



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

18 March 2025

MEMORANDUM FOR RECORD

SUBJECT: U.S. Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; 88 FR 3004 (18 January 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (8 September 2023),¹ NWS-2023-136.²

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 18 January 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 (18 January 2023) ("2023 Rule"). On 8 September 2023 the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", 88 FR 61964 (8 September 2023) which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S. 651, 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.

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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. Northern Ditch, non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (18 January 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (8 September 2023)
- c. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is 1.85 acres located at 2401 Inter Avenue within the eastern portion of the City of Puyallup, Pierce County, Washington, Section 26, Township 20 North, Range 04 East. The center of the parcel is located at latitude/longitude: 47.1898528, -122.2628667. The review area had been managed as a single-family homesite and for production of hay crops for the past few decades. During the summer of 2020, the central and southern portions of the review area were filled with clean gravel to form a vehicle parking area. The review area is bound by commercial development to the east, west, and north and Inter Avenue to the south.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Puyallup River, approximately 0.6 miles north. The Puyallup River is listed as a navigable waterway up to River Mile 3 as described on the

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Navigable Waters of the United States in Washington list revised 31 December 2008.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Flow from Wetland A does not leave the review area. Flow from the Northern Ditch enters a City of Puyallup stormwater inlet in the northwest corner of the site and flows 0.6 mile before entering Deer Creek near latitude/longitude: 47.192111, -122.273287. Deer Creek then flows 0.36 mile before entering the Puyallup River, a TNW. Total flow path from the review area to the TNW is approximately 1 mile.
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 at 33 CFR § 328.3(a)(1) through (a)(5), 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.

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 § 329.14 to make a determination that a water is a navigable water of the United States subject to Section 10 of the RHA.

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- 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).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).

Wetland A: Wetland A is 636 square feet depressional wetland in the northern portion of the review area. The Critical Areas Assessment provided by Habitat Technologies describes Wetland A as dominated by meadow foxtail, water foxtail (*Alopecurus geniculatus*), redtop bentgrass (*Agrostis alba*), and buttercup. Soils were described as very dark brown (10YR 3/1 to 10YR 3/2) coloration with a loamy texture with the subsoil (depth of approximately 24 inches) exhibiting a very dark grayish brown (10YR 3/2 to 10YR 4/2) coloration and loamy texture with prominent redoximorphic features.

Hydrology for Wetland A is supported primarily by stormwater and precipitation. An old agricultural swale previously bisected Wetland A, but did not extend fully

⁹ 88 FR 3004 (18 January 2023)

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to the northern boundary ditch. This swale likely in-filled over time and is no longer observable within the review area. Any potential outflow from Wetland A is separated from the northern boundary ditch by historic spoil piles according to the 2022 site visit conducted by Habitat Technologies, Washington Department of Natural Resources Pierce 2020 LiDAR imagery, and US Geological Survey 3DEP digital elevation models.

There is no discrete surface flow pathway from Wetland A. 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 does not have a continuous surface connection to a (a)(1), (a)(2) or (a)(3) water and is not a water of the U.S.

Northern Ditch: Northern Ditch flows west approximately 170 feet along the northern boundary of the review area. Flow from the Northern Ditch enters a City of Puyallup stormwater inlet in the northwest corner of the site and flows 0.6 mile before entering Deer Creek. Multiple additional stormwater inputs from residential and commercial development contribute to the stormwater system between northern ditch and the outfall to Deer Creek. During a site visit in late January 2025, the agent did not observe any flowing or standing water in the Northern Ditch. The ditch was vegetated primarily with reed canary grass (*Phalaris arundinacea*) and Himalayan blackberry (*Rubus armeniacus*) dominated the berm located south of the ditch. No ordinary high water mark indicators, such as sorting of material, scour or prolonged inundation were observed in the ditch. Hydrology was not observed within 16 inches below grade in the ditch. Precipitation levels for the 30 days preceding the site visit were about 50 percent of normal, and around 73 percent of normal for the water year. Review of aerial photos do not show standing water within the ditch. Northern Ditch does not experience 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 Northern Ditch does not meet the relatively permanent standard and is therefore 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. Office evaluation completed 21 February 2025
 - b. "Environmentally Critical Areas Assessment, Parcel 2105200150, 2401 Inter Avenue SE, City of Puyallup, Washington" prepared by Habitat Technologies, dated 03 November 2022

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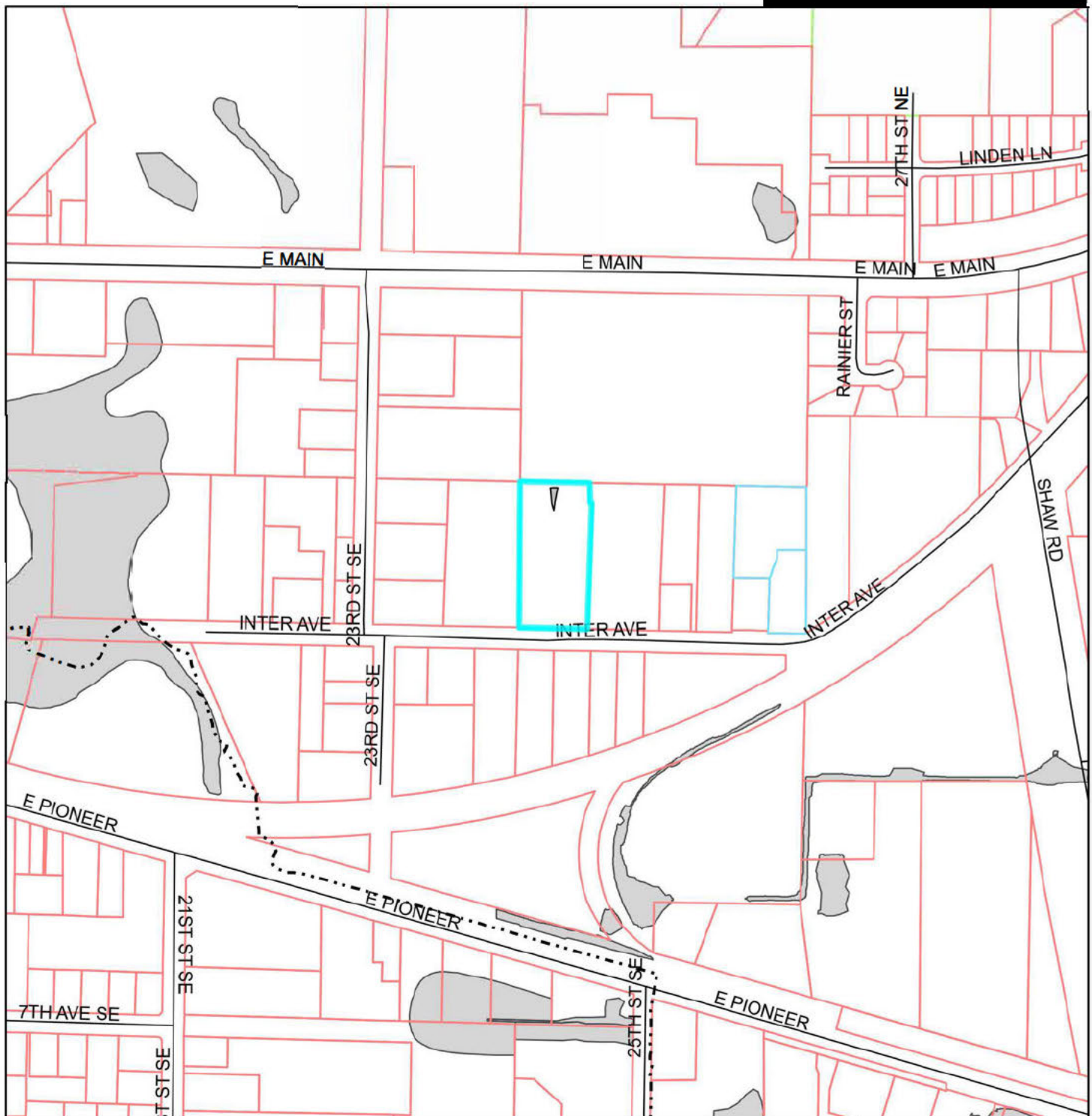
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- c. Additional information prepared by Habitat Technologies received 15 May 2024
- d. Additional information provided by Soundview Consultants received 25 February 2025
- e. Washington State Department of Natural Resources LiDAR portal accessed 20 February 2025
- f. City of Puyallup Public Data Viewer, Stormwater Utilities, accessed 20 February 2025
- g. U.S. Geological Survey (USGS) National Hydrography Dataset accessed 20 February 2025
- h. U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) Web Soil Survey, accessed 20 February 2025
- i. USGS 3D Elevation Program (3DEP) Bare Earth DEM Dynamic service accessed 20 February 2025

10. OTHER SUPPORTING INFORMATION. N/A

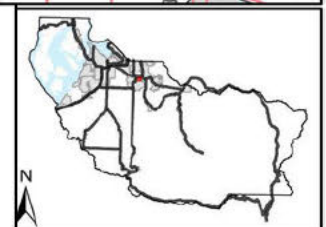
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Figure 1A - AJD Review Area



Legend

- | | | |
|--------------------|--------------------|---------------------|
| Wetland A | Tax Parcels | Other |
| Streams - Puyallup | Base Parcel | Wetlands - Puyallup |
| Roads | Condominium | |



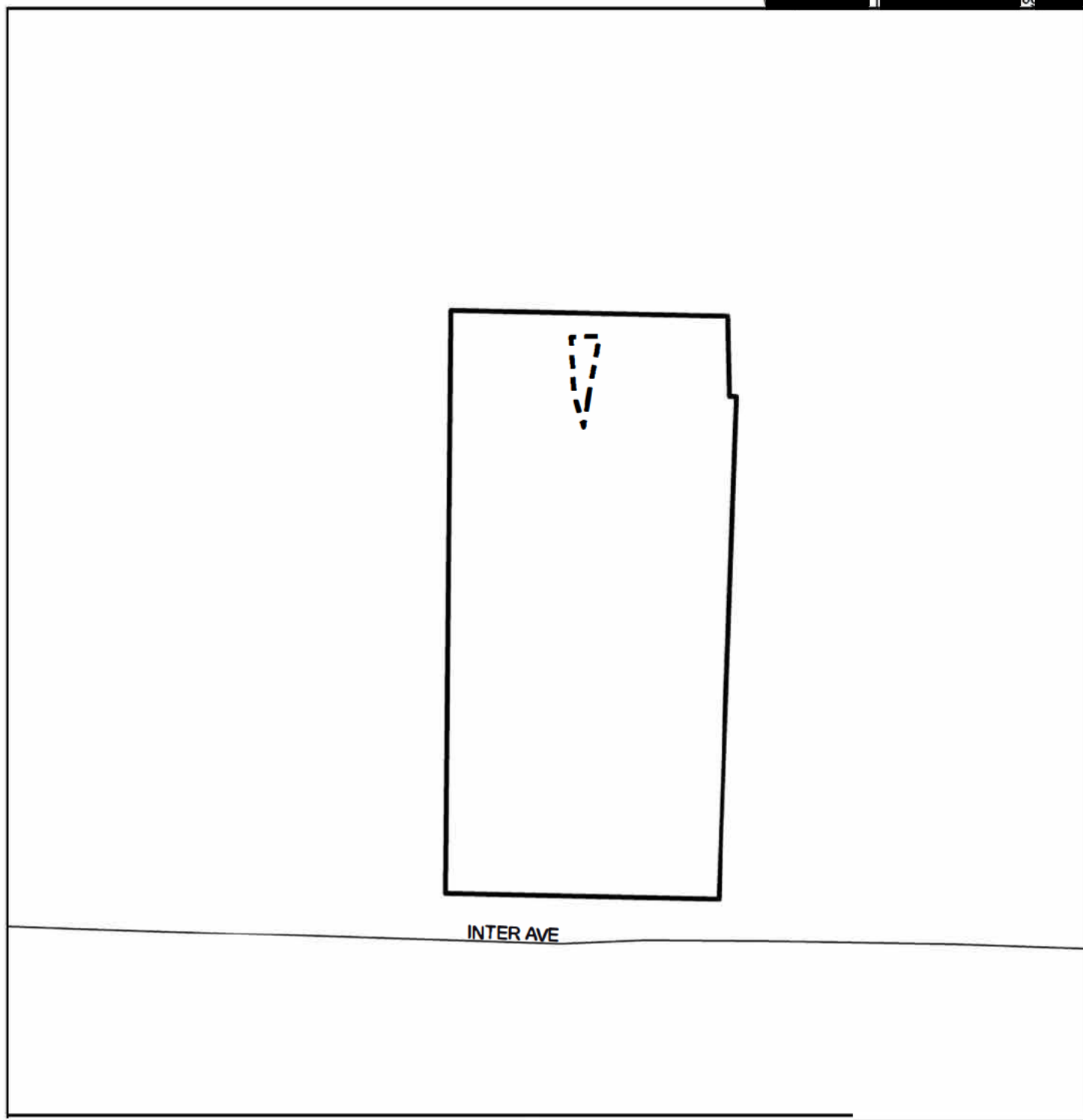
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0 105 210 420 Feet

The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

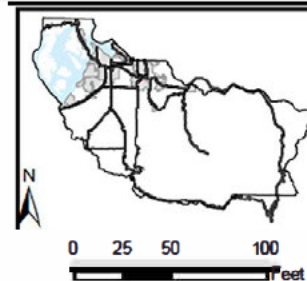
Date: 2/26/2025

Figure 2 Existing Conditions



Legend

-  Wetland A
-  Boundary
-  Roads



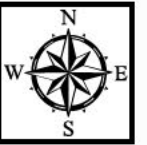
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The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. Orthophotos and other data may not align. The County assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'. The County makes no warranty of fitness for a particular purpose.

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Legend

- Water Feature
- Review Area
- Wetland Boundary



County of King, Bureau of Land Management, Esri Canada, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA, Esri, USDA Farm Service Agency



NWS-2023-136:
Jurisdictional
Determination for 2401
Inter LLC

0 0.01 0.01 0.03
mi

Map Center: 122.262637°W 47.189898°N

Map Created by: B.Cummings
Date: 2/26/2025

Coordinate System: WGS 1984 Web
Mercator Auxiliary Sphere