



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

26 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-2024-526.

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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- 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

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 a 1.4 acre portion of an approximately 4.8 acre parcel located at 20104 Bothell Everett Highway in unincorporated Snohomish County, Washington, Lat: 47.815564, Long: -122.210504 (Snohomish County parcel 27051900102900). The subject property is located within the Cedar –Sammamish watershed, Water Resource Inventory Area (WRIA) 8. The review area consists of a mostly un-mowed grass field and an abandoned single-family dwelling concrete foundation. The review area is bounded to the east by Silver Creek, to the west by the remainder of the property with another wetland (Wetland A), to the south by an 201st Place Southeast, and to the north by a residential road. Silver Creek is located to the east outside of the review area and Wetland A is located to the west outside of the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Sammamish River, approximately 4 miles directly south of the review area, which flows into the Puget Sound. The Sammamish River is listed as a navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁵

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.

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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 Silver Creek, 33 feet east of the review area. Silver Creek flows south approximately 0.3 miles into North Creek. North Creek flows south approximately 4.5 miles 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
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): N/A
 - d. Impoundments (a)(2): N/A

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.

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- 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 small (329 square feet) palustrine emergent wetland located in the mid-southern area of the review area. It is vegetated entirely with reed canary grass (*Phalaris arundinacea*). The primary source of hydrology for Wetland B is an episaturated condition due to relatively impermeable layer within 10 inches of the soil surface at a plateau. The soils upgradient of the plateau consist of gravelly disturbed soils with buried debris found throughout. Soils mapped within Wetland B consist of Everett gravelly sandy loam which is non-hydric. Wetland B is located 323 feet west of Silver Creek, the nearest known tributary. Wetland B does not have an outlet. Wetland B is not located within a floodplain. No surface connections from Wetland B to any other aquatic resources were observed during a site visit on 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. 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.

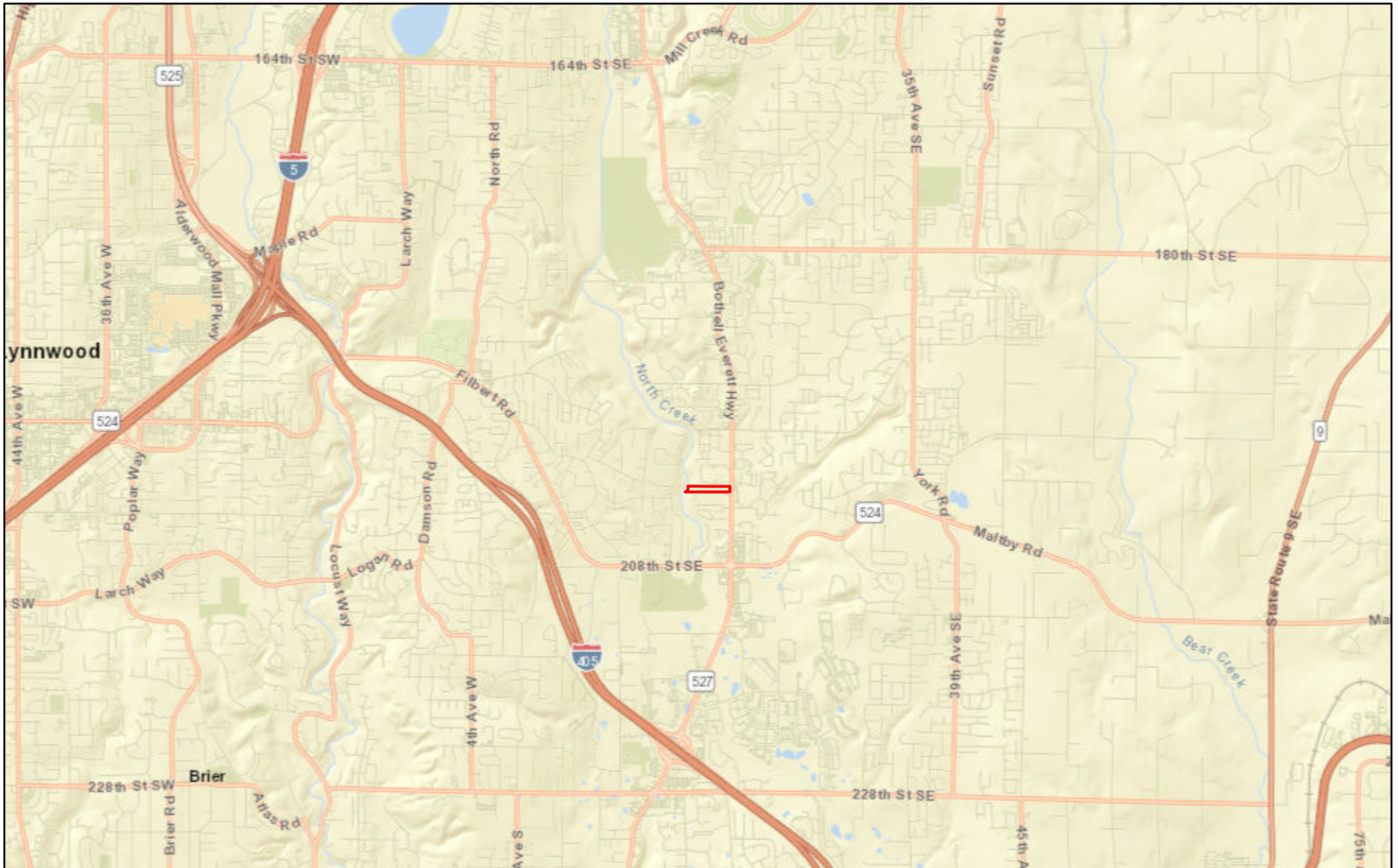
⁸ 88 FR 3004 (January 18, 2023)

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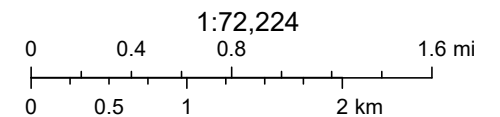
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. National Regulatory Viewer Lidar Dataset accessed December 15, 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
 - b. National Regulatory Viewer National Hydrography Dataset accessed December 15 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
 - c. USFWS National Wetland Index accessed December 15, 2024: [National Wetlands Inventory \(usgs.gov\)](#)
 - d. Snohomish County Critical Areas Map accessed December 15, 2024: [PDS Map Portal \(snoco.org\)](#)
 - e. WDFW SalmonScape Map accessed December 15, 2024: [WDFW SalmonScape \(wa.gov\)](#)
 - f. Snohomish County Drainage Inventory Map accessed December 15, 2024: [SWM DI Webmap \(snoco.org\)](#)
 - g. Site visit conducted on January 10, 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.

Vicinity Map



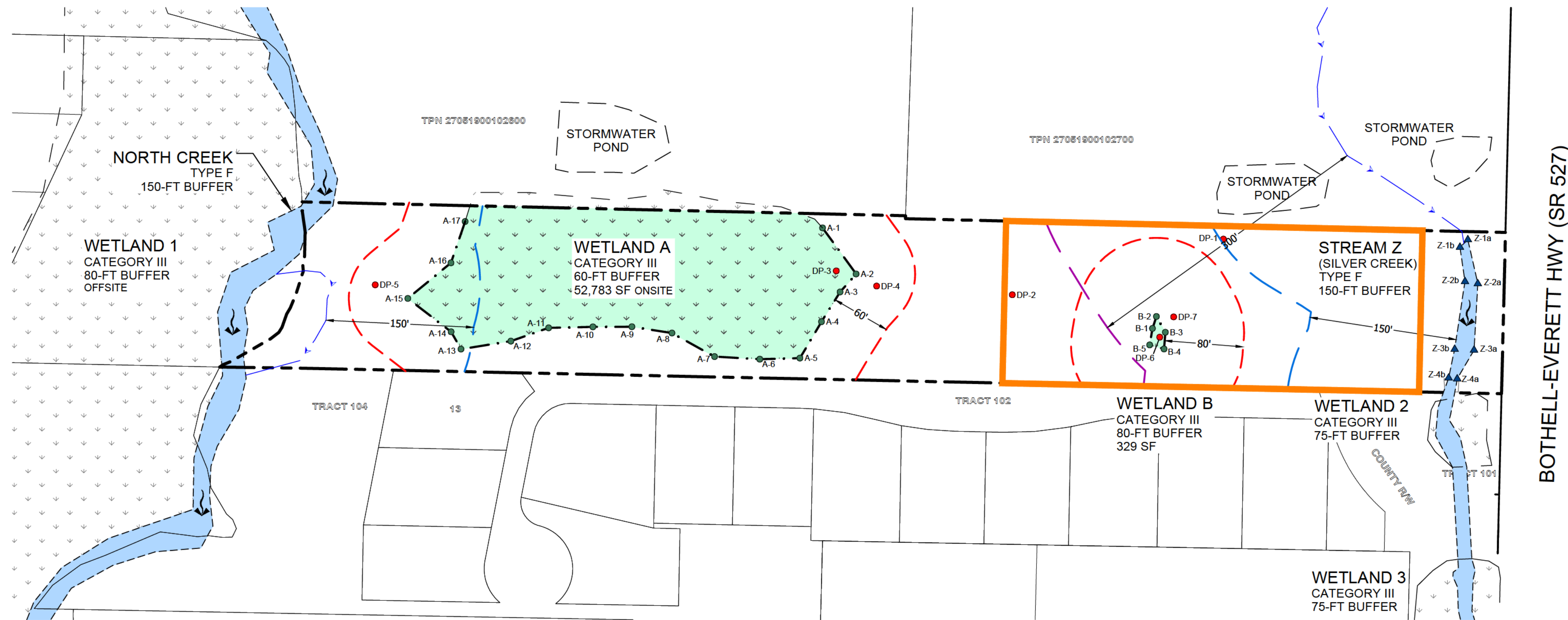
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 Subject Property

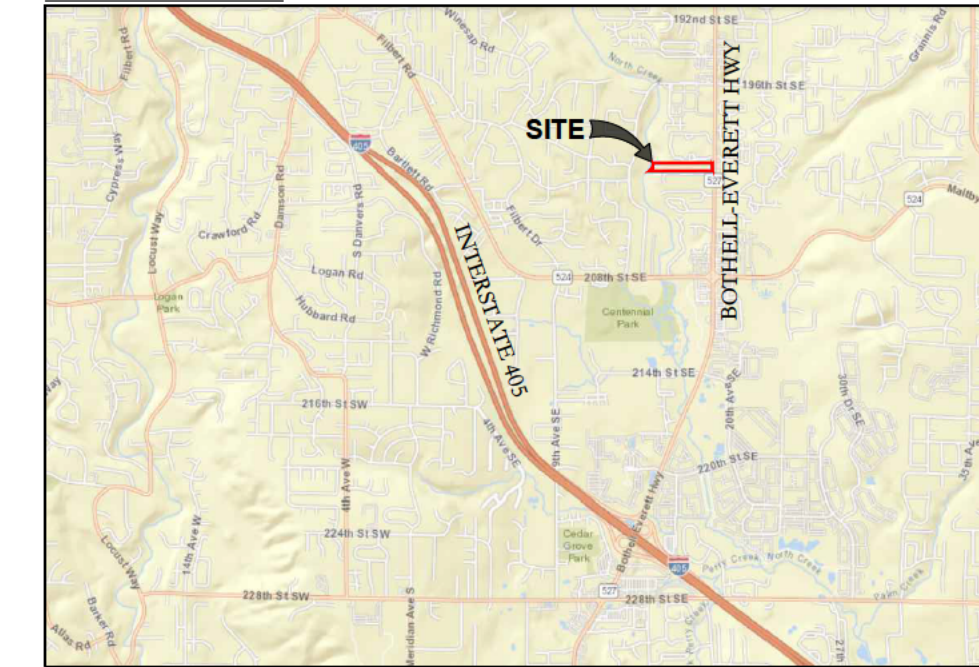


Bureau of Land Management, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

Soundview Consultants



VICINITY MAP



SOURCE: ESRI (ACCESSED 4/24/2024)

SOURCE:

LOCATION

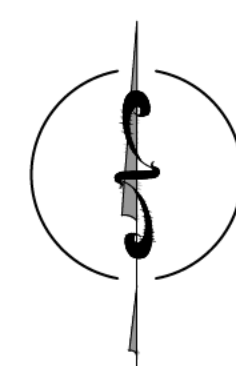
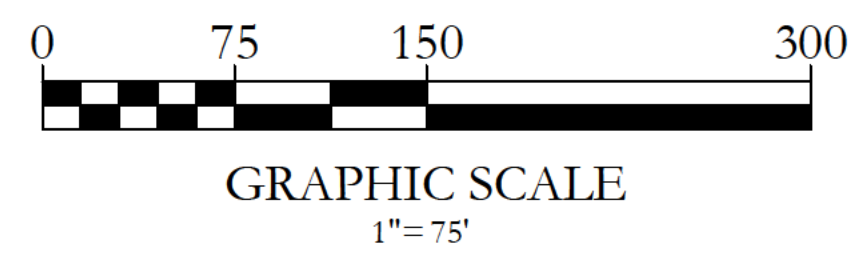
THE NE ¼ OF SECTION 19,
TOWNSHIP 27N, RANGE 5E, WM

APPLICANT/OWNER

NAME: MAIN STREET PROPERTY GROUP LLC
 ADDRESS: 5808 LAKE WASH. BLVD NE, SUITE 203
 KIRKLAND, WA 98033
 CONTACT: MARC BOETTCHER & ANTHONY WILSON
 PHONE: (425)298-0240
 E-MAIL: MARC@MSPGROUPLLC.COM
 ANTHONYW@MSPGROUPLLC.COM

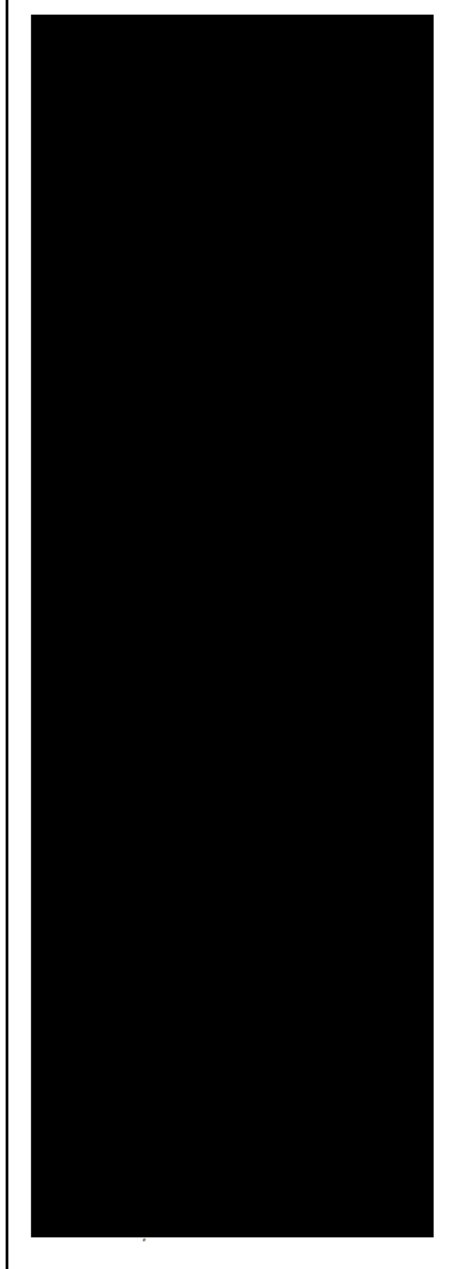
ENVIRONMENTAL CONSULTANT

SOUNDVIEW CONSULTANTS LLC
 2907 HARBORVIEW DRIVE
 GIG HARBOR, WA 98355
 (253) 514-8952



PLAN LEGEND

- PROPERTY BOUNDARY
- AJD REVIEW AREA BOUNDARY -- 4.2 ACRES
- EXISTING WETLAND BOUNDARY
- APPROXIMATED WETLAND BOUNDARY (NOT SURVEYED)
- WETLAND BUFFER
- WETLAND FLAG LOCATION
- DATA PLOT LOCATION
- STREAM ORDINARY HIGH WATER LINE (OHW)
- STREAM FLOW DIRECTION
- APPROXIMATED STREAM CENTERLINE (NOT SURVEYED)
- STREAM BUFFER
- STREAM OHW (ORDINARY HIGH WATER) FLAG LOCATION



BOTHELL-EVERETT HWY
 20104 BOTHELL-EVERETT HWY
 BOTHELL, WA 98012
 SNOHOMISH COUNTY
 PARCEL NUMBER(S):
 27051900102900

DATE: 01/10/2025
 JOB: 2745.0001
 BY: MW/DS
 SCALE: AS SHOWN
 SHEET: 1

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 S:\BANKING\A - Curberent\Main Street Property Group\11745-0001\11745-0001_BotHELL-Everett Hwy\Graphics & Maps\CAD\A - CURBENT
 Plotted January 9, 2025