



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

August 5, 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-2023-867

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

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 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The .18-acre review area is located at 10510 206th Street Southeast in the Maltby area of unincorporated Snohomish County, Washington at Latitude 47.809974 Longitude -122.089459. Exact Review Area is shown on the AJD Review Area enclosure.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Snohomish River located approximately 2.46 miles to the Northeast. Snohomish River is a listed 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. Hydrology within the review area does not connect downstream to a TNW.

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with

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.

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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

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

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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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 253 square feet and is a palustrine scrub shrub wetland. Hydrology for Wetland A is provided primarily by a seasonally high groundwater table, direct precipitation, surface sheet flow from surrounding uplands, and runoff from the adjacent road to the east and roadside ditch to the south. Wetland vegetation is dominated by vine maple, salmonberry, and red osier dogwood (*Cornus alba*). Wetland A is a Palustrine Scrub Shrub, Seasonally Saturated, Seasonally Flooded (PSSBC) wetland. The NRCS Soil Survey of Snohomish County, Washington identifies five soil series present on the subject property: Alderwood gravelly sandy loam, 0 to 8 percent slopes (1); Alderwood gravelly sandy loam, 8 to 15 percent slopes (2); Everett gravelly sandy loam, 0 to 8 percent slopes (17); Mukilteo muck (34); Norma loam (39). Wetland A is not located within a mapped floodplain. Wetland A does not abut, is not separated by a natural berm or bank from an a(1) through a(3) water. An artificial berm does exist between Wetland A and the roadside stormwater ditch. Water appears to overtop the berm, likely during high precipitation events. Wetland A does not have a continuous surface connection to a water identified in paragraph (a)(1) or to a relatively permanent, standing or continuously flowing body of water identified in paragraph (a)(2) or (a)(3) of the 2023 Rule, as amended. Wetland A is not water of the United States.

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. National Regulatory Viewer Lidar Dataset accessed July 5, 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)
 - b. National Regulatory Viewer National Hydrography Dataset accessed July 5 2024: [Northwestern Division Regulatory Viewers \(army.mil\)](#)

⁸ 88 FR 3004 (January 18, 2023)

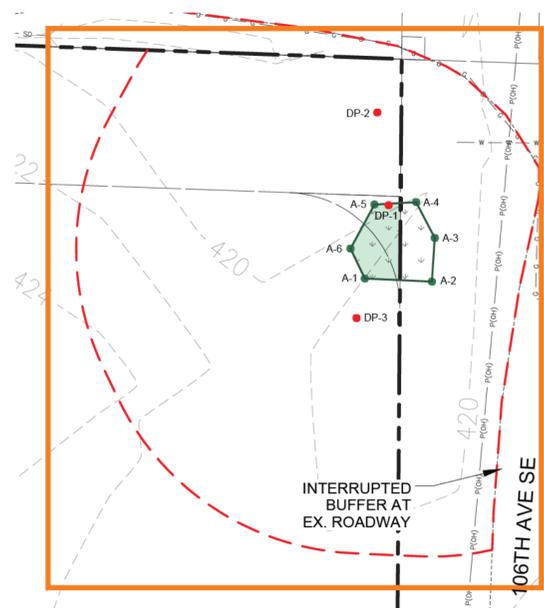
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- c. USFWS National Wetland Index accessed July 5, 2024: [National Wetlands Inventory \(usgs.gov\)](https://www.usgs.gov/national-wetlands-inventory)
- d. Snohomish County Critical Areas Map accessed July 5, 2024: [PDS Map Portal \(snoco.org\)](https://www.snoco.org/pds-map-portal)
- e. WDFW Habitat and Species Map accessed July 5, 2024: [PHS on the Web \(wa.gov\)](https://www.wa.gov/phs-on-the-web)
- f. WDFW SalmonScape Map accessed July 5, 2024: [WDFW SalmonScape \(wa.gov\)](https://www.wa.gov/wdfw-salmonscape)
- g. Snohomish County Drainage Inventory Map accessed July 5, 2024: [SWM DI Webmap \(snoco.org\)](https://www.snoco.org/swm-di-webmap)

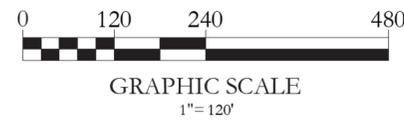
10. OTHER SUPPORTING INFORMATION.

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.



WETLAND A VIEWPORT
SCALE: 1"=20'

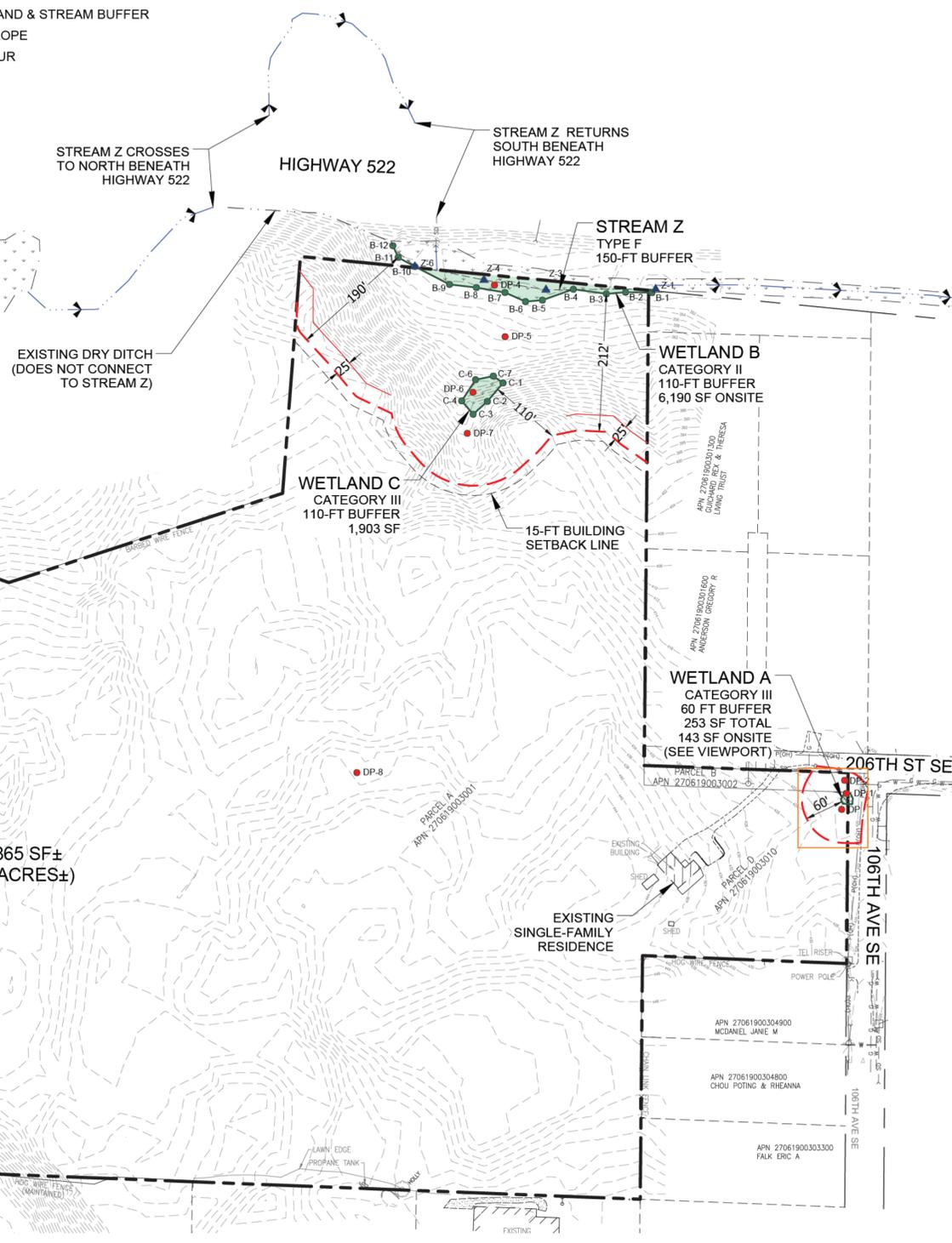
- PLAN LEGEND**
- AJD REVIEW AREA
 - PROPERTY LINE
 - EXISTING WETLAND BOUNDARY
 - W.# WETLAND FLAG LOCATION
 - DP.# DATA PLOT LOCATION
 - STREAM ORDINARY HIGH WATER LINE (OHW)
 - APPROX. STREAM CENTERLINE
 - STREAM OHW (ORDINARY HIGH WATER) FLAG LOCATION
 - ▲ O.#
 - COMBINED WETLAND & STREAM BUFFER
 - TOP OF STEEP SLOPE
 - EXISTING CONTOUR



VICINITY MAP



SOURCE: ESRI (ACCESSED 4/11/2023)



LOCATION

THE SW ¼ OF SECTION 19,
TOWNSHIP 27N, RANGE 6E, WM

APPLICANT/OWNER

NAME: MAIN VIEW HOMES
ADDRESS: 121 3RD AVENUE
KIRKLAND, WA 98033
CONTACT: TOM BARGHAUSEN
PHONE: (425) 251-6222
E-MAIL: TBARGHAUSEN@BARGHAUSEN.COM

ENVIRONMENTAL CONSULTANT

SOUNDVIEW CONSULTANTS LLC
2907 HARBORVIEW DRIVE
GIG HARBOR, WA 98355
(253) 514-8952

MALTY GROVE
10510 206TH STREET NE
SNOHOMISH, WA 98296
SNOHOMISH COUNTY
PARCEL NUMBERS:
27061900300100, 27061900301000,
& 27061900303000

DATE: 11/1/2023

JOB: 1186.0037

BY: MW

SCALE: AS SHOWN

SHEET: 1