U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 3/23/2021
ORM Number: NWS-2021-86
Associated JDs: N/A
Review Area Location[1]: State/Territory: Washington City: Burien County/Parish/Borough: King
Center Coordinates of Review Area: Latitude 47.479866 Longitude -122.326795

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Miller Creek	240	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Miller Creek is a naturally occurring surface water channel that contributes surface water flow to a paragraph (a)(1) water in a typical year. The subject creek is at least intermittent within the review area during a typical year. See Section III.C. for additional details.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination 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. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland A	0.202	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The delineated wetland boundary of the subject wetland extends waterward of the ordinary high water mark of an (a)(2) water. Wetland A abuts an (a)(2) water. See Section III.C. for additional details.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland B	0.027	acre(s)	(b)(1) Non-adjacent wetland.	Wetland B does not abut an (a)(1) through (3) water; is not inundated by flooding from an (a)(1) through (3) water in a typical year; and is not physically separated from an (a)(1) through (3) water by a natural berm, bank dune, or similar natural feature or by an artificial dike, barrier, or similar artificial structure that allows for a direct hydrologic surface connection between the wetland and the (a)(1) through (3) water in a typical year. See Section III.C. for additional details.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Habitat for Humanity, Burien Property - Wetland and Stream Delineation Report dated February 19, 2020.

This information is sufficient for purposes of this AJD.

Rationale: N/A or describe rationale for insufficiency (including partial insufficiency).

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial: Aerial imagery (historic and present) accessed via Google Earth ; Photographs of Wetland A, Wetland B, and Miller Creek provided by The Watershed Company dated February 19, 2020.

☐ Corps site visit(s) conducted on: Date(s).

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: NRCS Soil Survey Report accessed March 2021

☒ USFWS NWI maps: NWI Map accessed March 2021

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

☒ USGS topographic maps: USGS Topographic Maps entitled: Tacoma, WA dated 1897, 1900; Des Moines, WA dated 1949; Seattle, WA dated 1962; Burien, WA dated 1983; Des Moines, WA dated 2020W

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	WDFW Fish Passage Map accessed March 2021; WDFW SalmonScape access March 2021; WDFW PHS on the Web accessed March 2021; King County iMap accessed March 2021
Other Sources	EPA WATERS Layer accessed March 2021 via Google Earth

B. Typical year assessment(s): Based on the Antecedent Precipitation Tool, Wetland A may be inundated or flooded by an (a)(2) water in a typical year. During site investigations, it was determined that a portion of Wetland A extends below the ordinary high water mark of Miller Creek, an (a)(2) water. The Watershed Company observed that Miller Creek was flowing at the level of ordinary high water mark in January 2019. Based on the Antecedent Precipitation Tool, these observations occurred during dried than normal conditions. It is therefore reasonable to assume that, in a typical year, Miller Creek's flows surpass the ordinary high water mark and may inundate Wetland A.

Based on the Antecedent Precipitation Tool, Wetland B is not inundated or flooded by an (a)(1), (a)(2), or (a)(3) water in a typical year.

C. Additional comments to support AJD: Miller Creek flows east for 240 linear feet (lf) along the southern border of the subject property. The Watershed Company observed that the segment of Miller Creek within the review area was flowing at the level of ordinary high water in January 2019. Based on the Antecedent Precipitation Tool, these observations occurred during drier than normal conditions. Based on the Wetland Rating Forms submitted by The Watershed Company on behalf of the applicant, Miller Creek is perennial and flows constantly throughout the year within the review area. Based on the NWI Wetland Map provided by the USFWS, Miller Creek is mapped as an intermittent, seasonally flooded stream. There is no evidence to suggest that Miller Creek has only ephemeral flow within the review area. Miller Creek appears on the earliest USGS historic topographic maps, dated 1897, for the subject property. In addition, King County's Miller and Walker Creeks Basin Plan identifies Miller Creek as a natural watercourse. From the subject property, Miller Creek flows approximately five river miles southwest and discharges to Puget Sound, an (a)(1) territorial sea. Based on this information, Miller Creek is a tributary.

Wetland A is an 8,800 square foot (sf), Category III wetland located in the southwest corner of the subject property. Wetland A contains two different HGM classes; slope and riverine. Less than 10% of the wetland meets the characteristics of a riverine wetland; therefore, the subject wetland was classified as a slope wetland. The subject wetland receives hydrology from runoff and a high groundwater table. Based on site investigations, the wetland boundary for Wetland A extends waterward of the ordinary high water mark of Miller Creek. The subject wetland abuts Miller Creek, which is an (a)(2) water based on the rationale in the paragraph above. Based on this information, Wetland A is an adjacent wetland.

Wetland B is a 1,200 sf, Category III depressional wetland located in the center of the southern portion of

the subject property. Based on the NRCS Web Soil Survey report, soil within Wetland B is mapped as urban land-Alderwood complex and is not hydric. This soil type is described by NRCS as moderately well drained with very low to moderately low likelihood of ponding during a typical year. The subject wetland receives hydrology from runoff and a high groundwater table. No evidence of ponding was observed during site investigations, even after periods of heavy rainfall. The Watershed Company did not observe any surface water inlets or outlets, and no signs of flowing water such as scour, sediment deposits, defined channels, or ditches were observed. Wetland B is located 150 feet north of Miller Creek, an (a)(2) water based on the rationale above. The subject wetland does not abut Miller Creek, the nearest potential water of the U.S. In addition, there are no artificial structures such as culverts that would allow for a direct hydrologic surface connection between the subject wetland and Miller Creek. A topographic high point is present between the subject wetland and creek which likely prevents the subject wetland from being flooded by Miller Creek in a typical year. In addition, a topographic high point is present between Wetland B and Wetland A which likely inhibits surface flow connection between these wetlands. Based on this information, Wetland B is a non-adjacent wetland.