



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

5 December 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-2024-398²

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, non-jurisdictional
 - ii. Wetland B, non-jurisdictional
 - iii. Wetland C, jurisdictional, Section 404
 - iv. Wetland D, non-jurisdictional
 - v. Wetland E, 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 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 10.44-acre site at 11815 and 11809 Canyon Road East in Puyallup, Pierce County, Washington (47.148632 N latitude, -122.35364 W longitude). Five (5) wetlands (Wetlands A, B, C, D, and E) were identified within the review area as depicted in the enclosed figure. The western portion of the subject property is currently developed with one single-family residence and one commercial building. The central and eastern portions of the property are characterized by undeveloped forest. Topography onsite is generally flat with elevations ranging from approximately 470 feet above mean sea level (amsl) to approximately 480 feet amsl throughout the property. The review area is bounded by Canyon Road East to the west, residential development to the north, commercial development to the southwest, and undeveloped private property to the southeast and east. No previous jurisdictional determination has been made for the wetlands on the site.

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4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Puyallup River, approximately 7 miles downstream of the review area, is listed as a navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. A tributary located outside of the review area provides a hydrologic flow path from Wetland C, within the review area, as described below.

Water flows north through Wetland C, into a culvert under 117th Street Court East and then into a palustrine forested wetland mapped by NWI and Pierce County. No channelized flow was observed in Wetland C within the review area. An unnamed tributary to Clear Creek is mapped by the Statewide Washington Integrated Fish Distribution (SWIFD) map starting to flow approximately 0.2 miles north of the review area within the forested wetland mapped by NWI and Pierce County. The unnamed tributary flows north for 4 miles through multiple pipes, culverts, and sections of open channel. The tributary then flows northwest for approximately 1.3 miles and outlets to Clear Creek. Clear Creek flows northwest 1.55 miles to Swan Creek which then flows 0.15 miles to the Puyallup River.

Approximately 0.4 miles north of the review area, the unnamed tributary to Clear Creek is mapped by SWIFD as a Type “F” or fish-bearing stream. A Type “F” stream is defined by the Washington Department of Natural Resources as “streams and waterbodies that are known to be used by fish, or meet the physical criteria to be potentially used by fish. Fish streams may or may not have flowing water all year; they may be perennial or seasonal.” The Washington Department of Natural Resources mapped the Type “F” stream on the DNR Hydrography-Watercourses map as a perennial stream. The Washington Department of Ecology also mapped the stream as a perennial stream. The USGS maps the unnamed tributary to Clear Creek as an intermittent stream.

On 13 November 2024, a distinct channel with clear vegetation shifts and audible running water was observed from 112th Street East, the closest public access point to the review area, approximately 0.4 miles north of the review area. There is one contributing stormwater outfall (conveyance pipe) between the review area and the observed channel according to Pierce County’s Utilities Map. According to 2020 Lidar accessed from DNR’s Washington LiDAR Portal, the channel (unnamed tributary to Clear Creek) appears to begin approximately 0.2 miles north of the review area. Based on the above information, the Corps has determined that the

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unnamed tributary to Clear Creek meets the relatively permanent standard and indirectly connects 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 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):

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.

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.

Wetland C: Wetland C is an approximately 12,070 square foot depressional wetland. The wetland is a palustrine forested/scrub-shrub/emergent wetland with seasonally flooded and saturated hydroperiods. Vegetation observed within the wetland includes water parsley (*Oenanthe sarmentosa*), salmonberry (*Rubus spectabilis*), black cottonwood (*Populus balsamifera*), red alder (*Alnus rubra*), and invasive reed canarygrass (*Phalaris arundinacea*). As summarized above, Wetland C extends north outside of the review area and outlets to a culvert under 117th Street East. This culvert outlets to forested wetland mapped by NWI and Pierce County north of 117th Street East. For purposes of determining whether a wetland is “adjacent,” artificial structures do not divide a wetland if a hydrologic connection is maintained between the divided portions of the wetland. Rather, the wetland is treated as one wetland. Wetland C (delineated within the review area) and the forested wetland (mapped by NWI and Pierce County) are separated by a road with a connecting culvert. The Corps is evaluating the wetlands as one wetland due to the wetlands maintaining a hydrologic connection through the culvert under the road. The Pierce County Stream and Wetland Inventory identifies Wetland C as a potential stream. However, no evidence of a stream coinciding with Wetland C was identified, within the review area, during any site visits. Wetland C is a large wetland that conveys hydrology north. The wetland is densely vegetated throughout most of its length and lacks a defined bed and bank as well as other evidence of a stream channel such as scour, sediment deposits, erosion from stream flows, or sand/sorted substrates indicative of stream flows. The unnamed tributary to Clear Creek is located within and abutting the northern portion of Wetland C, located outside of the review area. Therefore, Wetland C has a continuous surface connection to and is adjacent to the unnamed tributary to Clear Creek, a relatively permanent tributary as documented above in Section 5. Based on this, the Corps has determined Wetland C meets the definition of an (a)(4) adjacent wetland and is a water of the U.S.

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).⁸

⁸ 88 FR 3004 (January 18, 2023)

- 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 an approximately 1,058 square foot Category III depressional, palustrine forested/ scrub-shrub wetland with temporarily flooded, seasonally saturated and flooded hydroperiods. The wetland is located in the the southwest portion of the review area and has mapped Kapowsin gravelly ashy loam, 0 to 6 percent slopes, a non-hydric soil with minor inclusions of Norma, Dupont, and McKenna soils. Vegetation observed within the wetland includes Douglas spiraea (*Spiraea douglasii*), hawthorne species (*Crataegus spp.*), non-native, invasive Himalayan blackberry (*Rubus armeniacus*), creeping buttercup (*Ranunculus repens*) and slough sedge (*Carex obnupta*). Wetland A does not have an outlet. The wetland is located 0.26-miles from the nearest known watercourse, an unnamed tributary to Clear Creek, located north of the review area. The wetland is not located within a floodplain. As documented in the delineation, Wetland A does not abut, is not separated by natural berm or bank, nor does Wetland A 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. An onsite investigation confirmed that there is no surface water connection between the mosaic wetland unit and Wetland C, an (a)(4) water of the U.S.

Wetland B: Wetland B is an approximately 13,244 square foot Category III depressional, palustrine forested/ scrub-shrub wetland with temporarily flooded, seasonally saturated and flooded hydroperiods. The wetland is located in the the southwest portion of the review area and has mapped Kapowsin gravelly ashy loam, 0 to 6 percent slopes, a non-hydric soil with minor inclusions of Norma, Dupont, and McKenna soils. Vegetation observed within the wetland includes red alder, black cottonwood, slough sedge, Nootka rose (*Rosa nutkana*), Himalayan blackberry, reed canarygrass, and creeping buttercup.. Wetland B does not have an outlet. The wetland is located 0.23 miles from the nearest waterway, an unnamed tributary to Clear Creek north of the review area. As documented in the delineation, Wetland B does not abut, is not separated by natural berm or bank, nor does Wetland B have a discrete conveyance connection to an (a)(1), (a)(2), or (a)(3) water. The wetland is not located within a floodplain. Wetland B does not have a continuous surface connection with Wetland C, an (a)(4) water of the U.S. Based on the above information, Wetland B does not have a

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continuous surface connection downstream to an (a)(1) through (a)(3) water and therefore, is not a water of the U.S.

Wetland D: Wetland D is an approximately 3,904 square foot Category III depressional, palustrine forested wetland with seasonal saturation and flooding hydroperiods. The wetland is located in the northwest portion of the review area and has mapped Kapowsin gravelly ashy loam, 0 to 6 percent slopes, a non-hydric soil with minor inclusions of Norma, Dupont, and McKenna soils. Vegetation observed within the wetland includes red alder, salmonberry, and slough sedge. Wetland D does not have an outlet. During a site visit, the Corps verified that the delineated boundaries are accurate and that Wetland D does not extend to the east. The nearest known waterbody is an unnamed tributary to Clear Creek located 0.2-miles north of the wetland. The wetland is not located within a floodplain. As documented in the delineation, Wetland D does not abut, is not separated by natural berm or bank, nor does Wetland D have a discrete conveyance connection to an (a)(1), (a)(2), or (a)(3) water. Wetland D does not have a continuous surface connection with Wetland C, an (a)(4) water of the U.S. Based on the above information, Wetland D 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 E: Wetland E is an approximately 202 square foot Category III depressional, palustrine forested/ scrub-shrub wetland with temporarily flooded, seasonally saturated and flooded hydroperiods. The wetland is located in the the northwest portion of the review area and has mapped Kapowsin gravelly ashy loam, 0 to 6 percent slopes, a non-hydric soil with minor inclusions of Norma, Dupont, and McKenna soils. Vegetation observed within the wetland includes Himalayan blackberry and creeping buttercup. Wetland E does not have an outlet. The nearest known waterbody is an unnamed tributary to Clear Creek and located 0.21-miles north of the wetland. The wetland is not located within a floodplain. As documented in the delineation, Wetland E does not abut, is not separated by natural berm or bank, nor does Wetland E have a discrete conveyance connection to an (a)(1), (a)(2), or (a)(3) water. Wetland B does not have a continuous surface connection with Wetland C, an (a)(4) water of the U.S. Based on the above information, Wetland E 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. 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.

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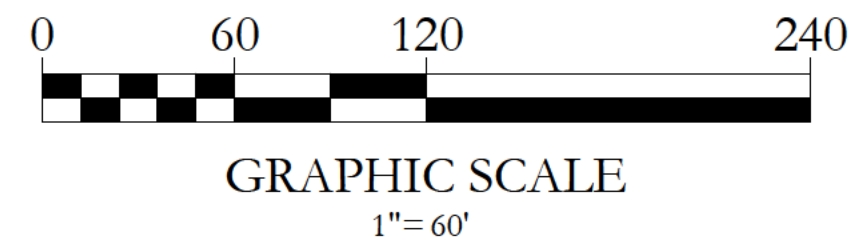
- a. Delineation report including photos, dated October 12, 2023, submitted on behalf of the applicant: Wetland and Fish and Wildlife Habitat Assessment Report, Dobler: Canyon Road, created by Soundview Consultants
- b. Flow path figure, dated July 29, 2024, submitted on behalf of the applicant: Drainage Inventory Overview
- c. U.S. Geological Survey topo viewer, accessed June 28, 2024, <https://ngmndb.usgs.gov/topoview/viewer/#4/39.98/-99.93>
- d. Washington Department of Fish and Wildlife Fish Passage Map webtool, accessed June 28, 2024, <https://geodataservices.wdfw.wa.gov/hp/fishpassage/index.html>
- e. Site visit conducted on July 18, 2024
- f. U.S. Fish and Wildlife Service National Wetlands Inventory, accessed on June 28, 2024, <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>
- g. Antecedent Precipitation created from the U.S. Army Corps of Engineers and U.S. Army Engineer Research and Development Center Antecedent Precipitation Tool Version 2.0 on the observation date March 30, 2022
- h. National Resources Conservation Service National Cooperative Soil Survey, accessed June 28, 2024, <https://apps.nationalmap.gov/viewer/>
- i. Statewide Washington Integrated Fish Distribution map, accessed September 18, 2024, <https://geo.wa.gov/datasets/wdfw::statewide-washington-integrated-fish-distribution/explore>
- j. Washington Department of Natural Resources, DNR Hydrography-Watercourses-Forest Practices web map, accessed September 18, 2024, <https://geo.wa.gov/datasets/wadnr::dnr-hydrography-watercourses-forest-practices-regulation/explore>
- k. Washington Department of Ecology, Freshwater DataStream map, accessed September 27, 2024, <https://apps.ecology.wa.gov/continuousflowandwq/>
- l. Pierce County, Public GIS Map, accessed November 20, 2024, <https://matterhornwab.co.pierce.wa.us/publicgis/>

10. OTHER SUPPORTING INFORMATION.

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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.



SOURCE:

[illegible]

CANYON ROAD
11809 & 11815 CANYON ROAD E
PUYALLUP, WASHINGTON 98373

PIERCE COUNTY
PARCEL NUMBERS:
0419076001, 0419076002,
0419076003, & 0419076007

DATE: 10/11/2022
JOB: 1245.0005
BY: MW/DS
SCALE: AS SHOWN
SHEET: 1