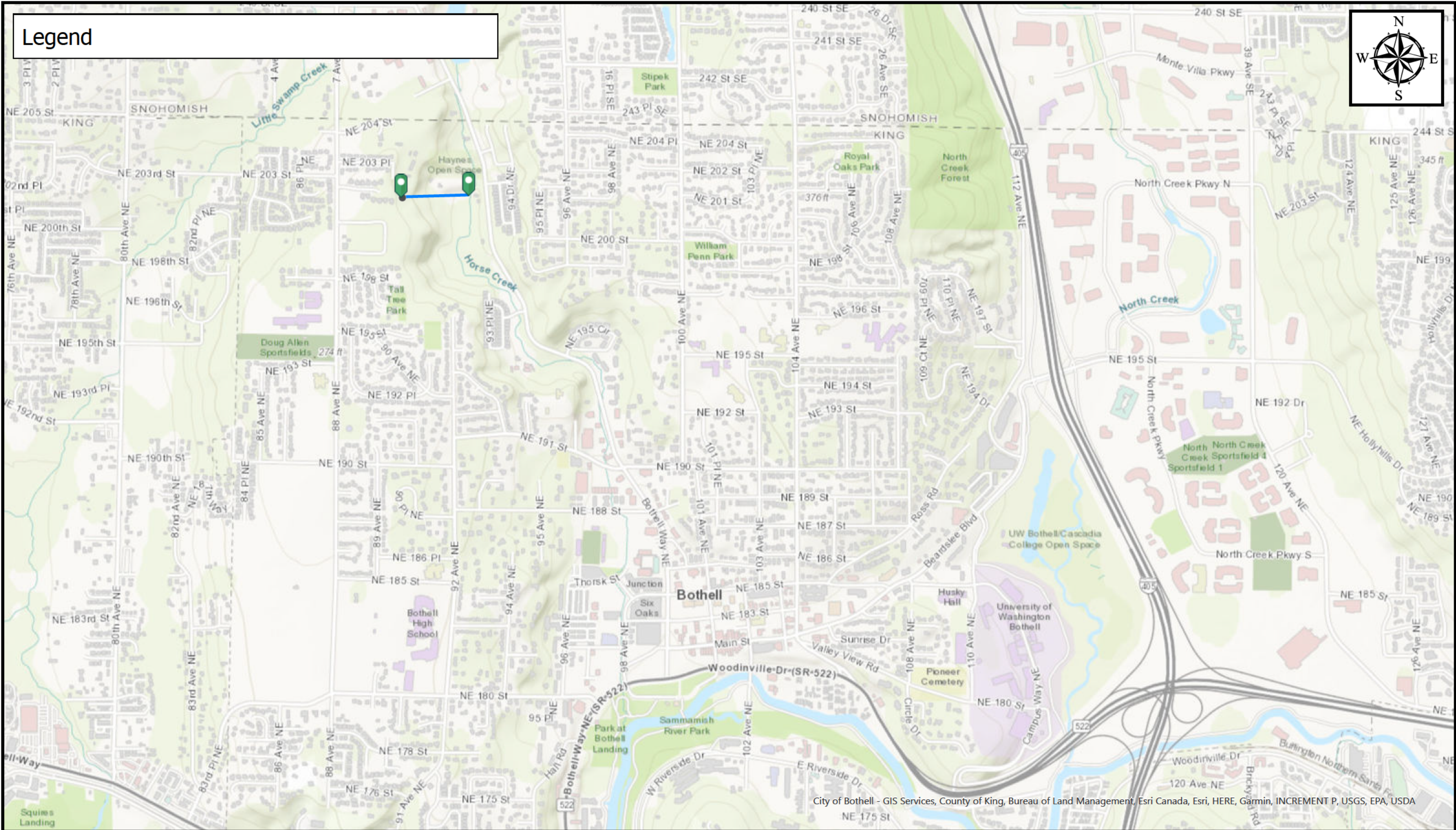


WETLANDS & WATERCOURSES DELINEATION
WITH TOPOGRAPHY

For
Sunrise Meadows

SHEET
2
OF
5

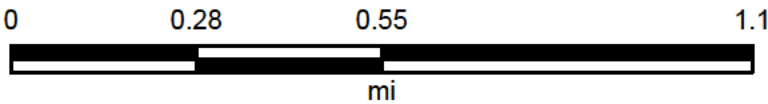
Legend



City of Bothell - GIS Services, County of King, Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA



NWS-2024-552



Map Center: 122.204758°W 47.767278°N

Map Created by: PM NAME

Date: 10/8/2024

Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
Projection: Mercator Auxiliary Sphere