



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

29 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-2024-875²

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 H, 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 0.6 acre review area is located Bellingham, Whatcom County Washington (48.812715, -122.489917). The review area consists primarily of deciduous forest with patches of evergreen trees. One wetland was identified in the review area. The review area is surrounded by undeveloped forest.

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 downstream. The Nooksack River is listed as navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008⁶

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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Ditch 4 flows approximately 140 feet east from Wetland H to Wetland N and is located entirely outside of the review area. Water in Wetland N then drains to East Fork Bear Creek. The East Fork Bear Creek flows approximately 500 feet southwest through property adjacent to the eastern edge of the review area. The East Fork Bear Creek then flows approximately 1.5 miles west through open channel and culverts to Bear Creek. Bear Creek then flows approximately 1.9 miles northwest to Silver Creek. Silver Creek flows approximately 4 miles southwest to the Nooksack River which then flows approximately 0.8 miles to Bellingham Bay.

Ditch 4 does not have a defined bed bank, is not characterized by any obvious indicators of frequent or permanent flow, and is vegetated with English ivy (*Hedera helix* – FACU). Although Ditch 4 indirectly connects downstream to a TNW, it does not meet the relatively permanent standard.

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.

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.

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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 H: Wetland H is an approximately 0.2 acre of an acre palustrine scrub shrub and forested wetland that extends east outside of the review area. The northeastern portion of Wetland H drains into Ditch 4 which is not considered a relatively permanent tributary as documented above. Ditch 4 extends approximately 140 feet east and drains into Wetland N. Approximately 200 feet south of the outlet of Ditch 4, Wetland N drains to and abuts the East Fork Bear Creek. This physically remote hydrologic connection does not establish a continuous surface between Wetland H and the East Fork Bear Creek per the

⁹ 88 FR 3004 (January 18, 2023)

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memo to the field dated 12 March 2025 referenced above. Wetland H does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland H 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. Site visit on 10 December 2024

b. USGS TopoView accessed on 12/10/24 at:
<https://ngmdb.usgs.gov/topoview/viewer/#4/40.01/-100.06>

c. USDA Web Soil Survey accessed on 12/10/24 at
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

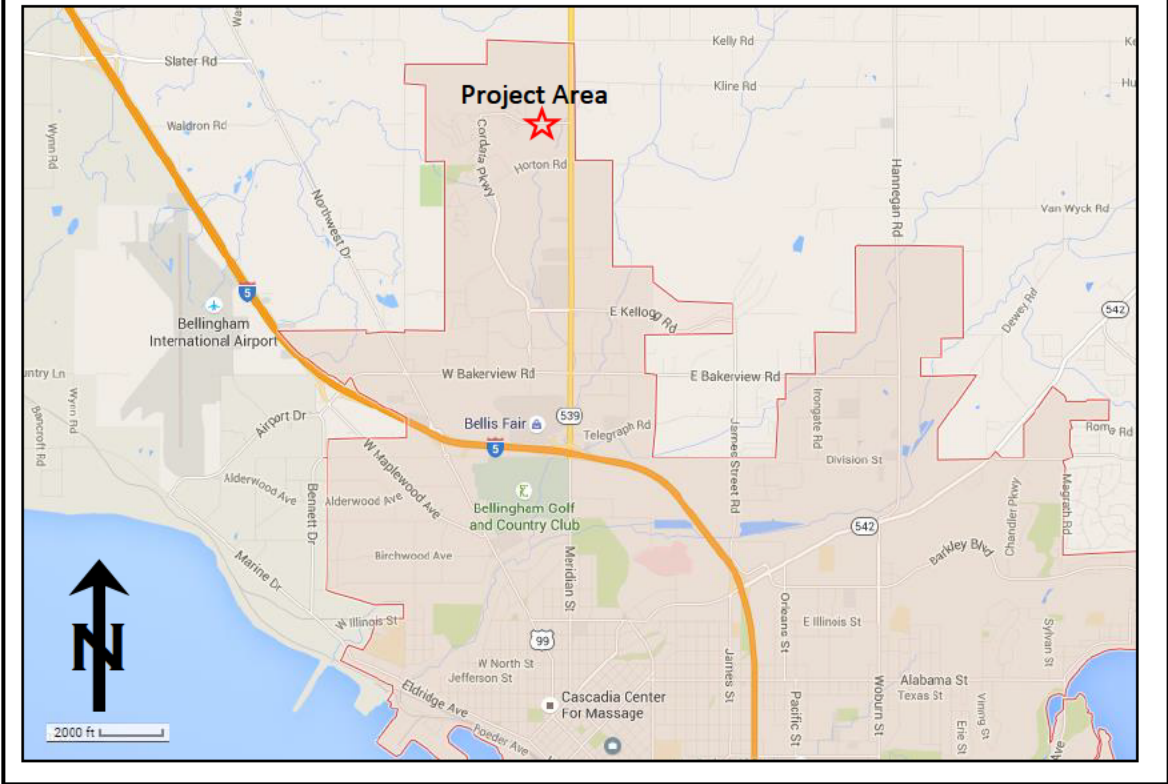
d. Bellingham CityIQ accessed on 12/10/24 at:
<https://maps.cob.org/geviewer/Html5Viewer/Index.html?viewer=cityiq>

e. "Wetland Delineation Report Waldron Woods" by NW Ecological Services. August 2015.

f. "JD Request for Waldron Woods" by NW Ecological Services. November 18, 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.



<p>Purpose: Multi-Family Residential Applicant: [REDACTED] Project #: NWS- Adjacent Prop. Owners: See JARPA Date: 11/2024</p>	<p>Waldron Woods Residential North</p> <p>Vicinity Map</p>	<p>In: Wetlands Location: Tremont Avenue, Bellingham, Sec/Twp/Rng: 01/38N/02E County: Whatcom State: WA Sheet 1 of 4</p>
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EXHIBIT

SITUATE IN A PORTION OF THE NE 1/4 AND SE 1/4 OF SECTION 1, TOWNSHIP 38 NORTH, RANGE 2 EAST, W.M., CITY OF BELLINGHAM, WHATCOM COUNTY, WASHINGTON

SURVEY NOTES

- 1) HORIZONTAL DATUM: STATE PLANE NAD 27 WASHINGTON NORTH ZONE
- 2) VERTICAL DATUM: NAVD 88
- 3) WETLAND DELINEATION BY NWS IN JUNE OF 2015, SURVEYED BY PSE IN JUNE OF 2015.

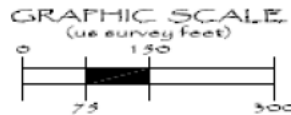
SURVEY LEGEND

- ▨ = EXISTING WETLAND AREA
- ⊕ = EXISTING SAMPLE PLOT LOCATION W/ NUMBER

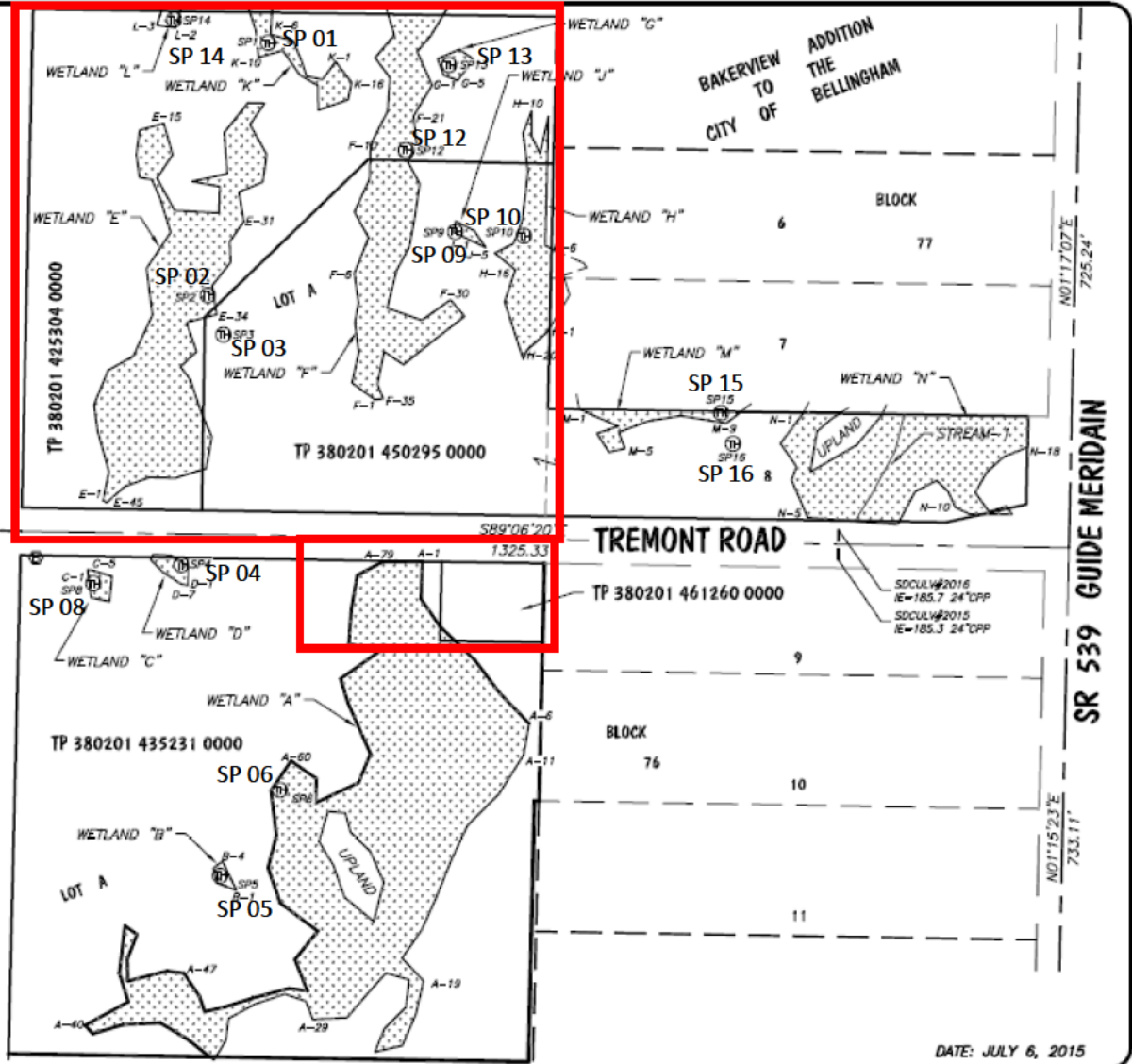
WETLAND TABLE

WETLAND 'A'	103,800 SF
WETLAND 'B'	504 SF
WETLAND 'C'	920 SF
WETLAND 'D'	1,058 SF
WETLAND 'E'	42,381 SF
WETLAND 'F'	27,826 SF
WETLAND 'G'	1,054 SF
WETLAND 'H'	10,804 SF
WETLAND 'J'	464 SF
WETLAND 'K'	3,809 SF
WETLAND 'L'	481 SF
WETLAND 'M'	3,099 SF
WETLAND 'N'	29,233 SF

*SQUARE FOOTAGE WITHIN SUBJECT PARCEL



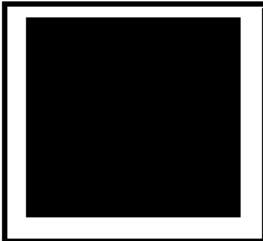
DWG NO. 2015062_svX_Base



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SR 539 GUIDE MERIDIAN

DATE: JULY 6, 2015



Wetland Map with Requested JD Area

Waldron Woods Residential JD Request Memo

Sheet 2 of 4

NOV 2024



	<p align="center">COB Map with Stormwater Features (City IQ)</p> <p align="center">Waldron Woods Residential JD Request Memo</p>	<p align="center">Sheet 3 of 4</p> <p align="center">NOV 2024</p>
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