



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

May 28, 2024

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-2023-447; MFR 1 of 1. 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 the 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,

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.

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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 is not a water of the U.S.
 - ii. Wetland B 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 1.75-acre property located near 1105 108th Avenue East, Pierce County, Washington (47.247458 N latitude, -122.283988 W longitude). The review area consists of two wetlands (Wetlands A and B) as depicted in the enclosed figure dated April 16, 2024. The wetlands are located within an existing easement maintained by the local jurisdiction. Wetland A extends outside of the review area, offsite to the north. Wetland B also extends outside of the review area, offsite to the south. See attached figures for site location, aerial view, and location of the wetland. No previous jurisdictional determination has been made for the review area.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED.⁶ Puyallup River is a listed navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008.

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

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. During normal hydrologic conditions, seasonal hydrology within Wetland A flows south outside of the review area, along the east fence line of 1109 108th Avenue East, into a catch basin, and then an underground conveyance pipe. This pipe collects seasonal flows from Wetland A, as well as surrounding residential areas south of the wetland including septic drainage flows, and conveys them into a depression north 16th Street East located approximately 0.2 miles south of the review area. The depression also receives water from an open drainage channel north of 16th Street East, located west of the depression. The drainage channel disperses flows in the depression. The Pierce County drainage inventory identifies the open drainage channel north of 16th Street East and does not identify any potential culverts, or other outlets, from the depression.

During wetter than normal conditions, seasonal hydrology within Wetland A may flow over residential yard south outside of the review area and then to the east to a roadside ditch along 110th Avenue East. The roadside ditch also receives surface runoff from adjacent residential development. Flows within the roadside ditch enter a culvert under 110th Avenue East and then disperses/infiltrates within a managed pasture area east of 110th Avenue East. The Pierce County drainage inventory identifies the roadside ditch along 110th Avenue East and a solid pipe which conveys flows from the ditch, across the road, and into the managed pasture land.

Onsite observations are consistent with the Pierce County drainage inventory. See the photolog associated with the site visit on May 1, 2024. Hydrology within Wetland B and the remaining review area would not flow offsite.

6. SECTION 10 JURISDICTIONAL WATERS⁷: 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

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.

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.

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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 (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).

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Wetland A: Wetland A is approximately 1,451 square feet in size within the review area. The delineation report documents a potential excavated regional ditch within Wetland A adjacent to the northern limits of the review area; however, on May 1, 2024, while topography does appear lower north of the review area, no excavated ditch was observed. A catch basin west of 108th Avenue East collects surface runoff from adjacent development and conveys the flows to a culvert under 108th Avenue East and then to Wetland A. These flows disperse and infiltrates within Wetland A. The hydroperiod of the subject wetland is saturation with seasonal flooding. On May 1, 2024, during drier than normal conditions, the Corps conducted a site visit and no surface flows were observed. As described under Section 5, any seasonal surface flows terminate within an isolated depression to the south or within a managed pasture to the east of the review area. Wetland A does not drain into a jurisdictional water. The wetland is located at least 0.2-mile from the nearest known feature, the isolated depression located south of the review area. Based on historic aerial imagery and topographic maps, the open drainage channel north of 16th Street East, located west of the depression, was constructed in uplands and the flows would disperse within the depression. The soil within the review area is mapped Alderwood gravelly sandy loam, 0 to 8 percent slopes (1B) and Kapowsin gravelly ashy loam, 0 to 6 percent slopes (19B). The Alderwood and Kapowsin soil series are defined as moderately well drained and as formed in gravelly glacial outwash. Both soil series are listed as non-hydric, but may contain minor components of hydric inclusions. The wetland is not located within a floodplain. Wetland A 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. Based on the above information, Wetland A 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.

Wetland B: Wetland B is approximately 891 square feet in size within the review area. The hydroperiod of the subject wetland is saturation only. Wetland B has no outlet and no surface water leaves the unit. Wetland B is also at least 0.2-mile from the isolated depression. Wetland B does not abut the isolated depression nor is it separated by only a natural berm or bank to an (a)(1), (a)(2), or (a)(3) water. Wetland B extends outside of the review area to the south in residential lawn and north of the unit is higher in elevation. The soil within the review area is mapped Alderwood gravelly sandy loam, 0 to 8 percent slopes, which is a moderately-well drained non-hydric soil with minor components of hydric inclusions. The wetland is not located within a floodplain. Based on the above information, Wetland B does not have a continuous surface connection downstream and is not a water of the U.S.

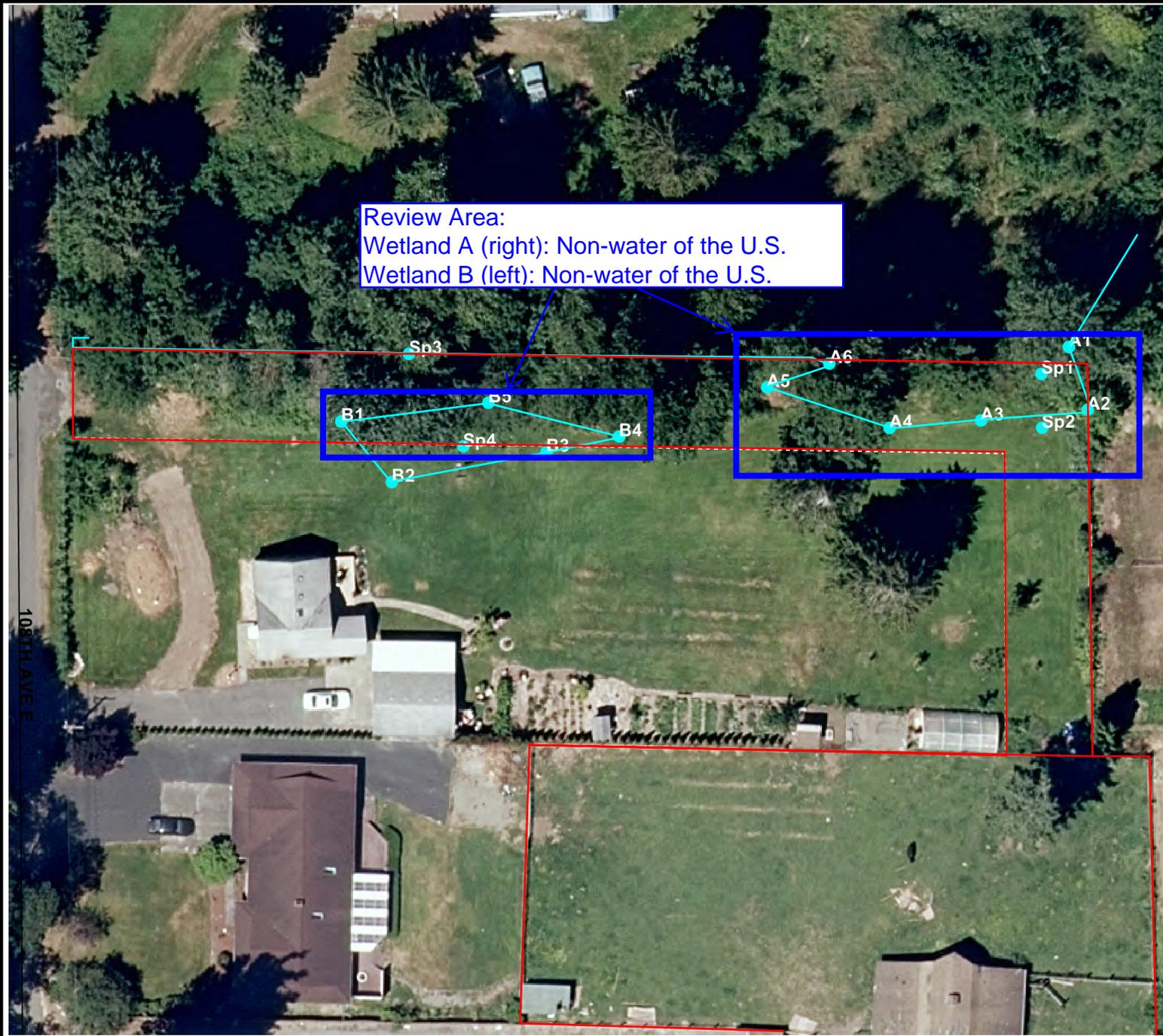
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9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
- a. Site visit conducted May 1, 2024
 - b. Delineation report including photos, dated January 18, 2023, submitted on behalf of the applicant: Critical Areas Assessment (Wetland Delineation, Surface Water Drainages, and Critical Habitats) Parcel 0420037016 And Associated Easement Within Parcel 0420037014
 - c. Supplemental information including updated data forms and photos, submitted on behalf of the applicant on May 8, 2024
 - d. Hydrology excerpt received February 14, 2024
 - e. [Piece County drainage inventory](#) accessed April 16, 2024
 - f. [City of Edgewood wetland inventory](#) accessed April 16, 2024
 - g. [U.S. Geological Survey topo viewer](#) accessed April 30, 2024
 - h. [Washington Department of Fish and Wildlife Fish Passage map](#) accessed April 30, 2024
 - i. [U.S. Geological Survey hydrography dataset](#) accessed May 7, 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.



The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. This is not a survey. The orthophotos and other data may not align. Pierce County and Habitat Technologies assume no liability for variations ascertained by actual survey. All data is expressly provided AS IS and WITH ALL FAULTS. Pierce County and Habitat Technologies make no warranty of fitness for a particular purpose.

- Map Legend**
- Gps Points
 - Highlighted Tax Parcels
 - Roads
 - Major Roads
 - County - 2014 - Ortho

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