



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

October 2, 2023

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination (JD) 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-2023-568

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 Clean Water Act (CWA), and no effect on any waters covered under the Rivers and Harbors Act (RHA), all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ The Corps 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. Farm pond 1: Is not a water of the U.S.
 - ii. Farm Pond 2: Is not a water of the U.S.
 - iii. Farm Pond 3: Is not a water of the U.S.
 - iv. Farm Pond 4: Is not a water of the U.S.
 - v. Farm Pond 5: Is not a water of the U.S.

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 located on an approximately 15.4-acre property located at 3511 240th Street Southeast in Bothell, Snohomish County, Washington (47.781717 N latitude, -122.184973 W longitude). The review area consists of five (5) farm ponds as depicted in the enclosed figure dated September 8, 2023. Based on historical aerials and a field visit conducted on September 6, 2023, the ponds were constructed in uplands.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Sammamish River

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A

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6. SECTION 10 JURISDICTIONAL WATERS⁵: N/A

7. SECTION 404 JURISDICTIONAL WATERS:

- a. Traditional Navigable Waters (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).⁶

Farm Pond 1 through 5: Based on historical aerials and historic topographic maps the ponds were constructed in uplands. In accordance with the 2023 regulatory definition of Waters of the U.S., the Farm Ponds meet the exclusion (b)(5) artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing. and are not a water of the United States.

⁵ 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.

⁶ 88 FR 3004 (January 18, 2023)

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- 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).

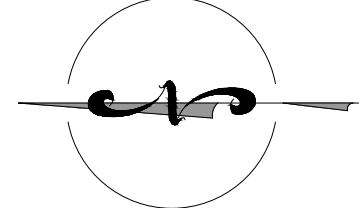
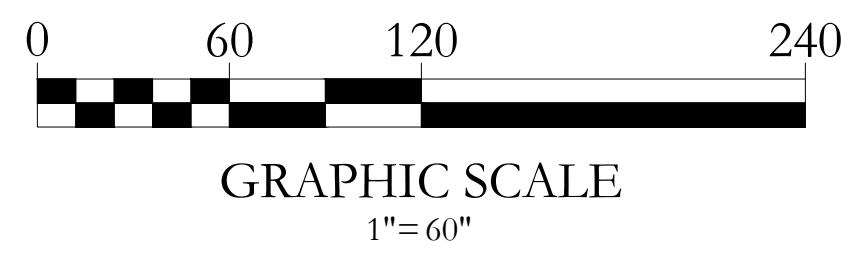
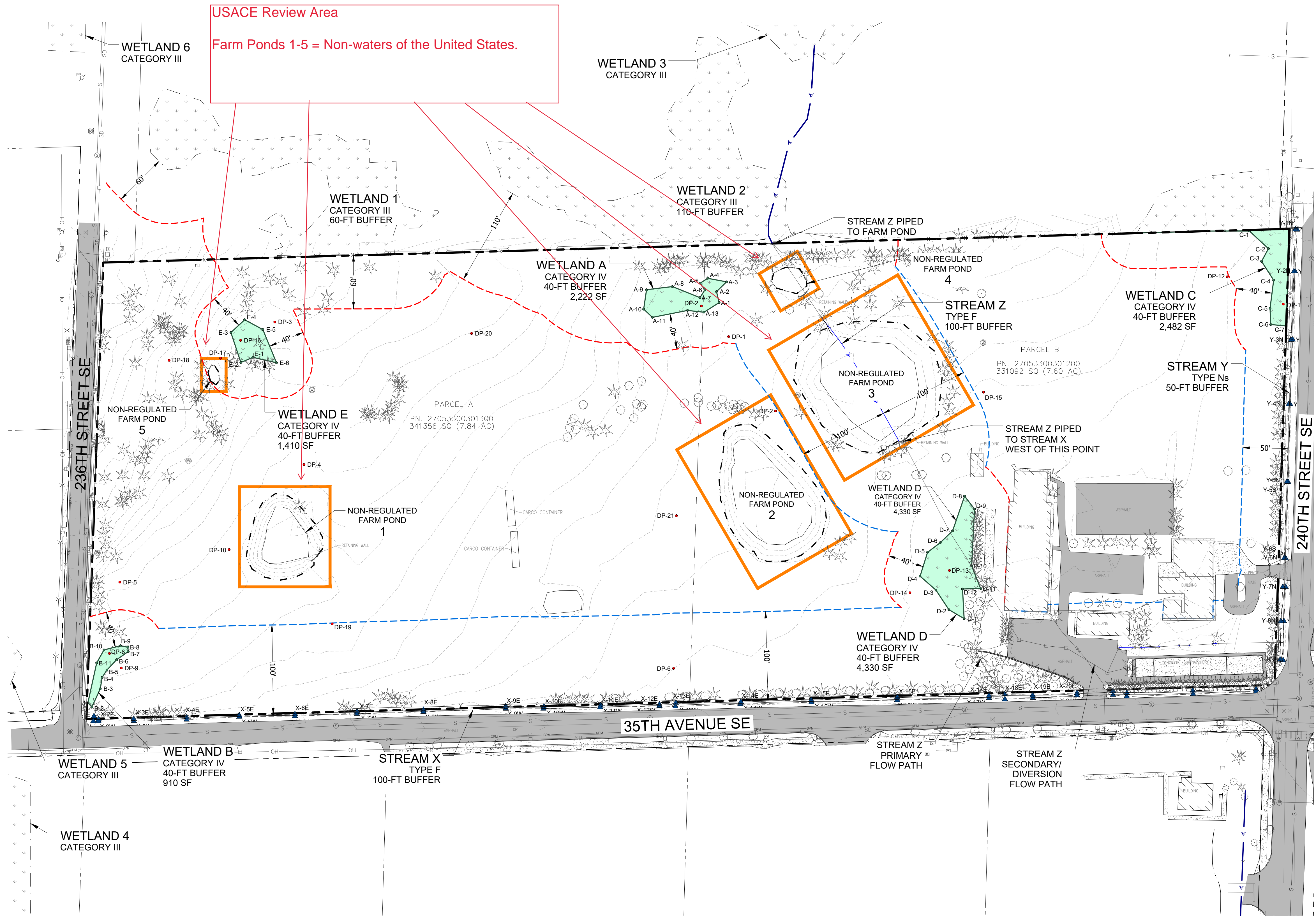
N/A

9. DATA SOURCES.

- a. Field visit conducted September 6, 2023
- b. Delineation report, dated July 20, 2023, submitted on behalf of the applicant: Revised Wetland and Fish and Wildlife Habitat Assessment - 3511 240th Street Southeast, Bothell, Washington 98021
- c. U.S. Geological Survey topo viewer accessed September 18, 2023.

10. OTHER SUPPORTING INFORMATION. N/A

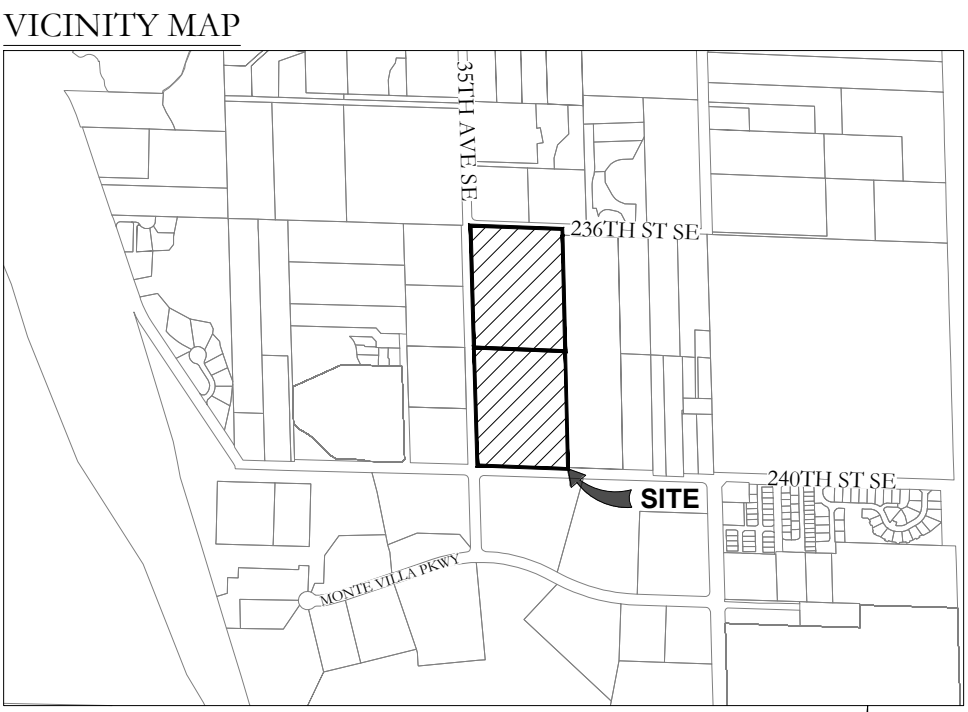
- 11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



PLAN LEGEND

- PROPERTY LINE
- AJD REVIEW AREA
- EXISTING WETLAND BOUNDARY
- EXISTING INDIRECT WETLAND IMPACTS
- WETLAND BUFFER
- WETLAND FLAG LOCATION
- DATA PLOT LOCATION
- STREAM CENTERLINE
- STREAM BUFFER
- STREAM OHW (ORDINARY HIGH WATER) FLAG LOCATION
- EXISTING CONTOUR
- NON-REGULATED FARM POND

- NOTES:
- SITE IS DEVELOPED WITH FISH HATCHERY AND UNDERGROUND PIPE NETWORK; NOT ALL UNDERGROUND PIPES ARE MAPPED.
 - REGULATED STREAM Z RUNS THROUGH NON-REGULATED FARM POND 3



SOURCE: ESRI (ACCESSED 09/15/2022)

LOCATION

THE SW ¼ OF SECTION 33,
TOWNSHIP 27N, RANGE 5E, WM

APPLICANT/OWNER

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LAKE STEVENS, WA 98258
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240TH STREET SE
3511 240TH ST SE
BOTHELL, WA 98021
SNOHOMISH COUNTY
PARCEL NUMBER(S):
270553300301200 & 270553300301300

DATE: 9/7/2023

JOB: 2376.0001

BY: MW

SCALE: AS SHOWN

SHEET: 1