



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

14 February 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-2024-475²

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 B, non-jurisdictional
 - ii. Ditch 1, 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)

3. REVIEW AREA. The review area is approximately 5.33 acres located at 47.805954, -122.112873 in Maltby, Snohomish County, Washington. The review area is located just north of the Maltby Café on a portion of two parcels (#27052400300100 and #27052400302500). The review area consists of undeveloped forest, scrub-shrub habitat, and grassy open areas. The review area is bounded by electrical power lines to the north, Broadway Avenue to the east, commercial businesses to the south and residential homes to the west.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Sammamish River, approximately 10.8 miles south and approximately 10.9 miles downstream. The Sammamish River is listed as navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Ditch 1 flows east through a culvert under Broadway Avenue. Water continues to drain south through a mixture of

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open channel ditches and underground stormwater pipes before outletting to Daniels Creek, approximately 0.75 miles southeast of the review area. Daniels Creek then flows approximately 3 miles to Cottage Lake Creek. Cottage Lake Creek flows approximately 3.4 miles to Bear Creek which flows approximately 3.7 miles to the Sammamish River.

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
 - 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):

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.

Ditch 1: Ditch 1 is approximately 584 feet long and is located on the eastern edge of the review area. The ditch receives direct precipitation and sheet flow runoff from Broadway Ave and surrounding uplands. According to the APT, there were normal precipitation conditions at the site during the Corps' 4 July 2024, and 10 January 2025 site visits; standing water was observed in Ditch 1 during both site visits. The channel is vegetated with reed canary grass (*Phalaris arundinacea* - FACW) and Himalayan blackberry (*Rubus armeniacus* - FAC). Based on the above information, Ditch 1 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 Ditch 1 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).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 543 square foot, depressional, freshwater emergent and scrub-shrub palustrine wetland located in the central southern portion of the review area. Wetland B does not connect to any other aquatic resources.

Wetland B is located approximately 346 feet west of Ditch 1. No drainage paths, pipes, or surface water connections were observed between Wetland B and Ditch 1 during site visits conducted on 4 July 2024 and 10 January 2025.

Wetland B 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.

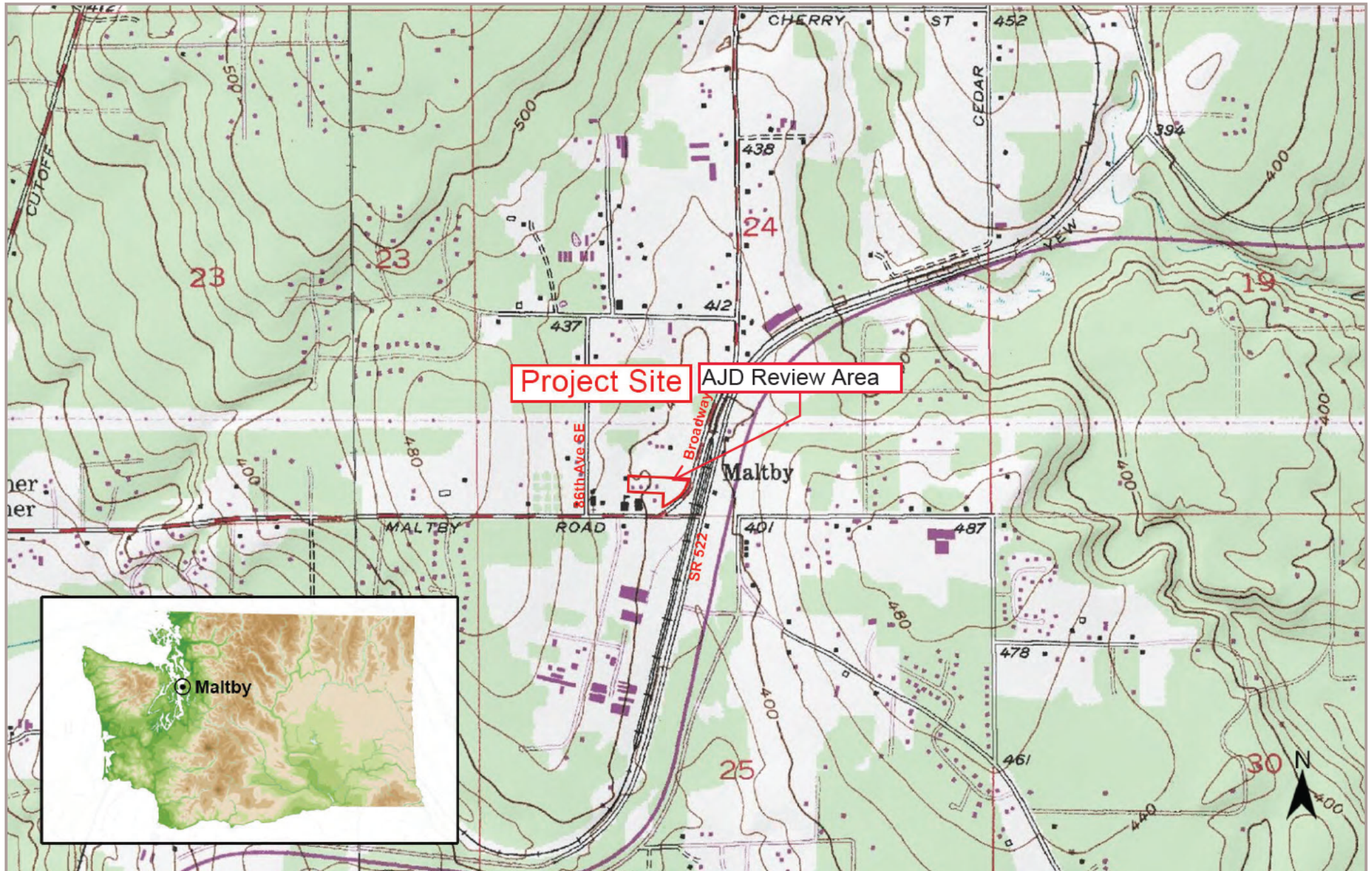
⁸ 88 FR 3004 (January 18, 2023)

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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. National Regulatory Viewer Lidar Dataset accessed June 27, 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
 - b. National Regulatory Viewer National Hydrography Dataset accessed September 5 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
 - c. USFWS National Wetland Index accessed June 27, 2024: [National Wetlands Inventory \(usgs.gov\)](#)
 - d. Snohomish County Critical Areas Map accessed June 27, 2024: [PDS Map Portal \(snoco.org\)](#)
 - e. WDFW SalmonScape Map accessed December 17, 2024: [WDFW SalmonScape \(wa.gov\)](#)
 - f. Snohomish County Drainage Inventory Map accessed June 27 and December 18, 2024: [SWM DI Webmap \(snoco.org\)](#)
 - g. Site visit conducted on June 28, 2024
10. OTHER SUPPORTING INFORMATION. On January 10, 2025, the Corps conducted a field investigation of the site. No connections were found between the subject wetland and ditch. Additionally, no additional potential waters were found. The area between the wetland and ditch consisted of disturbed fill soil with many inclusions of rock, brick, and concrete found below the soil surface. In this area, the dominant species was Scotch Broom (*Cytisus scoparius*) which is an upland listed species.
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.



Source: mytopo.com

FIGURE 1: VICINITY MAP
Moray Village, Snohomish County

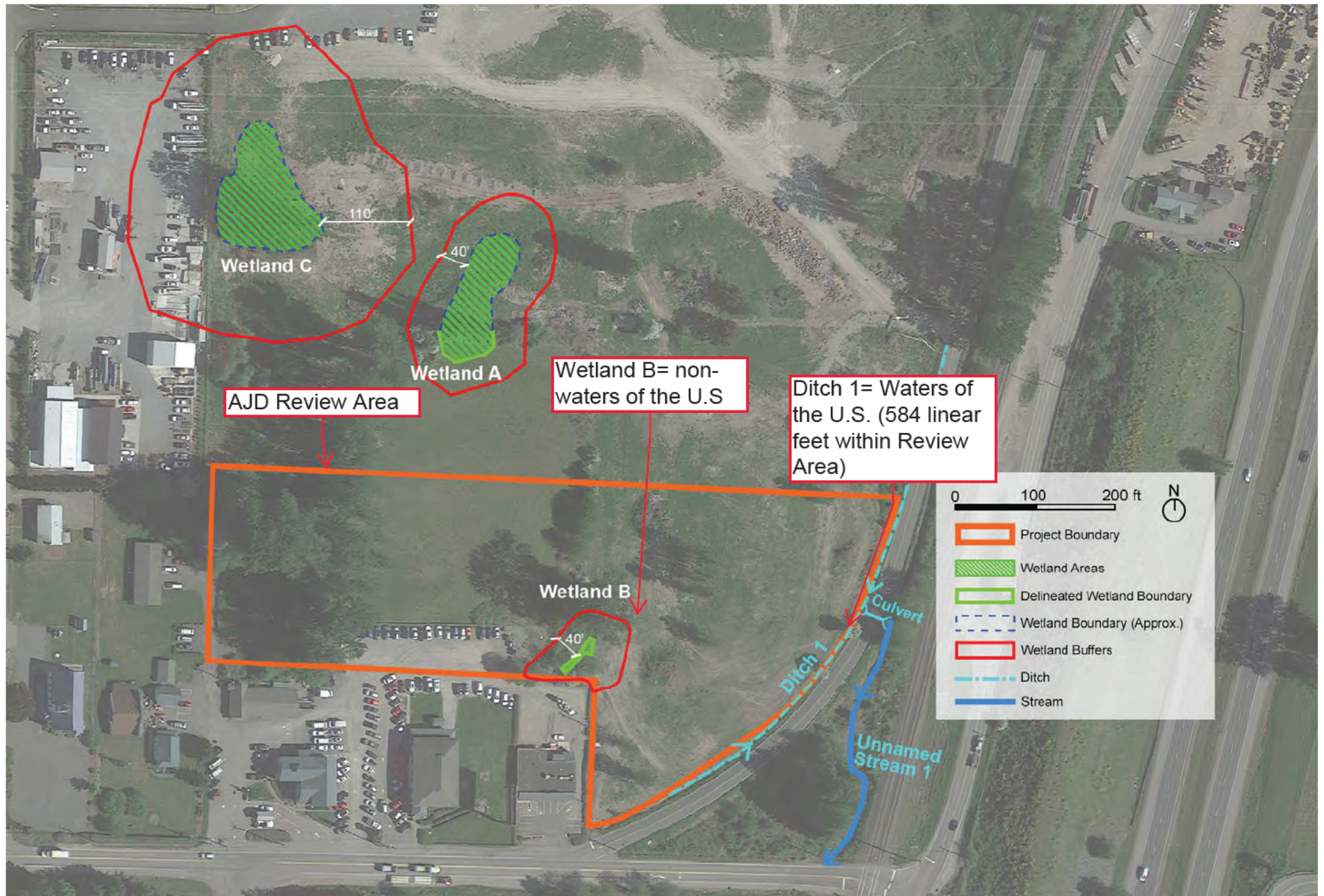


FIGURE 7: OVERALL WETLAND MAP
Moray Village, Snohomish County