



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

20 February 2026

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-2025-00360

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 A, non-jurisdictional
 - ii. Wetland B, non-jurisdictional
 - iii. Wetland C, non-jurisdictional
 - iv. Wetland D, 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 3.73-acre review area is located at Covington, King County, Washington (47.371986, -122.13216). A majority of the review area consists of mowed herbaceous habitat with deciduous tree stands located in the southwestern and southeastern portions. The review area gradually slopes from north to south. Four wetlands were identified within the review area. One single-family residence and associated structures (driveway, shed, etc.) were, until recently, located on the property and demolished in summer 2025. The review area is bounded by 156th Avenue Southeast to the west, residential developments to the east and south, and Southeast 256th Street to the north.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Duwamish River, approximately 9 linear miles northwest of the review area. The Duwamish River is listed as a navigable waterway from the river

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mouth at the head of the West Waterway in Seattle Harbor to the mouth of Black River (i.e., the point where the Duwamish River becomes the Green River) on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁵

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 downstream TNW, territorial sea, or interstate water.
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

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.

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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- 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).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 A: Wetland A is an approximately 2,220-square foot palustrine emergent depressional wetland within the northwestern portion of the review area. Wetland A does not have a distinct, well-defined 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) water and is not a water of the U.S.

Wetland B: Wetland B is an approximately 2,940-square foot palustrine scrub-shrub/emergent depressional wetland within the eastern portion of the review area. Wetland B does not have a distinct, well-defined outlet. 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.

⁸ 88 FR 3004 (January 18, 2023)

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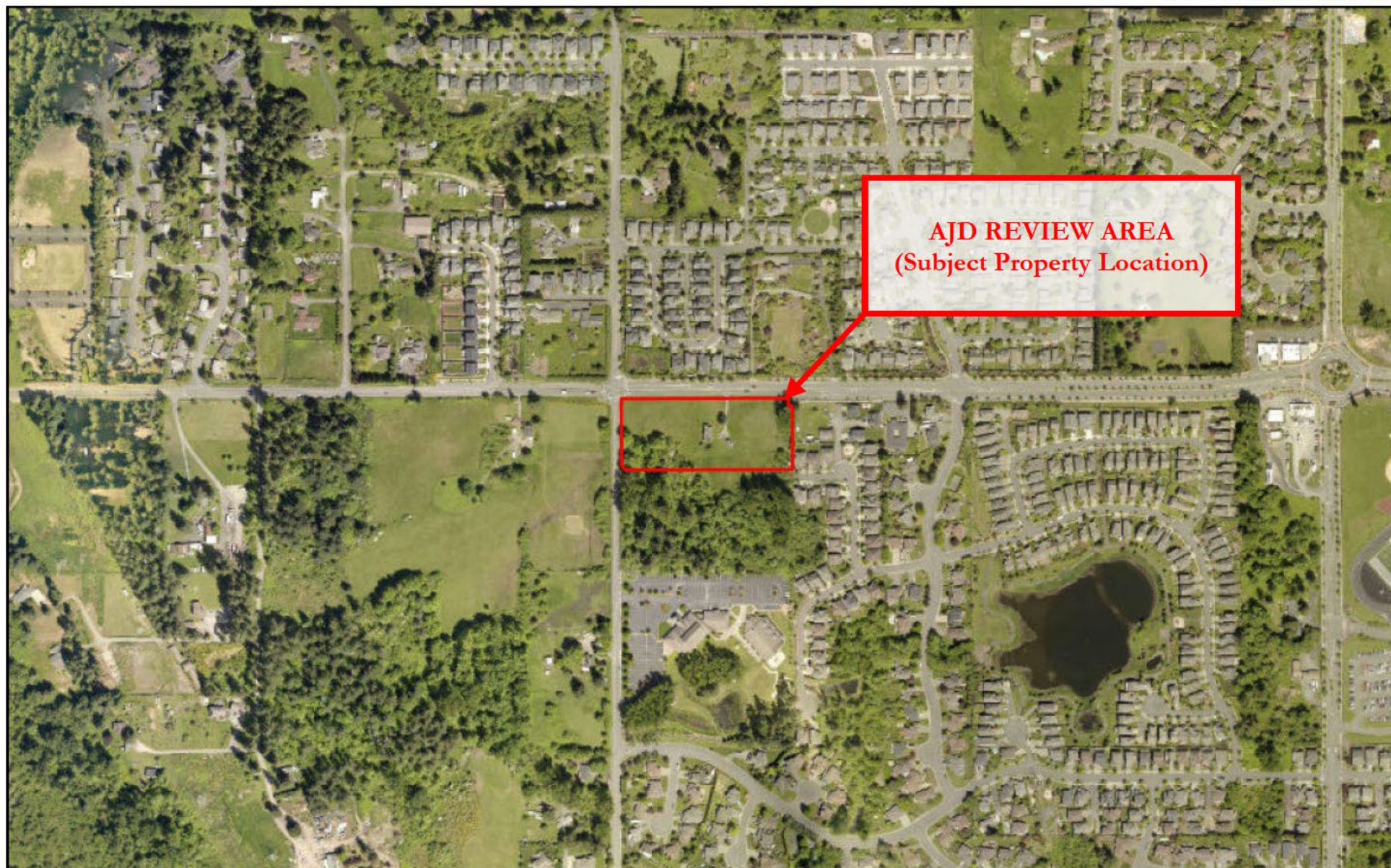
SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2025-00360

Wetland C: Wetland C is an approximately 450-square foot palustrine scrub-shrub/emergent depressional wetland within the northeastern portion of the review area. Wetland C does not have a distinct, well-defined outlet. Wetland C does not abut an (a)(1), (a)(2), or (a)(3) water. 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 an approximately 1,425-square foot palustrine scrub-shrub/emergent depressional wetland within the southern portion of the review area. Wetland D does not have a distinct, well-defined outlet. 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.

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. "Technical Memorandum Re: Wetland and Fish and Wildlife Habitat Assessment, Vivag II" dated August 13, 2025 by Soundview Consultants LLC
 - b. Washington State Department of Natural Resources LiDAR Portal accessed on 17 February 2026 at <https://lidarportal.dnr.wa.gov/>
 - c. EPA WATERS GeoViewer accessed on 17 February 2026 at <https://www.epa.gov/waterdata/waters-geoviewer>
 - d. King County Aerial Imagery Viewer accessed on 17 February 2026 at <https://experience.arcgis.com/experience/24bd002783804611a727f774032a28e8>
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



WIVAG II

15633 SE 256TH ST
COVINGTON, WA 98042

KING COUNTY PARCEL NUMBER:
262205-9025

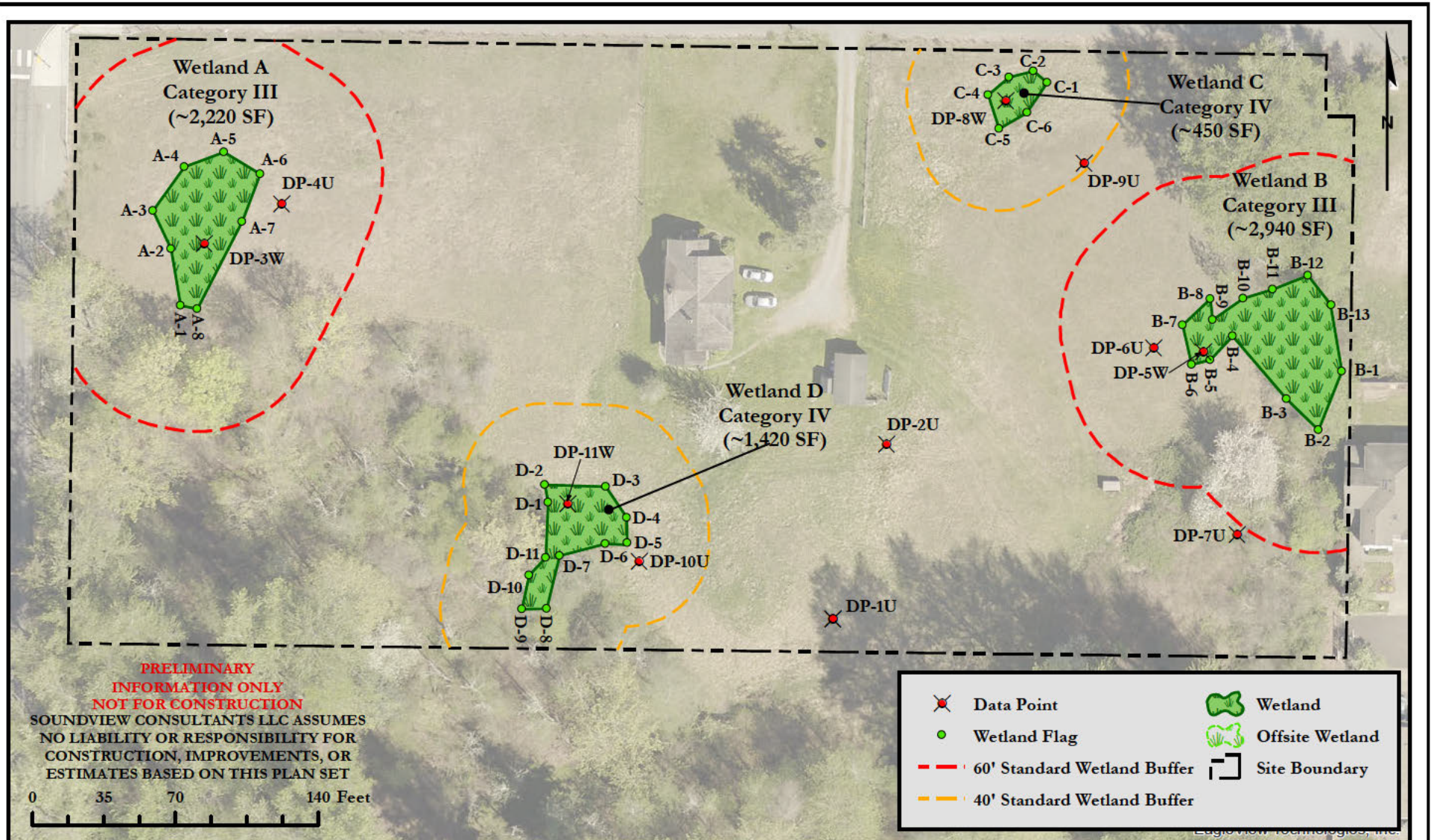
DATE: 7/31/2025

JOB: 1155.0060

BY: DDS

SHEET 1 OF 3

EXISTING CONDITIONS

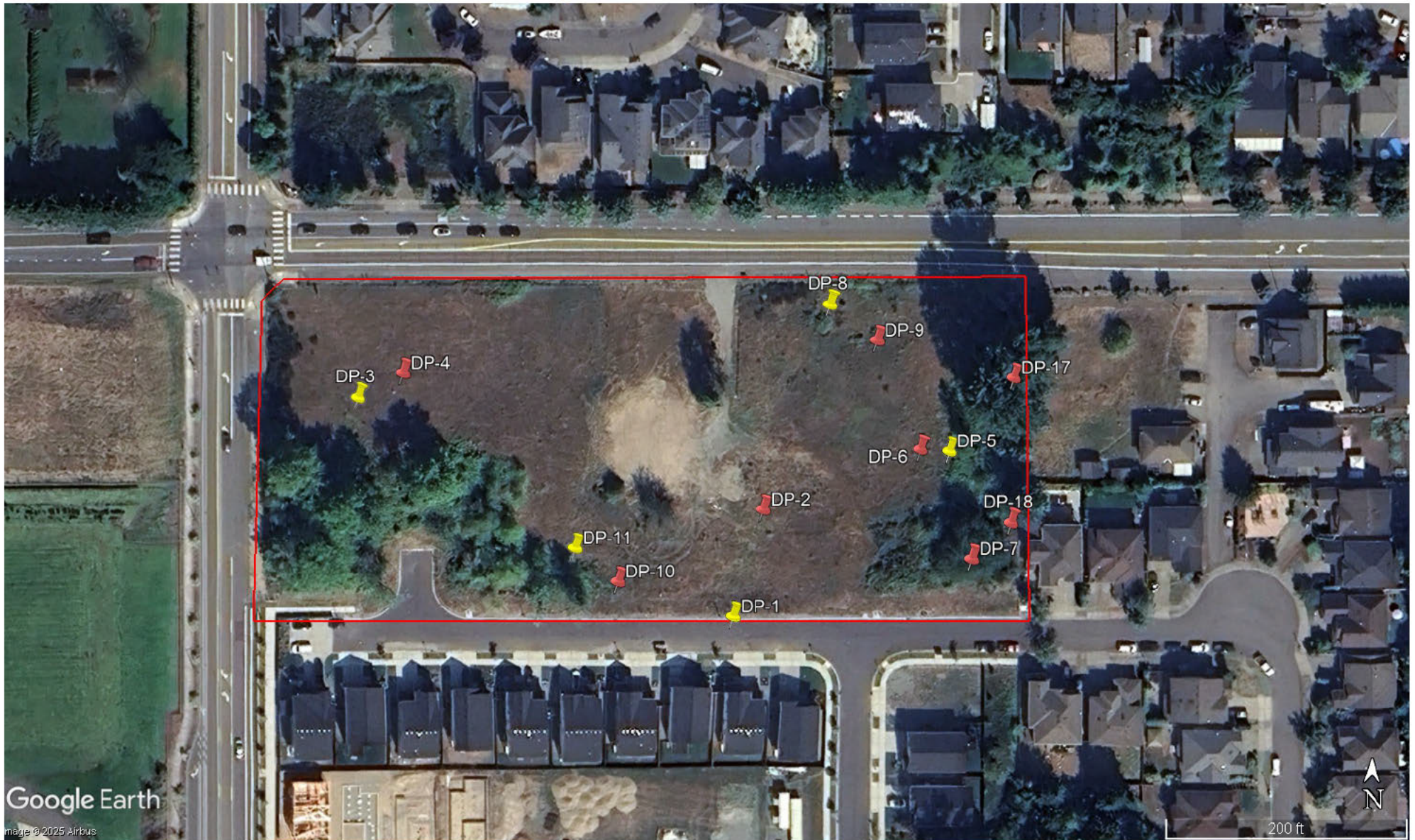


WIVAG II
15633 SE 256TH ST
COVINGTON, WA 98042

KING COUNTY PARCEL NUMBER:
262205-9025

DATE: 7/31/2025
JOB: 1155.0060
BY: DDS
SCALE: 1" = 70'
SHEET 2 OF 3

AJD REVIEW AREA - SEPTEMBER 2025 AERIAL IMAGE



WIVAG II

15633 SE 256TH ST
COVINGTON, WA 98042

KING COUNTY PARCEL NUMBER:
262205-9025

DATE: 9/29/2025

JOB: 1155.0060

BY: DDS

SHEET 3 OF 3