



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 April 2025

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-2023-227²

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.

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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. 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. 651, 143 S. Ct. 1322 (2023)
- d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The approximately 1.2 acre review area is located at Bellingham, Whatcom County, Washington (48.809676, -122.498956). The review area consists of an undeveloped lot vegetated by shrubs and herbaceous species. The review area slopes gently to the southwest. The review area is bounded by Meadowbrook Court to the north, multi family residential development to the west and south, 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. The Nooksack River, approximately 4.5 miles west and 7 miles

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downstream. The Nooksack River is listed as navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water flows south through Wetland B and into an underground pipe. Water flows 212 feet southwest through the pipe and then outlets into a forested wetland adjacent to a stormwater pond. This stormwater pond outlets to underground stormwater pipes that drain 530 feet west and outlet into an unnamed tributary to the East Fork Bear Creek (EFBC). This unnamed tributary flows 450 feet west to the EFBC. The EFBC flows northwest 5,100 feet to Bear Creek. Bear Creek flows 1.9 miles west and north to Silver Creek. Silver Creek flows approximately 4 miles southwest to the Nooksack River which then flows approximately 0.8 miles to Bellingham Bay.
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.

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.

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
- 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 an approximately 0.17 acre palustrine emergent wetland in the northern portion of the review area. Wetland A does not have an outlet. Wetland A does not abut 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 an approximately 0.06 acre palustrine emergent wetland in the southern portion of the review area. Wetland B flows into a pipe as

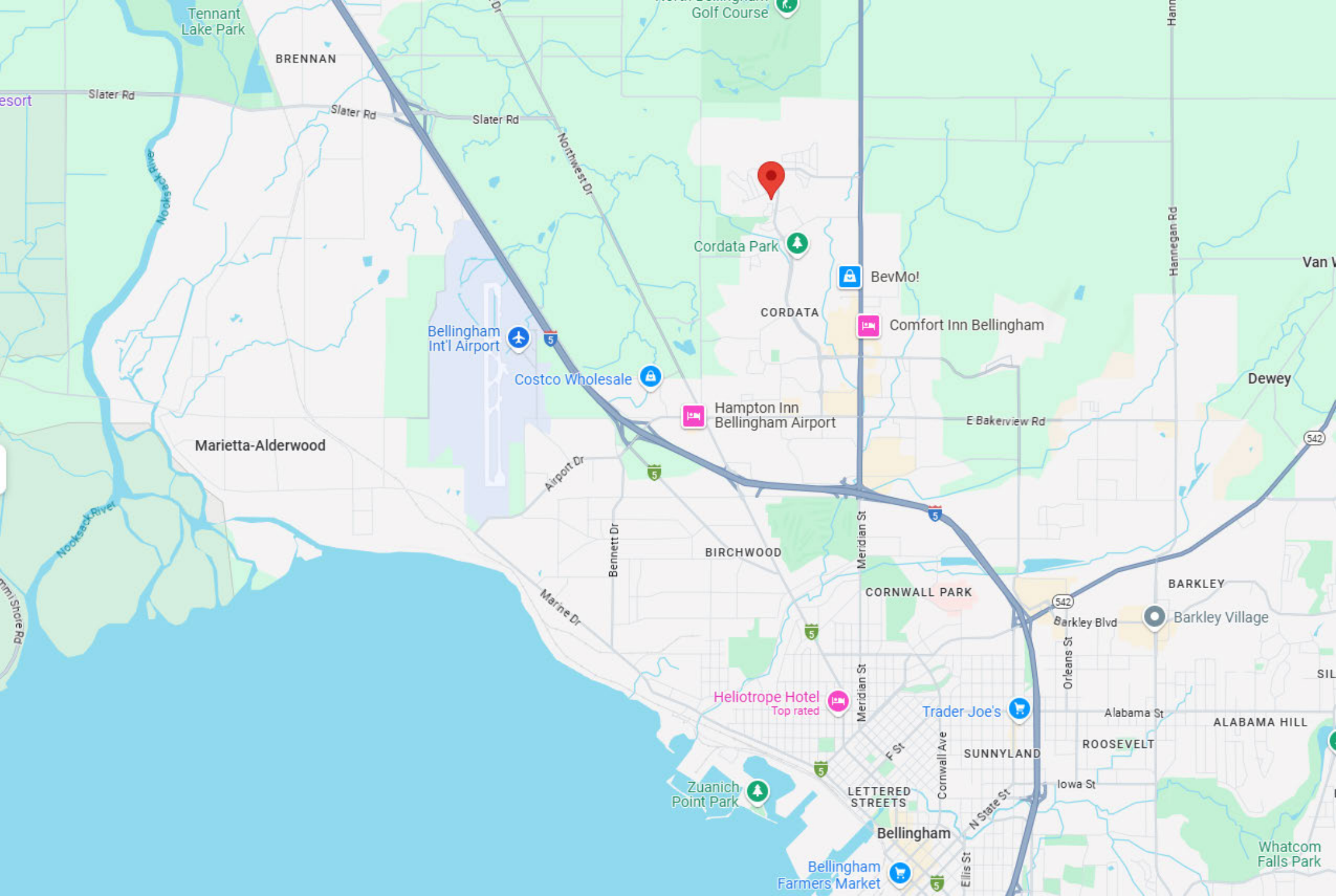
⁹ 88 FR 3004 (January 18, 2023)

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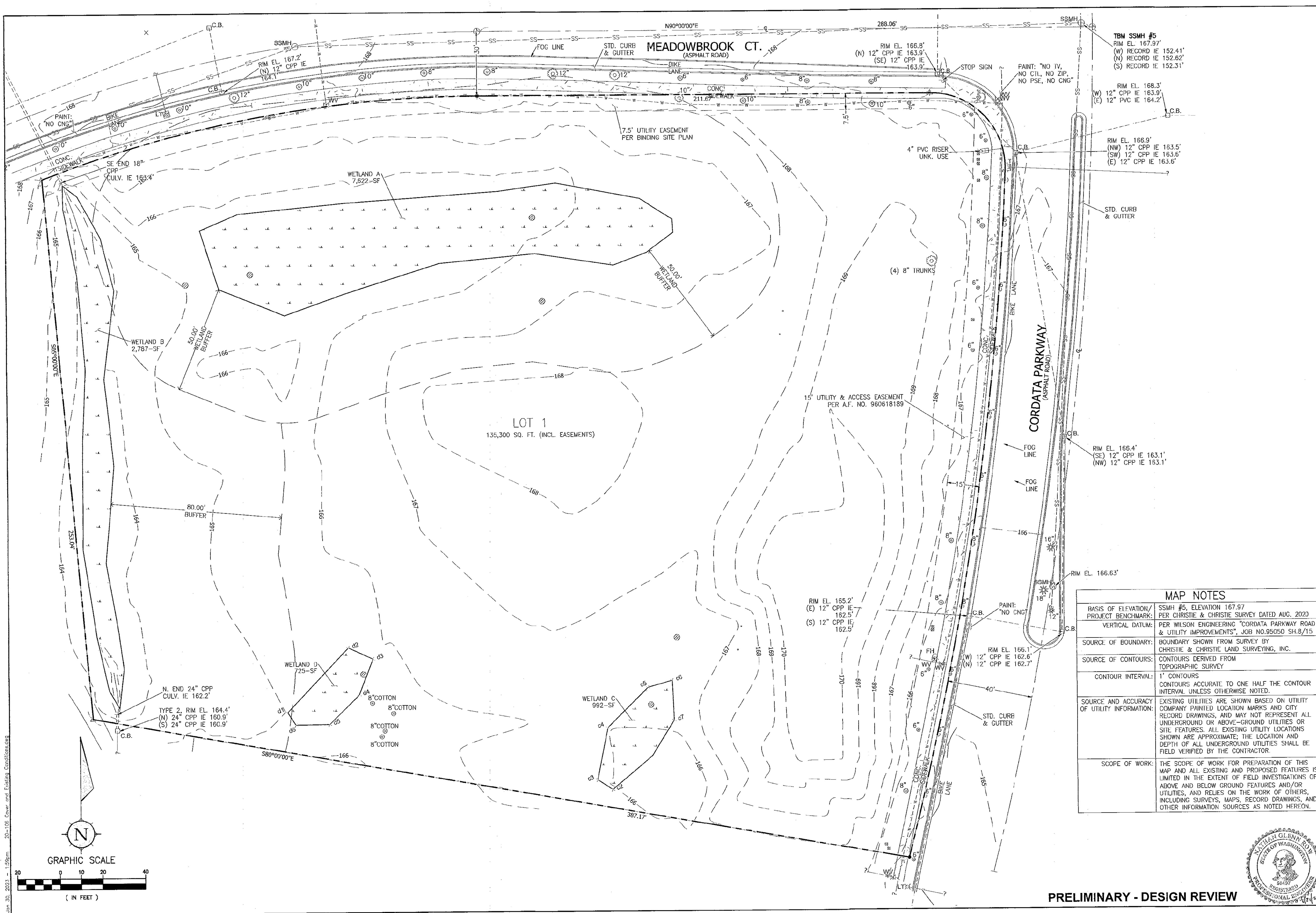
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described in Section 5 above. Wetland B is located approximately 1,092 feet northeast and upstream of the unnamed tributary to the East Fork Bear Creek, the closest potential requisite jurisdictional water. Wetland B is separated from the unnamed tributary by upland development. Water from Wetland B flows through another wetland, a stormwater pond, and over 750 feet of underground pipe before reaching the unnamed tributary. This physically remote hydrologic connection does not establish a continuous surface between Wetland B and the unnamed tributary per the memo to the field dated 12 March 2025 referenced above. Wetland B does not abut 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. Critical Aras Report and Mitigation Plan Wetlands & Habitat Conservation Areas for Skyline at Cordata – Multi-Family Project 4611 Alba Lane. Miller Environmental Services, LLC. January 23, 2023.
 - b. USGS TopoView accessed on 4/21/2025 at:
<https://ngmdb.usgs.gov/topoview/viewer/#4/40.01/-100.06>
 - c. Bellingham CityIQ accessed on 4/21/2025 at:
<https://maps.cob.org/geviewer/Html5Viewer/Index.html?viewer=cityiq>
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.

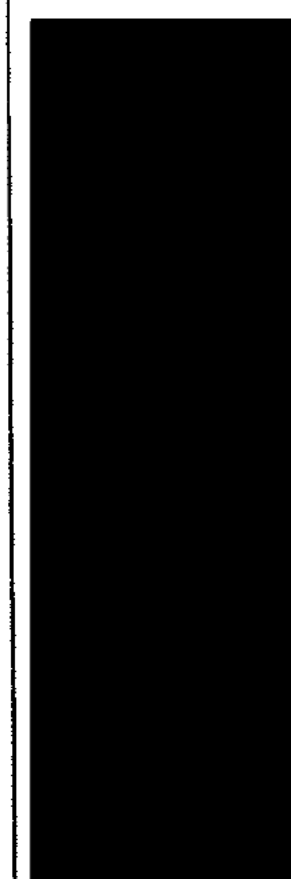


Jan 30, 2023 - 1:59pm 20-106 Cover and Existing Conditions.dwg



REVISIONS
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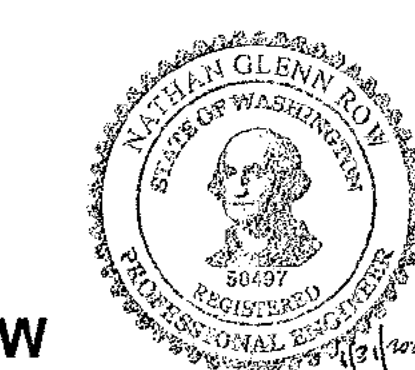
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MIKE BELUSIE
SKYLINE AT CORDATA - MULTI FAMILY
EXISTING CONDITIONS SURVEY MAP

APC PROJECT # 20-106
DESIGNED: NGR
DRAWN: ITM
CHECKED:
Sheet of
C-2

MAP NOTES	
BASIS OF ELEVATION/PROJECT BENCHMARK:	SSMH #5, ELEVATION 167.97 PER CHRISTIE & CHRISTIE SURVEY DATED AUG. 2020
VERTICAL DATUM:	PER WILSON ENGINEERING "CORDATA PARKWAY ROAD & UTILITY IMPROVEMENTS", JOB NO.95050 SH.8/15
SOURCE OF BOUNDARY:	BOUNDARY SHOWN FROM SURVEY BY CHRISTIE & CHRISTIE LAND SURVEYING, INC.
SOURCE OF CONTOURS:	CONTOURS DERIVED FROM TOPOGRAPHIC SURVEY
CONTOUR INTERVAL:	1' CONTOURS CONTOURS ACCURATE TO ONE HALF THE CONTOUR INTERVAL UNLESS OTHERWISE NOTED.
SOURCE AND ACCURACY OF UTILITY INFORMATION:	EXISTING UTILITIES ARE SHOWN BASED ON UTILITY COMPANY PAINTED LOCATION MARKS AND CITY RECORD DRAWINGS, AND MAY NOT REPRESENT ALL UNDERGROUND OR ABOVE-GROUND UTILITIES OR SITE FEATURES. ALL EXISTING UTILITY LOCATIONS SHOWN ARE APPROXIMATE; THE LOCATION AND DEPTH OF ALL UNDERGROUND UTILITIES SHALL BE FIELD VERIFIED BY THE CONTRACTOR.
SCOPE OF WORK:	THE SCOPE OF WORK FOR PREPARATION OF THIS MAP AND ALL EXISTING AND PROPOSED FEATURES IS LIMITED IN THE EXTENT OF FIELD INVESTIGATIONS OF ABOVE AND BELOW GROUND FEATURES AND/OR UTILITIES, AND RELIES ON THE WORK OF OTHERS, INCLUDING SURVEYS, MAPS, RECORD DRAWINGS, AND OTHER INFORMATION SOURCES AS NOTED HEREON.



PRELIMINARY - DESIGN REVIEW