



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

10 OCTOBER 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-2024-124²

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, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

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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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. State Route 410 Ditch is a water of the U.S and jurisdictional under Section 404 of the Clean Water Act.

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 2.25-acre property located east of 28820 State Route 410 East at Buckley, Pierce County, Washington (47.158489 N latitude, -122.043796 W longitude). The review area consists of one ditch, as depicted in the enclosed figure dated September 23, 2024. The subject property is primarily undeveloped with the exception of a gravel on the eastern portion of the site. Outside of the review area but located on the subject property there is another ditch and a detention pond. Adjacent land uses consist of commercial or residential developments. See attached figures for site location and aerial view. No previous jurisdictional determination has been made for wetlands or ditches on the site.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Puyallup River, approximately 29 miles downstream, is listed on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁶

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 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.

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5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Water within State Route 410 Ditch flows 0.7 miles west through multiple roadside ditches along the southern edge of State Route 410, then flows 0.8 miles north through a series of ditches and subsurface pipes along the eastern edge of Mundy Loss Road, outlets into an unnamed flume via a 30-inch diameter outfall west of Sumner-Buckley Highway, flows five miles northwest in the unnamed flume, and then outlets into Lake Tapps. Lake Tapps discharges into the White River, which flows approximately 3.5 miles southwest to the Puyallup River, which flows approximately 8 miles northwest into Puget Sound.
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
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

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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- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): State Route 410 Ditch is 648 linear feet within the review area. As described in Section 5 above, the State Route 410 Ditch has a flow path to a TNW (Puyallup River). Based on historic topographic maps, the ditch appears to have been constructed in uplands. The ditch receives flows from surface runoff from State Route 410, precipitation, and another ditch (Western Ditch), located on the subject property, but outside of the review area. Western Ditch receives flows from surface runoff from adjacent development, precipitation, and overflows from a stormwater pond located on the subject property but also outside of the review area. On March 12, 2024, during a period of normal precipitation, a site visit was conducted and surface water was observed in portions of the grass-lined ditch which appeared mowed. As described above, the ditch was likely constructed in uplands and is characterized by artificially excavated banks. According to modeled hydrology data provided by the applicant, the State Route 410 Ditch contains surface water at a flow of at least 0.0001 cubic feet per second in 134 days of the year. While flows may be exasperated by precipitation events, they are expected to be continuous from late September to April in an average year of rainfall. Surface water and/or flows from May to August are expected to occur in periodic events. The data was modeled using the 2012 Western Washington Hydrology Model which is intended to size stormwater control facilities to mitigate the effects of increased runoff (peak discharge, duration, and volume) from proposed land use changes that impact watercourses. The model is based on continuous simulation hydrology (Hydrologic Simulation Program-FORTRAN or HSPF), long-term recorded precipitation data, measured pan evaporation data, historic vegetation for predeveloped conditions, and regional HSPF parameters. Based on the information described above, the Corps has determined the State Route 410 Ditch meets the relatively permanent standard and indirectly connects downstream to a TNW. Therefore, the SR 410 ditch meets the definition of an (a)(3) tributary.
- 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

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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).⁹ 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). N/A

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. Wetland and Fish and Wildlife Habitat Assessment, dated January 30, 2024, submitted on behalf of the applicant
- b. Letter, dated July 19, 2023, submitted on behalf of the applicant in response to an information request: Cascade Water Alliance Comments
- c. Hydrology data submitted on behalf of the applicant in response to an information request: Buckley Gas and Coffee – 2023 Daily Average Flows
- d. Flow path figure submitted on behalf of the applicant in response to an information request: Drainage Map
- e. Site visit conducted on March 12, 2024
- f. [U.S. Geologic Survey National Hydrography Dataset](#) accessed September 11, 2024
- g. [U.S. Geological Survey topo viewer](#) accessed September 11, 2024
- h. [Washington Department of Fish and Wildlife Fish Map webtool](#) accessed September 11, 2024
- i. Google Earth and Google Maps accessed October 7, 2024

10. OTHER SUPPORTING INFORMATION. N/A

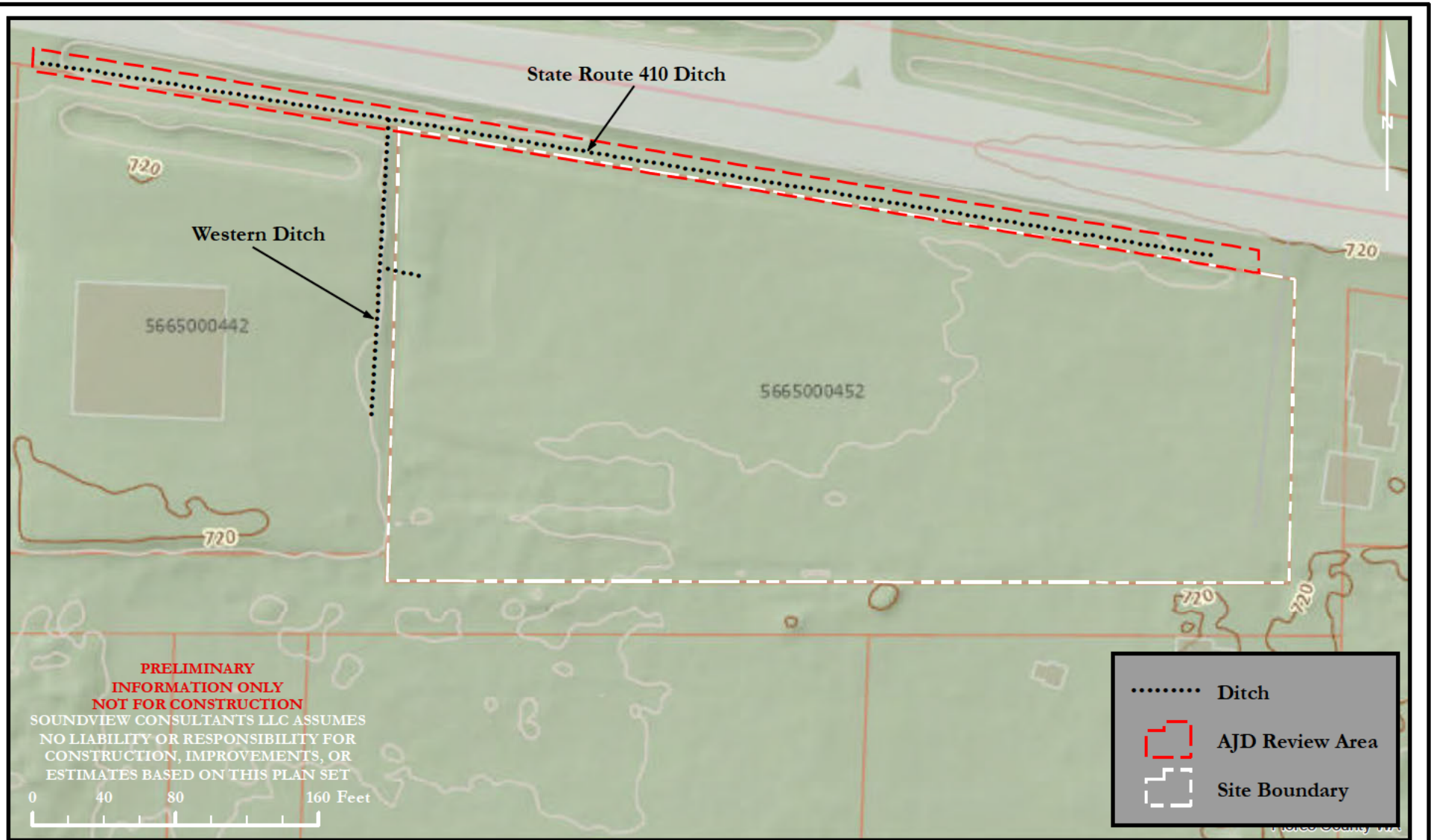
⁹ 88 FR 3004 (January 18, 2023)

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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.

AJD REVIEW AREA EXHIBIT (TOPO)



STATE ROUTE 410

LOCATED EAST OF 28820 STATE ROUTE 410 E
BUCKLEY, WA 98321

PIERCE COUNTY PARCEL NUMBER:
5665000452

DATE: 9/23/2024

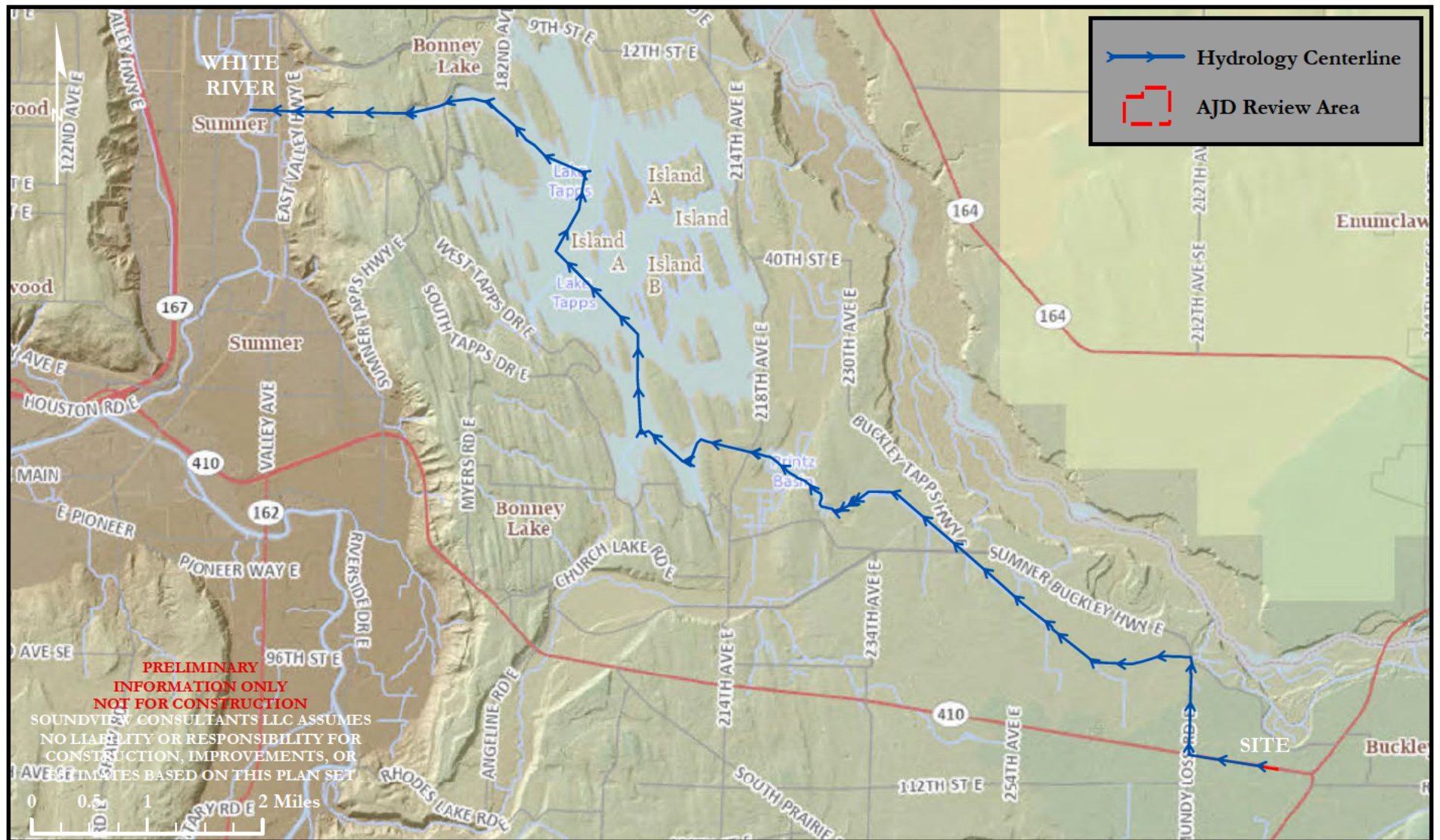
JOB: 2644.0001

BY: DDS

SCALE: 1" = 80'

FIGURE NO. 1 of 2

AJD REVIEW AREA EXHIBIT (VICINITY EXHIBIT)



STATE ROUTE 410

LOCATED EAST OF 28820 STATE ROUTE 410 E
BUCKLEY, WA 98321

PIERCE COUNTY PARCEL NUMBER:
5665000452

DATE: 9/23/2024

JOB: 2644.0001

BY: DDS

SCALE: 1" = 1 mi

FIGURE NO. 2 of 2