



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
4735 EAST MARGINAL WAY, SOUTH BLDG 1202  
SEATTLE, WA 98134-2388

CENWS-ODR

March 19, 2024

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) ,<sup>1</sup> NWS-2019-511; MFR 1 of 1.

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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> 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.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> 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. List of each individual feature within the review area and the jurisdictional status of each one.

i. Wetland 14 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 2.95-acre property located near 22407 Southeast 4<sup>th</sup> Street in Sammamish, King County, Washington (47.605217 N latitude, -122.040768 W longitude). The review area consists of one wetland (Wetland 14) as depicted in the enclosed figure dated January 25, 2024. On October 2, 2019, the Corps previously determined Wetland 14 was not a water of the U.S. Wetland 14 was partially filled as part of a road improvement project associated with Southeast 4<sup>th</sup> Street. See attached figures for site location, aerial view, and location of the wetland.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Lake Sammamish is a listed navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland 14 is situated next to a north-south oriented drainage ditch that is located outside of the review area and discharges into the uplands to the south.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: N/A

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<sup>5</sup> 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.

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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). 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 14: Wetland 14 is 2,857 square feet in size. As documented in the delineation, Wetland 14 does not abut, is not separated by natural berm or bank, nor does Wetland 14 does not have a discrete conveyance connection to an (a)(1), (a)(2), or (a)(3) water. The hydroperiod of the subject wetland is saturation with seasonal flooding. During normal conditions, the wetland is saturated. Any surface flow, likely during wetter than normal conditions, within the wetland would drain into an abutting unnamed ditch (outside of the review area), located at the southern end of the wetland boundary. On February 9, 2024, during normal

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conditions, the Corps conducted a site visit and determined the ditch infiltrates in upland areas. The ditch is hydrologically isolated and does not drain into a jurisdictional water. Based on historic aerial imagery, the ditch was constructed in uplands and conveyed hydrology from previously built structures on the property and the flows would terminate offsite into uplands southwest of the review area. The wetland is located at least 0.2-mile from the nearest known watercourse located east of the review area. The soil within the review area is mapped Alderwood gravelly sandy loam, 8 to 15 percent slopes, which does not contain hydric inclusions. The wetland is not located within a floodplain. Based on the above information, Wetland 14 does not have a continuous surface connection downstream to an a(1) through a(3) water and therefore, is not a water of the U.S.

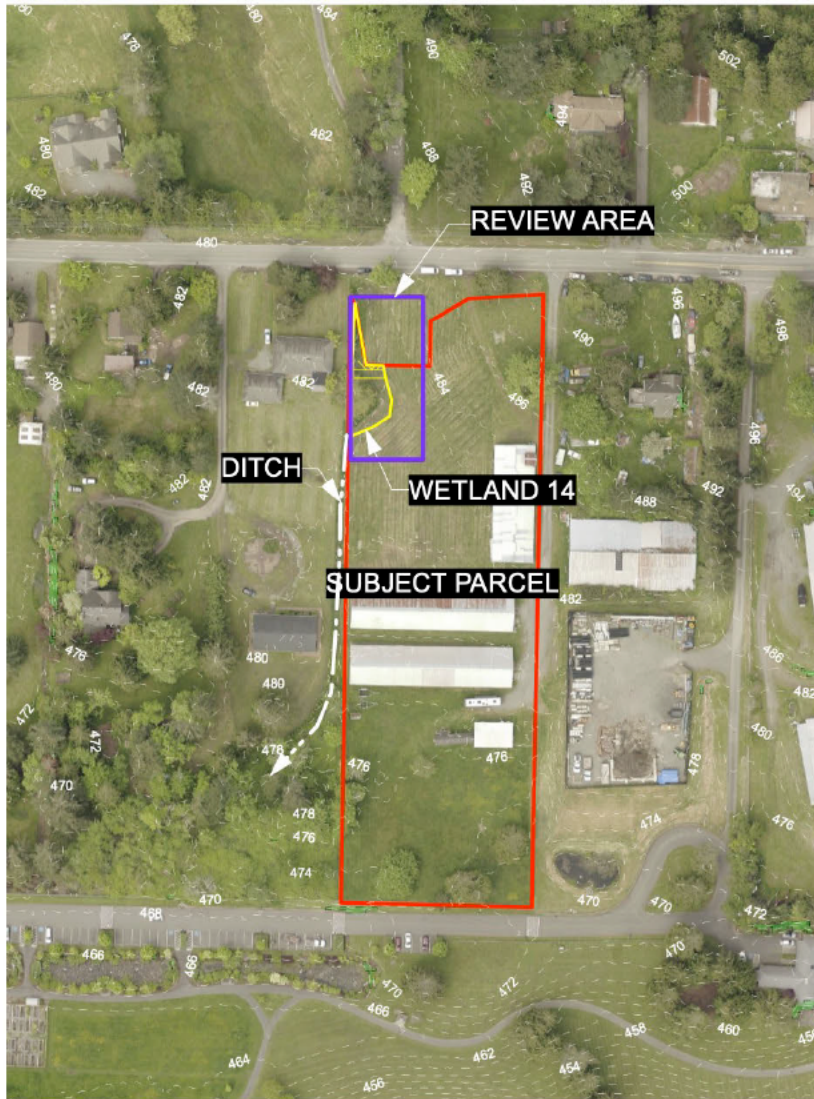
#### 9. DATA SOURCES.

- a. Site visit conducted February 9, 2023
- b. Delineation report including photos, dated May 2, 2023, submitted on behalf of the applicant: Wetland Delineation Report for Parcel 332506-9085 – Wetland 14, Sammamish, WA
- c. Washington Department of Fish and Wildlife Fish Passage map accessed January 26, 2024
- d. City of Sammamish drainage inventory accessed February 13, 2024
- e. U.S. Geological Survey national map viewer accessed January 11, 2024

#### 10. OTHER SUPPORTING INFORMATION.

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.

**FIGURE 9: SITE TOPOGRAPHY MAP**  
 City of Sammamish - 22407 SE 4th St  
 Section 33, Township 25N, Range 06E, W.M.  
 Latitude: 47.6050243 N  
 Longitude: -122.0407082 W



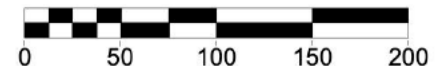
**LEGEND**

 REVIEW AREA (WETLAND 14)

 OFF-SITE DITCH



**Scale 1" = 100'**



**Location:** King County Parcel #: 3325069085  
 22407 SE 4th Street  
 Sammamish, WA 98074

**Lat/Long:** 47.6050243 N / -122.0407082 W

**Proposed Project:** Town Center Development

**In:** WRIA 8  
**Local Jurisdiction:** City of Sammamish  
**County:** King  
**State:** Washington

**Sheet 9/10**