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 June 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 2025-147[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 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 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,

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[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.

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

      iii. Wetland C, non-jurisdictional

      iv. Wetland D, non-jurisdictional

      v. Ditch 1, non-jurisdictional

      vi. Ditch 2, non-jurisdictional

      vii. Ditch 3, non-jurisdictional

      viii. Ditch 4, non-jurisdictional

      ix. Ditch 5a, non-jurisdictional

      x. Ditch 5b, non-jurisdictional

      xi. Ditch 6, non-jurisdictional

      xii. Ditch 7, non-jurisdictional

      xiii. Ditch 8, 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 review area is 11.3 acres in size, located at 405 North 25th Street, Mount Vernon, Skagit County, Washington (48.422481 latitude, -122.305939 longitude) (Figure 1). Topography of the site slopes to the northwest toward Logan Creek.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Skagit River, located about 6 miles northeast of the site. It is listed on the Navigable Waters of the United States in Washington State dated December 31, 2008, from its mouth to river mile 77.[6]

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no continuous flow path from the subject aquatic resources or review area to a TNW, the territorial seas, or interstate water. Stormwater flows are routed through an underground stormwater system (Figures 5 and 6) that flows northwest to an off-site stormwater pond that outlets to Logan Creek. The closest known tributary is Logan Creek, located approximately 0.08 miles northwest of the review area at its closest point. Logan Creek flows northeasterly for 1.4 miles to Trumpeter Creek. Trumpeter Creek flows

[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.

0.8 miles east into the Nookachamps River. The Nookachamps River is a tributary that flows north for approximately 3.9 miles to the Skagit River, a TNW. Nookachamps River flows into the Skagit River near river mile 19.

6. SECTION 10 JURISDICTIONAL WATERS[7]: 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. 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

[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.

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 3.6-acre palustrine forested (PFO)/ scrub-shrub (PSS), slope wetland that spans approximately 2/3 the length of the review area. The northern forested portion of the wetland is dominated by deciduous trees and contains a dense understory of shrubs. This area is composed of a mosaic of wetlands and uplands. Wetland A experiences seasonal soil saturation but also contains small pockets of seasonal inundation. Sources of hydrology to the wetland likely include a seasonally high or perched ground water table, surface runoff from surrounding development, and direct precipitation. Water within the wetland flows to the north, down slope, and outlets in multiple locations. The Corps conducted a site visit on 21 April 2025, to confirm delineation boundaries and identify any possible surface water connections between Wetland A and other waters. Precipitation conditions were normal at the time of the April 21, 2025, site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Wetland A abuts Ditches 3, 4, and 5a; none of these ditches meet the definition of a relatively permanent tributary as documented below. Logan Creek, the nearest known tributary, is located 831 feet west of Wetland A. Wetland A is separated from Logan Creek by uplands, a stormwater pond, commercial development and an access road. Wetland A does not abut an (a)(1), (a)(2) or

[9] 88 FR 3004 (January 18, 2023)

(a)(3) water. Therefore, Wetland A does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water and is not a water of the U.S.

Wetland B: Wetland B is a small (0.10 acre) palustrine, scrub-shrub, slope wetland in the western portion of the review area. The wetland is dominated by Scouler's willow (*Salix scouleriana*) and black cottonwood (*Populus balsamifera*) saplings. Soils and vegetation around the wetland are highly disturbed. This wetland was potentially created during grading of the site after the initial plat and installation of the infrastructural stormwater pond, road, and paved trail. Wetland B experiences seasonal soil saturation. The wetland is situated on an approximately 5-percent-gradient sloping to the northeast. Sources of hydrology to Wetland B likely include seeping ground water, surface water runoff, and direct precipitation. During a site visit on 21 April 2025, the Corps observed Wetland B slopes to the north and west toward a stormwater pond access road. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). No flows or ordinary high water mark indicators were observed in the adjacent access roadside ditch, Ditch 7, at the toe of Wetland B. Logan Creek, the nearest known tributary, is located 570 feet west of Wetland B. Wetland B is separated from Logan Creek by uplands, a stormwater pond, commercial development and an access road. 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) water and is not a water of the U.S.

Wetland C: Wetland C is a small (0.10 acre) palustrine, scrub-shrub, wetland that contains both depressional and slope hydrogeomorphic components. The wetland is situated on an approximately 5 percent gradient and slopes to the northwest to an excavated depressional stormwater inlet area that has evidence of ponding. The pipe inlet flows to the stormwater pond located northwest of the review area. The pipe inlet was elevated approximately 1.5 feet from the ground surface during the site visit on 21 April 2025, and no water was observed flowing into the pipe. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Water likely only flows into the inlet culvert at extreme high stormwater events. Logan Creek, the nearest known tributary, is located 700 feet west of Wetland C. Wetland C is separated from Logan Creek by uplands, a stormwater pond, commercial development and an access road. Wetland C does not abut an (a)(1), (a)(2) or (a)(3) water. Although Ditch 7 indirectly connects downstream to a TNW, it does not meet the relatively

permanent standard and therefore is not a water of the U.S. as documented below. Therefore Wetland C does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water and is not a water of the U.S.

Wetland D: Wetland D is a small (0.04 acre) palustrine emergent, slope wetland. The wetland is situated on an approximately 1-2 percent gradient sloping to the northeast. Due to a dense thicket of Himalayan blackberry, only the southern portion of the wetland was observed by NES. However, surface water was observed flowing to the northeast through a narrow swale within the thicket. NES ecologists walked around the thicket to the north and could not find an extension or an outfall. Wetland D experiences seasonal soil saturation. Sources of hydrology to the wetland likely include seasonally high or perched ground water, ground water seepage, surface water runoff, direct precipitation, and possibly overflow from a ditch located up gradient of the wetland that conveys runoff from Wetland A and surrounding forested areas. Surface water from the wetland likely eventually flows into the off-site stormwater pond; however, no outlet from the wetland has been observed. During a site visit on 21 April 2025, no outlet was observed from Wetland D. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Logan Creek, the nearest known tributary, is located 750 feet west of Wetland D. Wetland D is separated from Logan Creek by uplands, a stormwater pond, commercial development and an access road. Wetland D does not abut an (a)(1), (a)(2) or (a)(3) water; therefore, Wetland D does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water and is not a water of the U.S.

Ditch 1: Ditch 1 is located along the western boundary of the review area outside of the western boundary of Wetland A. Ditch 1 drains about 180 feet from the south side of the site into a 30-foot culvert then runs along a parking lot as an indistinct feature for about 700 feet. Stormwater catch basins collect stormwater and take it off-site to the northwest to an off-site stormwater pond through about 1,140 linear feet of stormwater pipes. No water was observed in Ditch 1 during the site visit on 21 April 2025. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Ditch 1 does not have a defined bed and bank, is not characterized by any obvious indicators of frequent or permanent flow, and is dominated by tall orchard grass (*Dactylis glomerata*). Although Ditch 1 indirectly connects downstream to a TNW through a stormwater system, it does not meet the relatively permanent standard and therefore is not a water of the U.S.

Ditch 2: Ditch 2 is also located on the west side of the review area and outside of the western boundary of Wetland A. Ditch 2 drains about 450 feet northwest to two catch basins. Ditch 2 does not have a defined bed bank and is not characterized by any obvious indicators of frequent or permanent flow. During the site visit on 21 April 2025, small, isolated patches of standing water were observed in Ditch 2, but no flowing water was observed in the ditch. Ditch 2 was largely dry to northwest of the catch basins, and lowest elevation portions of the ditch were completely dry. Two stormwater catch basins were observed in Ditch 2, sending collected flows through about 726 linear feet of stormwater pipe northwest to the stormwater pond. Grasses are growing around the catch basins; there are no distinct channel/bed and banks; and no signs of flow were observed. Although Ditch 2 indirectly connects downstream to a TNW, it does not meet the relatively permanent standard and therefore is not a water of the U.S.

Ditch 3: Ditch 3 is an excavated feature located entirely within the western portion of Wetland A. Standing water was observed in Ditch 3 during the site visit on 21 April 2025. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). No connection between Ditch 3 and Ditch 2 was observed. Water likely seasonally ponds in Ditch 3 but does not connect downstream to any other waters. Ditch 3 does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 4: Ditch 4 is an excavated feature located entirely within the central portion of Wetland A. Standing water was observed in Ditch 4 during the site visit on 21 April 2025. Precipitation conditions were normal at the time of the April 21, 2025, site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). No connection between Ditch 4 and Ditch 2 was observed. Water likely seasonally ponds in Ditch 4 but does not connect downstream to any other waters. Ditch 4 does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 5a: Ditch 5a flows about 155 linear feet northeast from Wetland A to Ditch 5b. The confluence of Ditches 5a and 5b is characterized by a topographic depression. During the site visit on 21 April 2025, standing water was observed in the depression; however, no outlet was observed. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025).

Ditch 5a does not connect downstream to a TNW and therefore, is not a water of the U.S.

Ditch 5b: Ditch 5b flows about 280 linear feet southwest from uplands toward Ditch 5a. The confluence of Ditches 5a and 5b is characterized by a topographic depression. During the site visit on 21 April 2025, standing water was observed in the depression; however, no outlet was observed. Precipitation conditions were normal at the time of the April 21, 2025, site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Ditch 5b does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 6: Ditch 6 is located north of Wetland C and south of Wetland D but is not abutting either wetland. Ditch 6 appears to drain 50 linear feet to the southwest. During the site visit on 21 April 2025, no water was observed in Ditch 6. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Ditch 6 does not have an outlet. Ditch 6 does not connect downstream to a TNW and therefore is not a water of the U.S.

Ditch 7: Ditch 7 is located downslope (westerly) of Wetland B for about 100 linear feet along the toe of a stormwater access road sloping to the northeast. No flows or signs of flows were observed during a site visit on 21 April 2025. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025). Ditch 7 does not have a defined bed bank and is not characterized by any obvious indicators of frequent or permanent flow. Although Ditch 7 indirectly connects downstream to a TNW, it does not meet the relatively permanent standard and therefore is not a water of the U.S.

Ditch 8: Ditch 8 is located at the north side of the review area. Ditch 8 drains about 180 feet from uplands to a culvert that flows into the stormwater pond located northwest of the review area. Ditch 8 does not have a defined bed bank and is not characterized by any obvious indicators of frequent or permanent flow. Vegetation along Ditch 8 includs western sword fern (*Polystitchum munitum*), Himalayan blackberry (*Rubus armeniacus*), and red alder (*Alnus rubra*) trees. Rock was observed in the bottom of the ditch with no flows. No water was observed in Ditch 8 during the site visit on 21 April 2025. Precipitation conditions were normal at the time of the April 21, 2025 site visit with 0.05 inches of rain the day prior and 0.27 inches of rain occurring the day of the site visit (NOAA 2025).

Although Ditch 8 indirectly connects downstream to a TNW, it does not meet the relatively permanent standard and therefore 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 information referenced is available in the administrative record.

   a. Skagit County iMap (Skagit County iMap) datasets for Washington LIDAR, topographic, streams, and Aerial imagery accessed 20 April 2025

   b. USACE site visit on 21 April 2025.

   c. Critical Areas Assessment Report (Wetland Delineation & HCA Assessment) by NW Ecological Services (May 2022).

   d. Addendum to Critical Areas Assessment Report for East Division Street (Parcels P115979 and P27112) by NW Ecological Services (January 31, 2024).

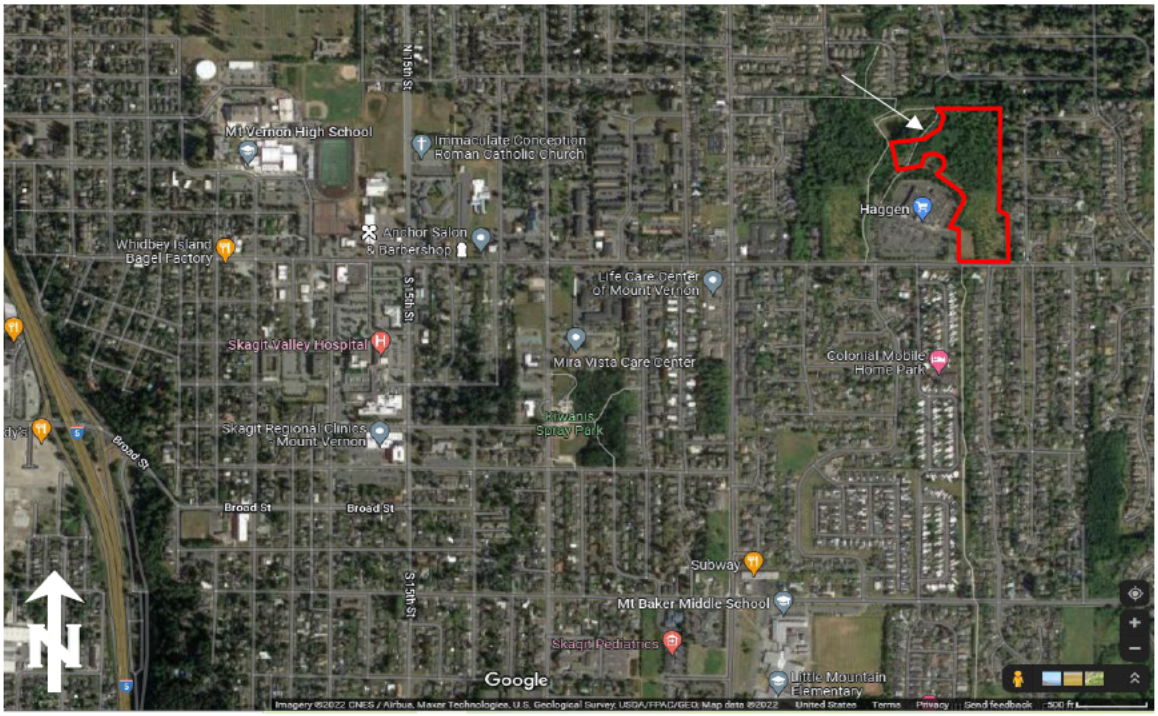
   e. City of Mount Vernon NPDES Stormwater Permit Information and Map accessed 20 April 2025 online at: NPDES Stormwater Permit | Mount Vernon, WA - Official Website (mountvernonwa.gov).

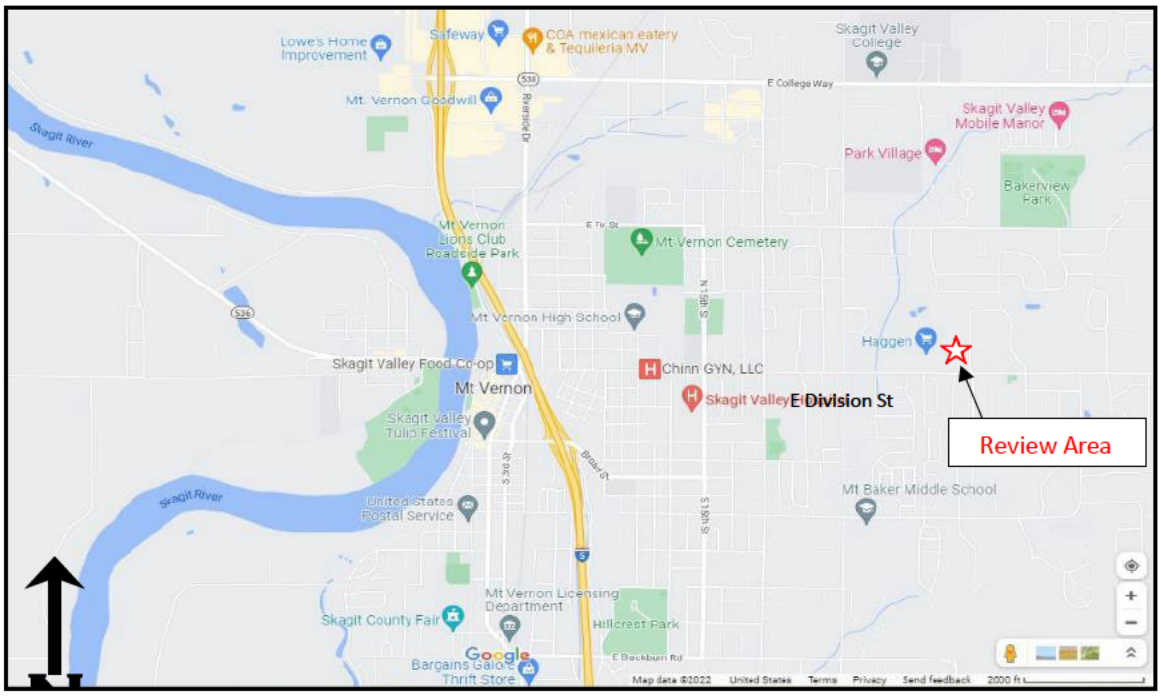
   f. National Oceanic and Atmospheric Administration. NOAA. 2025. National Weather Service. NOWData Online Weather Mapper for Mount Vernon, WA. Accessed online at: Climate (weather.gov).

   g. Haggen Food Storage. Storm Drainage As Constructed Drawings. Mount Vernon, Washington. November 12, 1999.

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.





[redacted]	**Vicinity Map (Google Maps)** **E Division Street (P115979 and P27122)** **Critical Areas Assessment Report**	**Figure 1** **MAY 2022**

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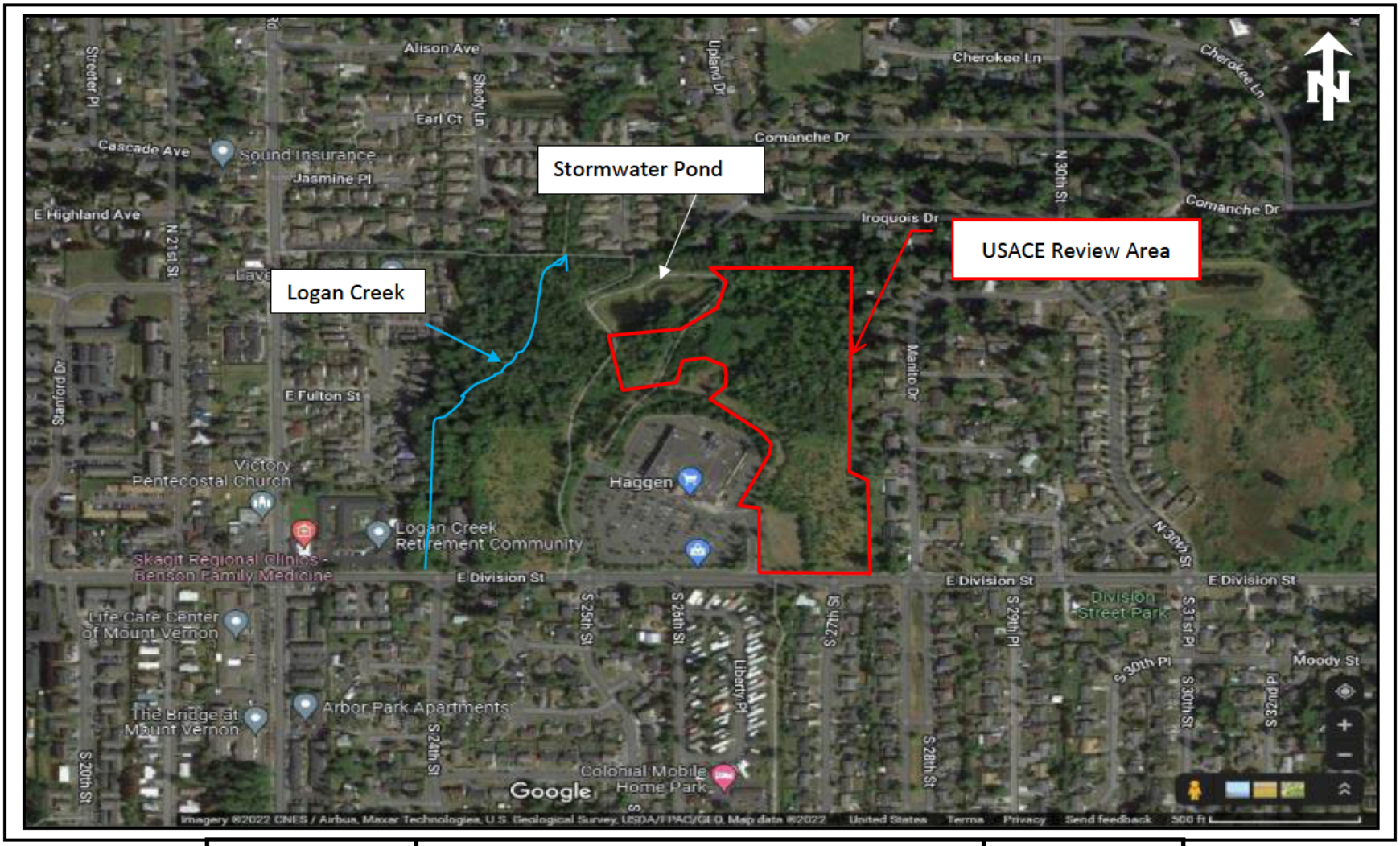

[redacted]	**Aerial Photo** **(Google Maps)** **E Division Street (P115979 and P27122)** **Critical Areas Assessment Report**	**Figure 2** **MAY 2022**

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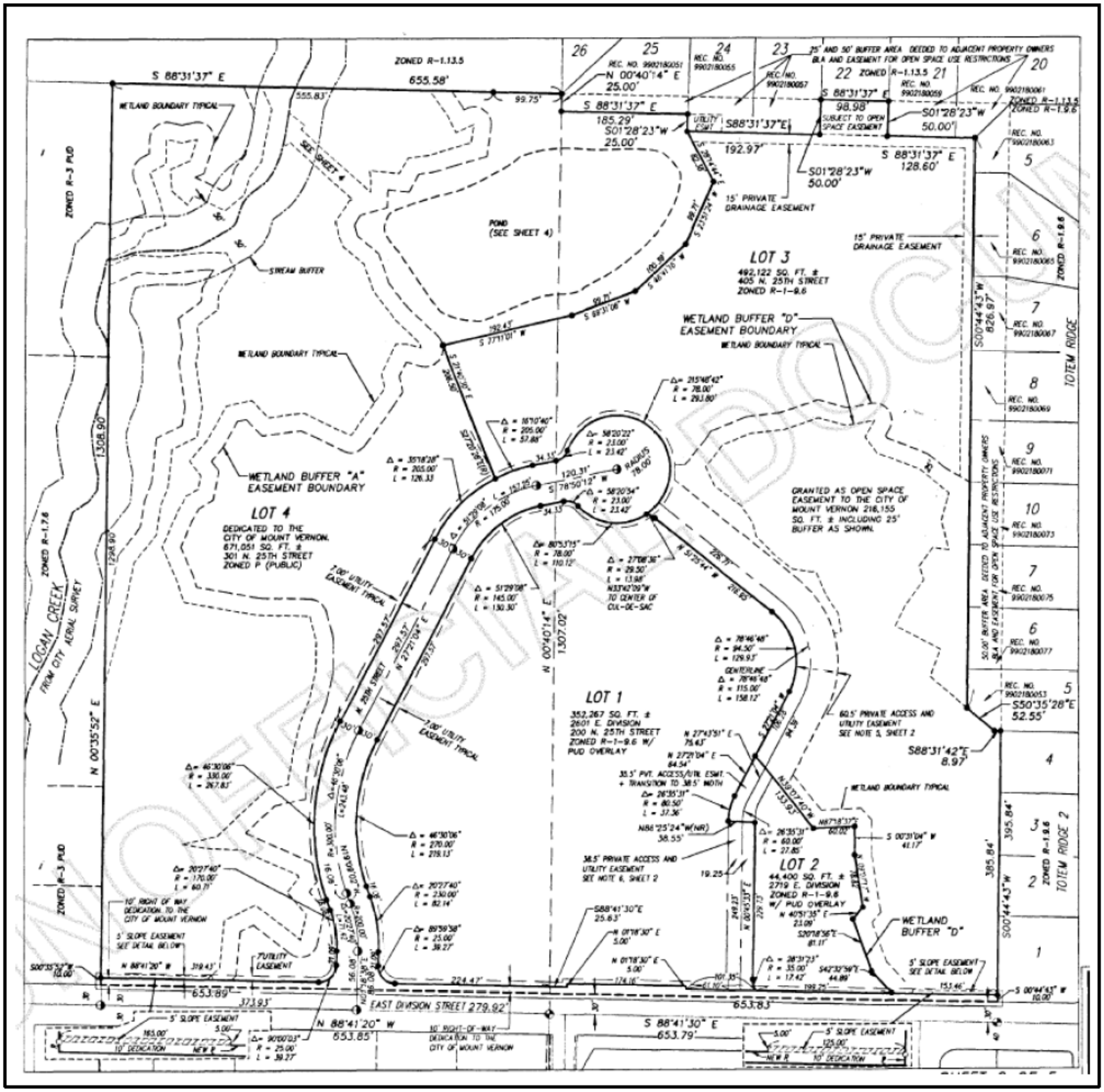

Haggen Short Plat Map
(W&H Pacific)

E Division Street (P115979 and P27122)
Critical Areas Assessment Report

Figure 3

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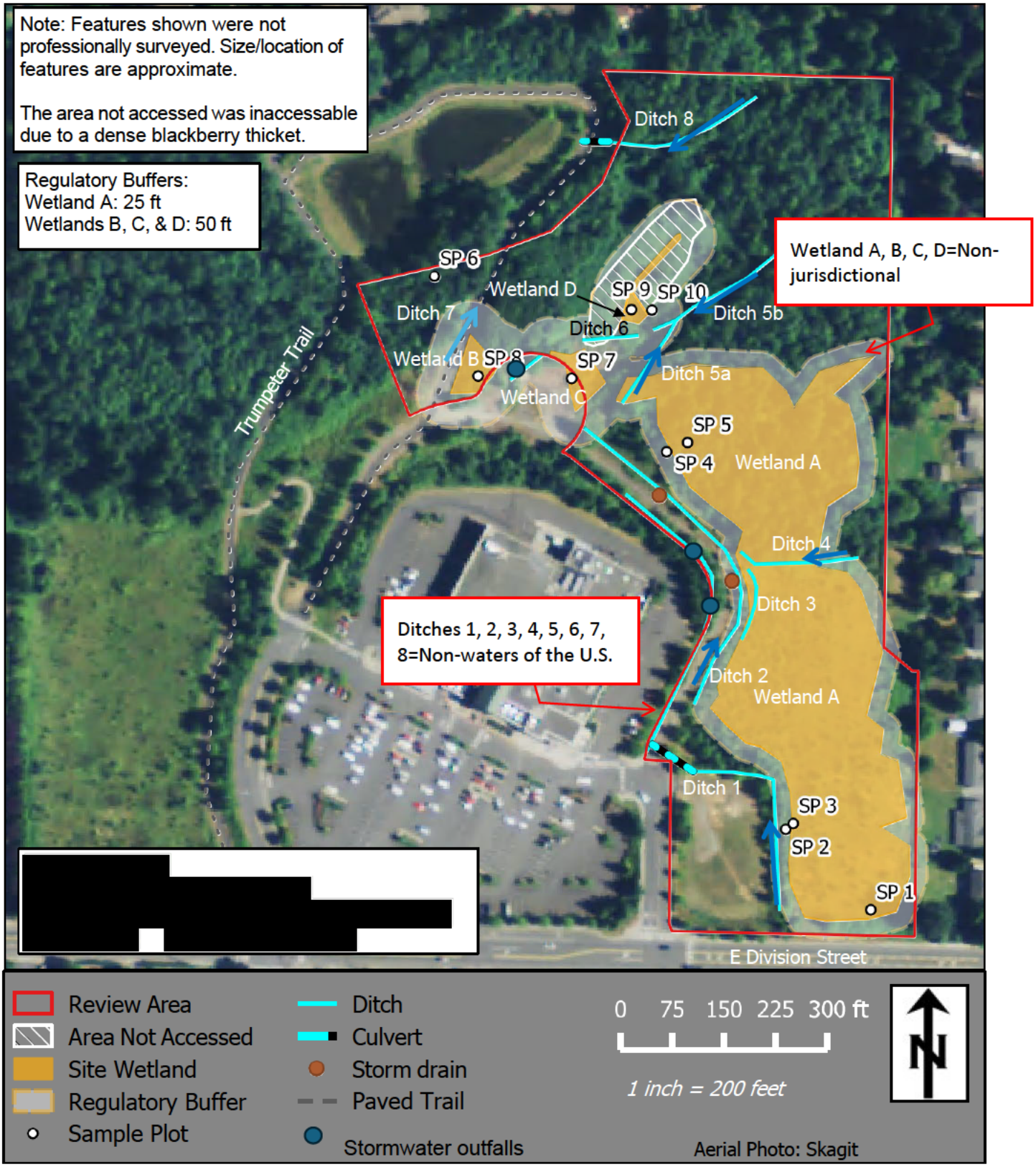

[redacted]	**Wetland Map** **E Division Street** **Critical Areas Assessment Report**	**Figure 4** **MAY 2022**

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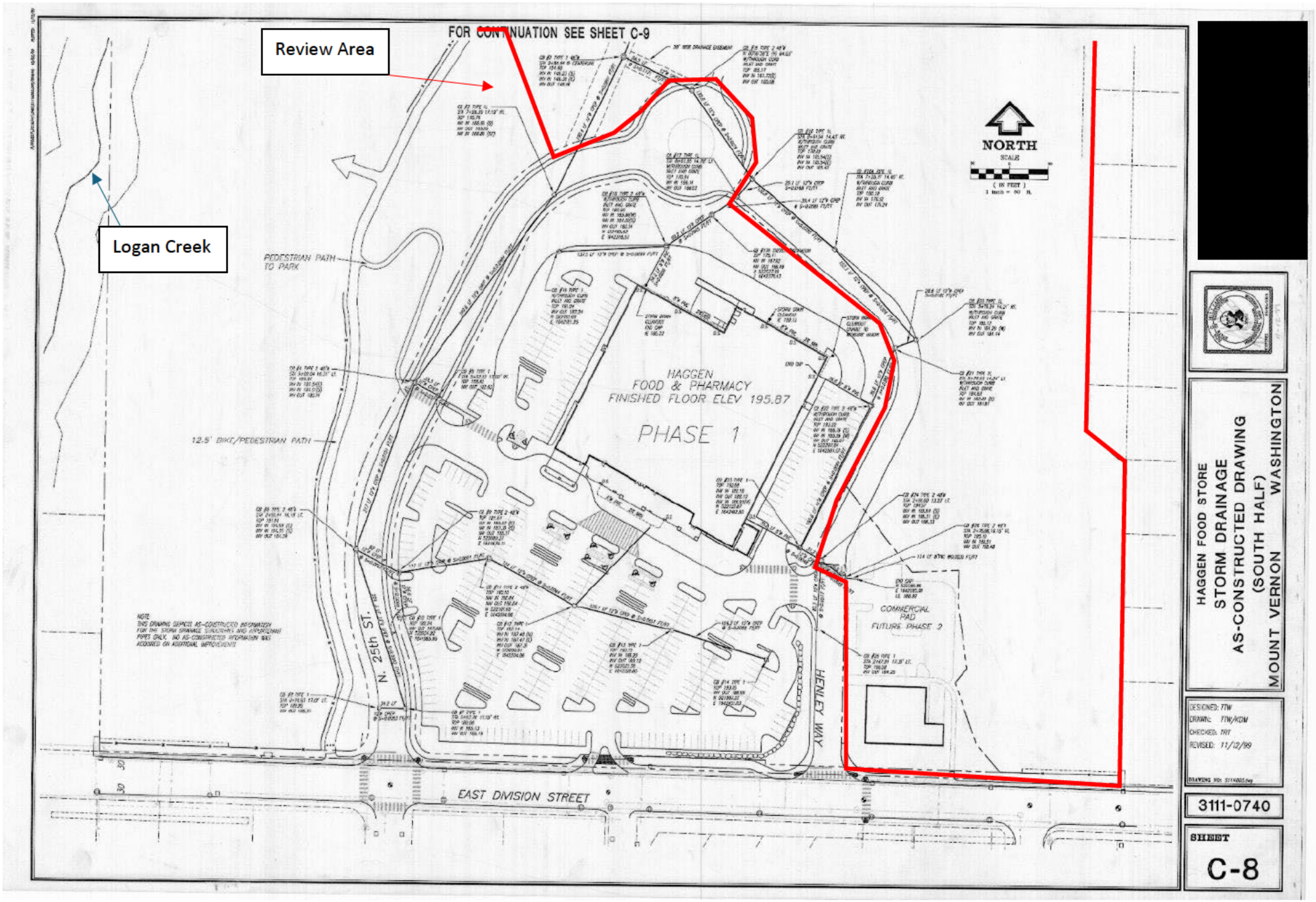

Figure 5. As-built Stormwater Drainage (South).

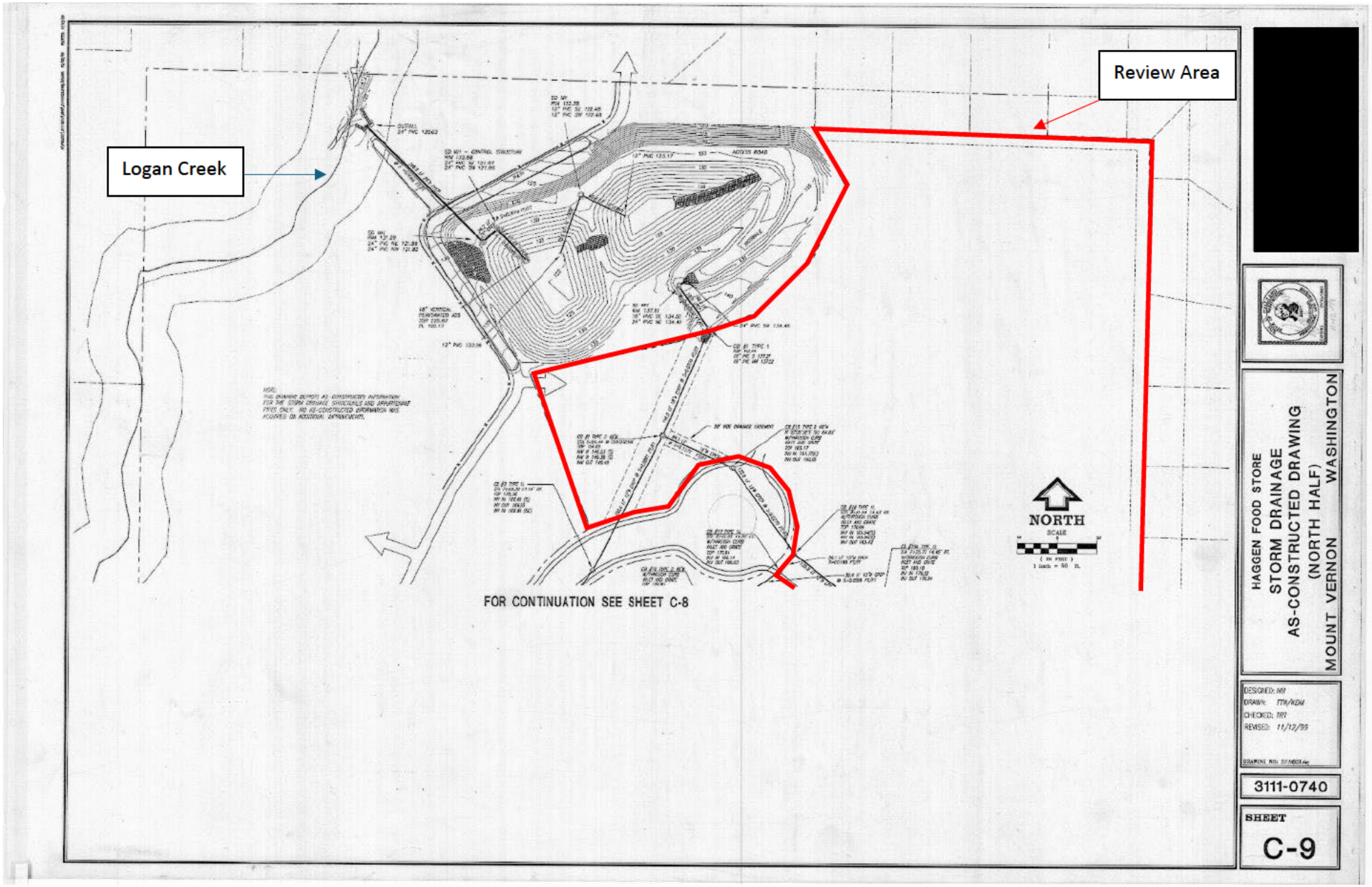

Figure 6. As-built Stormwater Drainage (North)

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