



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

9 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) ,<sup>1</sup> NWS-2024-482-WRD; MFR 1 of 1<sup>2</sup>

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>3</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>4</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>5</sup> the 2023 Rule as amended,

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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 CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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 1 is a water of the U.S.
  - ii. Wetland 2 is 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. 651 (2023)

3. REVIEW AREA. The review area is located on an approximately 6.78-acre property located near 9815 12<sup>th</sup> Avenue Southwest, Seattle, King County, Washington (47.515537 N latitude, -122.350113 W longitude). The review area consists of two wetlands, Wetlands 1 and 2, as depicted in the enclosed figure dated June 17, 2024. There is an additional offsite pond located south of the review area. Wetlands 1 and 2 and the offsite pond comprise the White Center Ponds, a regional stormwater facility operated by King County, and are identified as stormwater ponds by King County's stormwater conveyance system inventory. The White Center Ponds receives drainage from surrounding residential developments, as well as direct inputs from a City of Seattle sewer line. 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. Puget Sound is a traditional navigable water and is listed as a

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navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008<sup>6</sup>.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. During normal hydrologic conditions, hydrology within Wetland 1 discharges into Wetland 2 through a box culvert under an existing pedestrian walkway between the southern end of Wetland 1 and the northern end of Wetland 2. Based on King County's stormwater conveyance system inventory, the box culvert is 75 inches wide, 50 inches tall, and 20 feet in length. Hydrology within Wetland 2 discharges into an offsite pond to the south through a culvert under Southwest 100<sup>th</sup> Street located between the southern end of Wetland 2 and the northern end of the offsite pond. Based on King County's stormwater conveyance system inventory, the culvert is 24-inch diameter pipe that is 59 feet long. Hydrology within the offsite pond then flows into a subsurface stormwater conveyance network and discharges into Mallard Lake and then into three stormwater ponds identified by King County before discharging into Hicklin Lake (also referred to as Lake Hicks and Lake Garrett). Hicklin Lake has no natural drainage outlet and receive multiple inputs from surrounding development. During wetter than normal conditions, hydrology within the lake flows into a pump station through a subsurface stormwater system, and into a flow splitter near 12<sup>th</sup> Avenue Southwest. At the flow splitter, a majority of the flows are diverted into a 24-inch diameter concrete pipe known as the "Government Line", but some flows may be diverted to Salmon Creek. In either case, flows are eventually conveyed to the Puget Sound.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> N/A

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<sup>6</sup> 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.

<sup>7</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.

<sup>8</sup> 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.

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):

Wetlands 1 and 2 are a water of the U.S. and are reviewed as a single feature as described below.

The waters within the review area include Wetland 1 (0.81-acre) and Wetland 2 (1.97-acre). The hydroperiod of the Wetland 1 is seasonally flooded. The hydroperiods of Wetland 2 are permanently flooded, seasonally flooded, and saturated only. As previously discussed in Section 5 above, the wetlands are separated by an artificial barrier and connected via a culvert. Based on historic aerials, the wetlands may have formerly been a single unit that was later bisected by the pedestrian walkway, which is considered the artificial barrier that separates the two wetlands. A historic aerial dated 1969 depicts a contiguous forest canopy where the existing wetlands occur; however, the canopy appears to reduce over time and an aerial dated 2009 later shows the pedestrian walkway bisecting the two wetlands. As previously discussed in Section 5 above, the wetlands are hydrologically connected via a box culvert. The wetlands discharge into an offsite pond south of the review area via a culvert under Southwest 100<sup>th</sup>

Street. For Corps jurisdictional review, Wetlands 1 and 2 and are collectively referred to as “the wetlands”.

Based on historical aerial imagery and topographic maps, there was a historic tributary northwest of the review area in 1909; however, the offsite pond south of the review area is not a historic water that was impounded and was not a part of any historic tributary system. The offsite pond was constructed in uplands, is not a part of a historical tributary system based on historical aerials and historic topographic maps. Any impoundments of wetlands during those times would not be considered an impoundment of an (a)(4) as defined under the Amended 2023 Rule. Therefore, the offsite pond south of the review is not considered an (a)(2) impoundment. However, lakes and ponds can be considered tributaries where they are directly part of the tributary system—that is, where they are in-stream or “run of the stream”. Tributaries include natural, man-altered, or man-made water bodies that flow directly or indirectly into (a)(1) waters or (a)(2) impoundments. Based on a review of aerials, standing water is observed within the offsite pond south of the review area throughout the year. Therefore, the offsite ponds is considered a relatively permanent water. As described further below, the pond outlets via a pipe and contributes flows to the Puget Sound, an (a)(1) water. Therefore, as a relatively permanent water with a downstream connection to a traditional navigable water, the offsite pond south of the review area is considered an (a)(3) water. As previously discussed in Section 5 above, the wetlands are located at least 59 feet from the offsite pond (which is being considered an a(3) water) for the purposes of this AJD) via a 24-inch diameter, 59-foot long plastic culvert. This culvert provides an unimpaired, physical connection that satisfies the continuous surface connection between the wetlands and the offsite pond.

Per the Strahler procedure, the offsite pond is considered a first order reach. The upstream limit of the reach is the northern end of the offsite pond, and the downstream limit of the reach is the northern end of Mallard Lake, which receives at least four (4) stormwater inputs and is considered a change in reach per the Strahler procedure. Based on King County’s stormwater conveyance system inventory, the total length of the reach is at least 1,313 linear feet and consists of the offsite pond (at least 602 feet in length) and at least 711 linear feet of pipes which convey flows from the White Center Ponds (i.e. the wetlands and the offsite pond south of the review area) and adjacent stormwater conveyance pipes to Mallard Lake. The 711 linear feet of pipes, connected via three (3) catch basins, is considered a discontinuity in Ordinary High Water Mark. As such, this piped section of the reach at the farthest downstream point of the entire reach is not considered representative of the reach as a whole. The flow regime of the

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offsite pond is considered representative of the reach as a whole. As previously noted, the offsite ponded is considered a relatively permanent water.

A historic aerial dated 1969 and a historic topographic map dated 1894 identify Mallard Lake and Hicklin Lake, respectively, and there are no tributaries identified within close proximity of either lake. As noted above, any impoundments of wetlands during those times would not be considered an impoundment of an (a)(4) as defined under the Amended 2023 Rule. Therefore, the lakes are also not considered (a)(2) impoundments. However, lakes and ponds can be considered tributaries where they are directly part of the tributary system. Based on a review of aeriels, standing water is observed within the lakes. Therefore, Mallard Lake and Hicklin Lake are also considered relatively permanent waters. As described further below, both Mallard Lake and Hicklin Lake outlet via pipes and contributes flows to the Puget Sound, an (a)(1) water. Based on a water quality assessment dated May 16, 2023, the White Center Ponds (i.e. the wetlands and the offsite pond south of the review area) provide a year-round source of water to Mallard Lake. Based on King County's stormwater conveyance system inventory, as described above, there are at least four (4) stormwater inputs discharging into Mallard Lake, excluding the flows received from the wetlands and the offsite pond. The level of Mallard Lake is controlled by an overflow structure which conveys flows through pipe to a stormwater pond (referred to as "first stormwater pond" below), through a ditch (referred to as "subsequent ditch" or "first ditch" below) and culvert, to a second stormwater pond, through a second culvert, to a third stormwater pond, and through either a pipe to Hicklin Lake or a biofiltration swale, culvert, and then grass lined ditch to Hicklin Lake. The pipe between Mallard Lake and the first stormwater pond receives flows from at least nine (9) stormwater inputs, excluding the flows discharged from Mallard Lake. These nine (9) stormwater laterals include includes stormwater runoff from Southwest 106<sup>th</sup> Street, 11<sup>th</sup> Avenue Southwest, and Southwest 108<sup>th</sup> Street. The wetlands are located at least 813 feet or 0.15-mile from Mallard Lake and at least 2,602 feet or 0.49-mile from the first ditch.

Based on the *Lakewood Park (Lake Hicks - Pump Station) Design Report* submitted on behalf of the applicant, dated July 2023, Hicklin Lake does not have a natural outlet. Based on King County's stormwater conveyance system inventory, there are at least four (4) stormwater inputs discharging into Hicklin Lake, excluding the flows received from Mallard Lake via the stormwater ponds, ditches, and biofiltration swale. As discussed in Section 5 above, due to stormwater overflows during wetter than normal conditions, the pump system within Hicklin Lake pumps water, approximately 10-12 times a year during high-flow events, from a pipe resting at the lake's bottom to a flow splitter at the headwaters of Salmon Creek. The distance between Hicklin Lake and the flow

splitter is at least 3,764 linear feet or 0.71-mile. Some flows at the flow splitter may be diverted to Salmon Creek, which also outlets to Puget Sound, so the distance from Hicklin Lake to Salmon Creek is the same 0.71-mile. However, the majority of the flows at the flow splitter are diverted into a 24-inch diameter concrete pipe known as the “Government Line”, which is at least 4,551 linear feet or 0.86-mile from the outfall to Puget Sound. Therefore, the distance from Hicklin Lake to Puget Sound is at least 8,315 linear feet or 1.57 miles. The wetlands are located at least 4,291 linear feet or 0.81-mile from Hicklin Lake. The wetlands are located at least 6,366 linear feet or 1.21 miles from the flow splitter/Salmon Creek and 12,017 linear feet or 2.28 miles from Puget Sound.

The soil within the review area is mapped Urban land-Alderwood complex, 5 to 12 percent slopes and Urban land-Alderwood complex, 12 to 35 percent slopes. The Alderwood soil series is 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 wetlands are not located within a floodplain.

Based on the above information, the 59-foot long culvert between Wetland 2 and the offsite pond provides an unimpaired, physical connection that satisfies the continuous surface connection between Wetlands 1 and 2 and the offsite pond. The offsite pond is outside of the review area but is considered an (a)(3) water that is relatively permanent with a downstream connection to a traditional navigable water. As such, Wetland 1 and Wetland 2 have a continuous surface connection downstream to an (a)(3) water. Therefore, Wetland 1 and Wetland 2 are waters 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).<sup>9</sup> 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

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

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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. Delineation report including photos, dated August 11, 2021, submitted on behalf of the applicant: Wetland Delineation Report White Center Pond Retrofit Project Seattle, Washington
- b. Cover letter received June 17, 2024
- c. Hydrology flow diagrams received June 17, 2024
- d. City of Burien GIS webviewer accessed August 6, 2024:  
<https://ogtx.burienwa.gov/ExternalViewer/index.html?viewer=Stormwater>
- e. King County iMap webviewer accessed October 21, 2024:  
<https://gismaps.kingcounty.gov/iMap/>
- f. U.S. Geological Survey topo viewer accessed June 21, 2024:  
<https://ngmdb.usgs.gov/topoview/viewer/#4/40.01/-100.06>
- g. U.S. Geological Survey hydrography dataset accessed August 7, 2024:  
<https://apps.nationalmap.gov/viewer/>
- h. Historic aerials received August 12, 2024
- i. Google Streets View accessed August 5, 2024
- j. Technical memorandum entitled, "Hicklin Lake Water Quality Assessment and Loading Study Results," dated May 16, 2023

10. OTHER SUPPORTING INFORMATION.

The evaluation of Wetlands 1 and 2 as a single unit is consistent with the joint case-specific policy memorandum for LRB-2021-01386. In addition, the determination for the continuous surface connection maintained via a culvert between the wetlands and the offsite pond south of the review area is consistent with the case-specific policy memoranda for NAP-2023-01223 and SWG-2023-00284. The adaptation of



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the Strahler procedure to determine flow characteristics of a reach is consistent with the 2023 Rule preamble at 88 FR 3086.

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.

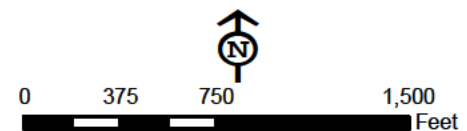


### Legend

- Study Area
- City Boundary
- Parks  
(King County 2020)
- Waterbody  
(King County 2020)



Figure 1. Vicinity and Study Area Map for the White Center Pond Retrofit Project.





**Legend**

- Test Pits
- Culvert
- Study Area
- Delineated Wetlands
- Contour 5ft (King County 2021)

**Figure 4. Wetlands Delineated in the Study Area for the White Center Pond Retrofit Project.**

