



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

16 December 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-2024-839²

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.³ 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.⁴

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),⁵ the 2023 Rule as amended,

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 When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ 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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-839

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- 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, non-jurisdictional
 - ii. Unnamed Tributary, jurisdictional, Section 404

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)
- d. "Royle Ridge Development, Wetland Delineation and Assessment" (June 24, 2024)

3. REVIEW AREA. The review area is 9.91 acres located at 45.816777, -122.701464. It is located in Ridgefield, Clark County, Washington. The exact review area boundaries are shown in the AJD Review Figures. The review area is characterized mostly by grasses and forbs that were either mowed or trampled and chewed down by livestock. The area contains several buildings used to house livestock including chickens, goats, and horses. To the west, along the main road, North Royle Road, the review area is mostly characterized by mature trees such as Douglas fir (*Pseudotsuga menziesii*) and western red cedar (*Thuja plicata*). No previous jurisdictional determinations have been completed for this site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Lake River, approximately 3.95 miles downstream. Lake River is

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-839

listed on the Navigable Waters of the United States in Washington State dated December 31, 2008⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. An Unnamed Tributary flows northwest 360 feet within the eastern portion of the review area. The unnamed tributary then flows 2.18 miles west (meandering north and south) to Gee Creek. Gee Creek then flows 1.7 miles northwest into the Lake River.
6. SECTION 10 JURISDICTIONAL WATERS⁷: 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 10.⁸ 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

⁶ 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.

⁷ 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.

⁸ 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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-839

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):

Unnamed Tributary: The unnamed tributary is a perennial stream that flows northwest through the western portion of the property. Surface flow was observed during a site visit on August 7, 2024. Surface water is visible in the channel in aerial imagery from April 17, 2024, July 10, 2022, and August 13, 2020. The unnamed tributary is vegetated mostly by obligate and facultative wet plant species such as soft rush (*Juncus effusus*), American bur-reed (*Sparganium americanum*), cattail (*Typha sp.*), and marsh pennywort (*Hydrocotyle vulgaris*). Observed ordinary high water mark indicators included defined bed and banks and changes in vegetation. Based on the above information, the unnamed tributary experiences flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that the unnamed tributary meets the relatively permanent standard and connects downstream to a TNW.

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).⁹ 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).

⁹ 88 FR 3004 (January 18, 2023)

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-839

Wetland A: Wetland A is a 2,835 square feet palustrine emergent slope wetland. It is dominated by Kentucky bluegrass (*Poa pratensis* – FAC) and white clover (*Trifolium repens* – FAC). During an August 7, 2024 site visit, the Corps confirmed the boundaries of Wetland A. Wetland A is isolated and does not connect to any other aquatic resources. Wetland A is located approximately 120 feet west of the unnamed tributary. There is an upland break between the wetland and the stream and there are no drainage paths, pipes, or other potential avenues for a surface connection present. The upland break was confirmed through multiple test pits in and out of the wetland to confirm lack of hydric soil or hydrology indicators. Wetland A 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 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.

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.

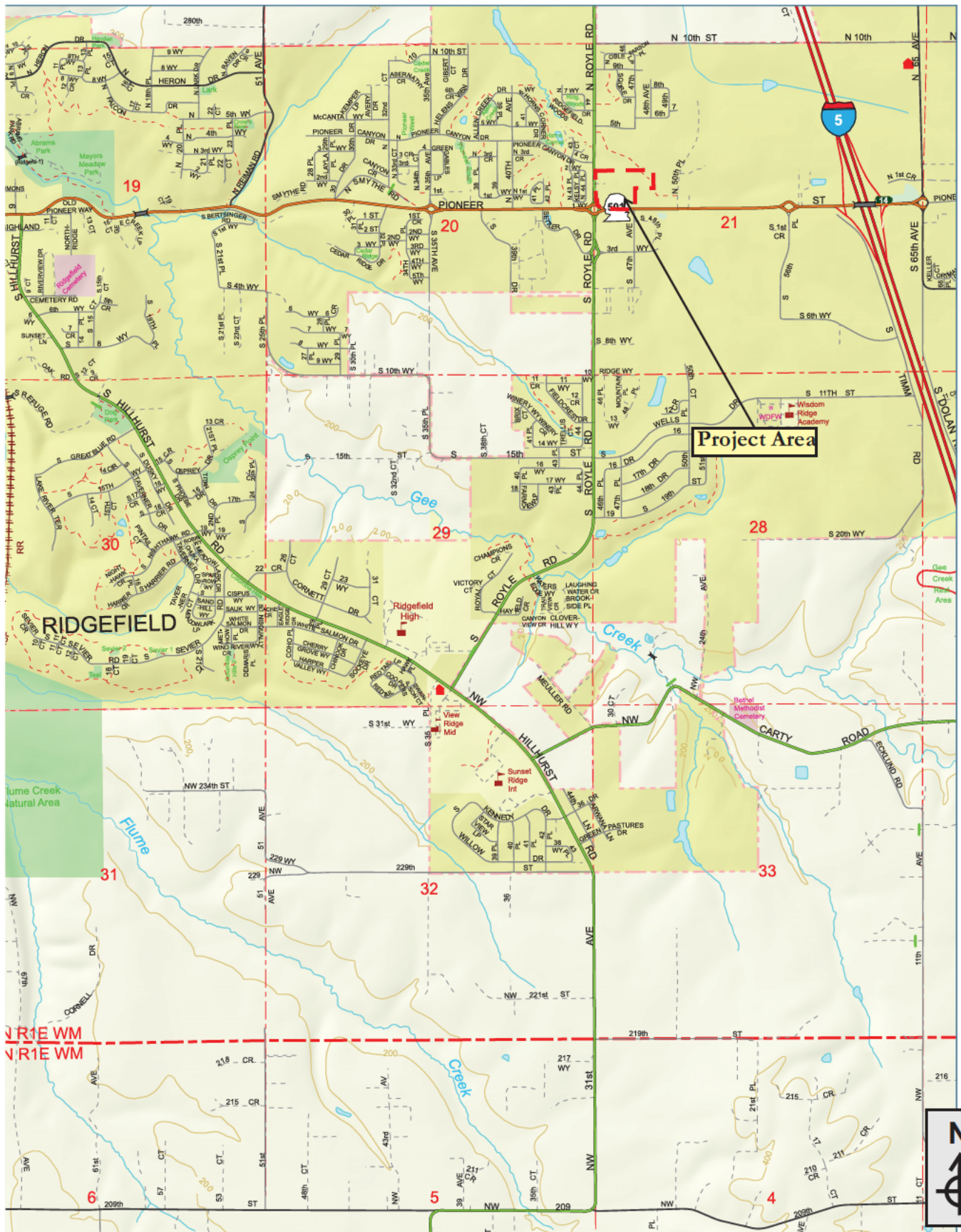
a. On 7 August 2024, J. Ari Sindel – USACE and Meghan Tait – Washington Department of Ecology met Kevin Grosz – Private Practice Consultant onsite to confirm wetland boundaries and jurisdiction.

b. Google Earth. Accessed November 13, 2024.

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.

12. On 29 November 2024, the District sent EPA a draft AJD MFR. On 13 December 2024, EPA concurred with the draft AJD; therefore, the AJD is considered final.



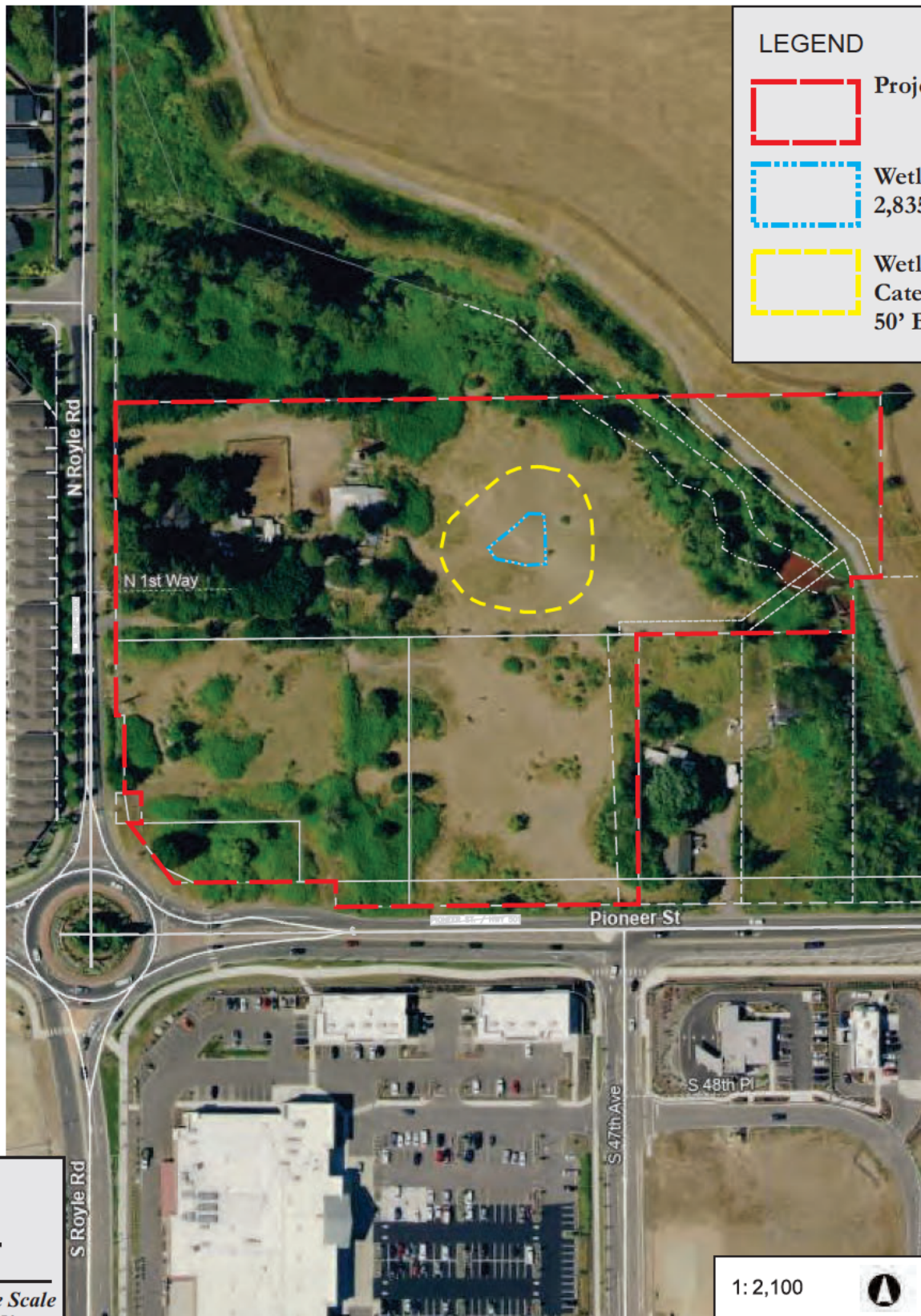
Project Location Map
Royle Ridge Project
Ridgefield, Washington

Natural Resources Environmental Services, LLC
WETLANDS/HABITAT/WILDLIFE
P.O. 638, Ridgefield, WA 98642 - (360) 608-7881

PROPOSED ACTIVITIES IN:
Allen Canyon Creek Watershed
LAT/LONG: 45.81634849/-122.70401304
LEGAL: NW1/4, S21, T4N, R1E, W.M.
NEAR: Ridgefield, Washington
COUNTY: Clark County
DATE: June 20, 2024

Figure 1

PURPOSE: Wetland Delineation & Assessment



**Delineated Wetland and Buffer
Royle Ridge Project
Ridgefield, Washington**

*Natural Resources Environmental Services, LLC
WETLANDS/HABITAT/WILDLIFE*

P.O. 638, Ridgefield, WA 98642 - (360) 608-7881

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Allen Canyon Creek Watershed
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Figure 5

PURPOSE: Wetland Delineation & Assessment