



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

25 June 2025

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-2022-771²

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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2022-771

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. Stone Detention Pond, non-jurisdictional
 - ii. Ditch 1, 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. 651, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 1.5 acre review area is located in Seattle, King County, Washington (47.716298, -122.342012). The review area includes a pedestrian trail and a stormwater management facility (stone detention pond, flow control structure, overflow ditch and a series of catch-basins). The area is partially vegetated with a small cluster of trees as well as shrub and emergent vegetation, dominated by primary invaders and noxious weeds. Topography is generally flat. The review area is surrounded by a mixture of low and high-density residential development and commercial development. No AJDs have been completed for the review area.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Portage Bay, approximately 5 miles downstream and 4.5 miles southeast of the review area. Portage Bay is a part of Lake Union which is listed as

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2022-771

a navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Ditch 1 and Stone Detention Pond drain to a flow control structure that outlets to underground stormwater infrastructure. These stormwater pipes drain south approximately 2.2 miles to Green Lake. Green Lake outlets to a concrete pipe that drains to underground stormwater infrastructure that flows southeast approximately 2.8 miles to Portage Bay, a part of Lake Union.
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.

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.

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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2022-771

- 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 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).

Ditch 1: Ditch 1 flows south approximately 100 feet in the northern portion of the review area. Ditch 1 flows into a flow control structure located in the Stone Detention Pond. Section 5 above provides a detailed description of downstream flow path. Surface water is not visible within Ditch 1 in any Google Earth aerial imagery. Ditch 1 does not have a defined bed and bank. Ditch 1 does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Ditch 1 does connect downstream to an (a)(1) water, but it does not meet the relatively permanent standard and is therefore not a water of the US.

⁹ 88 FR 3004 (January 18, 2023)

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2022-771

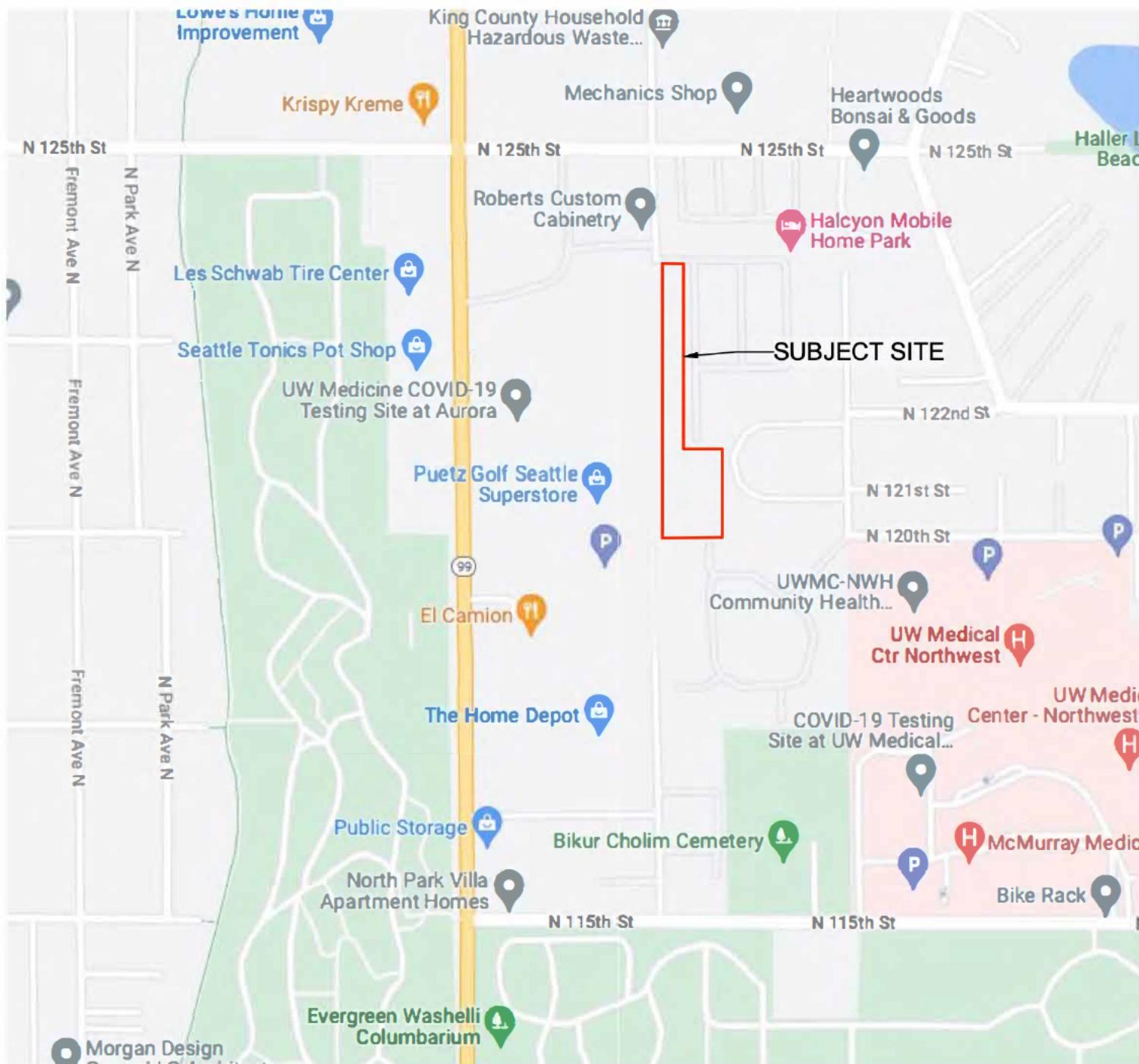
Stone Detention Pond: Stone Detention Pond is a 2.5 acre constructed stormwater facility. Hydrophytic vegetation and hydric soils have not been observed in the pond; therefore, the pond is not a wetland. Surface water is not visible within the pond in any Google Earth aerial imagery. No ordinary high water mark indicators are visible in the pond in site photographs. The pond does not experience flowing or standing water continuously during certain times of the year that is more than only a short duration in direct response to precipitation. The Corps has determined that Stone Detention Pond does connect downstream to an (a)(1) water, but it does not meet the relatively permanent standard. Stone Detention Pond does not meet the definition of an (a)(3) water or (a)(5) water and is therefore not a water of the US.

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. Determination Report for Pulte Group – 2 Degrees. Wetland Resources, Inc. 30 September 2022.
 - b. Google Earth Aerial Imagery. Accessed 4 June 2025 at <https://earth.google.com/web/search/11762+Aurora+Avenue+North,+Seattle,+WA/@47.71639372,-122.34256582,110.0414055a,272.91444779d,35y,0h,0t,0r/data=Cj4iJgokCc3bE7yj3EdAEeaXFj6W2kdAGfjW7559IF7AITPhzGZW117AKhAIARIKMjAyNC0wNC0zMBgBQgIIAUICCBABKDQj8BEAA>
 - c. Washington LiDAR Portal. Accessed on 4 June 2025 at: <https://lidarportal.dnr.wa.gov/>
 - d. Seattle Water and Sewer Research Map. Accessed on 4 June 2025 at: <https://experience.arcgis.com/experience/95749d0993164eefa99300182e99bd43>

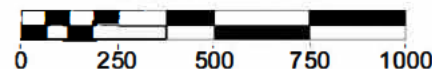
10. OTHER SUPPORTING INFORMATION. N/A

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.

FIGURE 1: REGIONAL VICINITY MAP
2 DEGREES
PORTION OF SECTION 30, TOWNSHIP 26N, RANGE 4E, W.M.



Scale 1" = 500'



Corps Reference # NWS-2022-771



Date: 5/5/2025

Sheet 1/4

Address: 11762 Aurora Ave N, Seattle, WA 98133

Parcel #s: 3026049100

Lat/Long: 47.716298° N, -122.342012° W

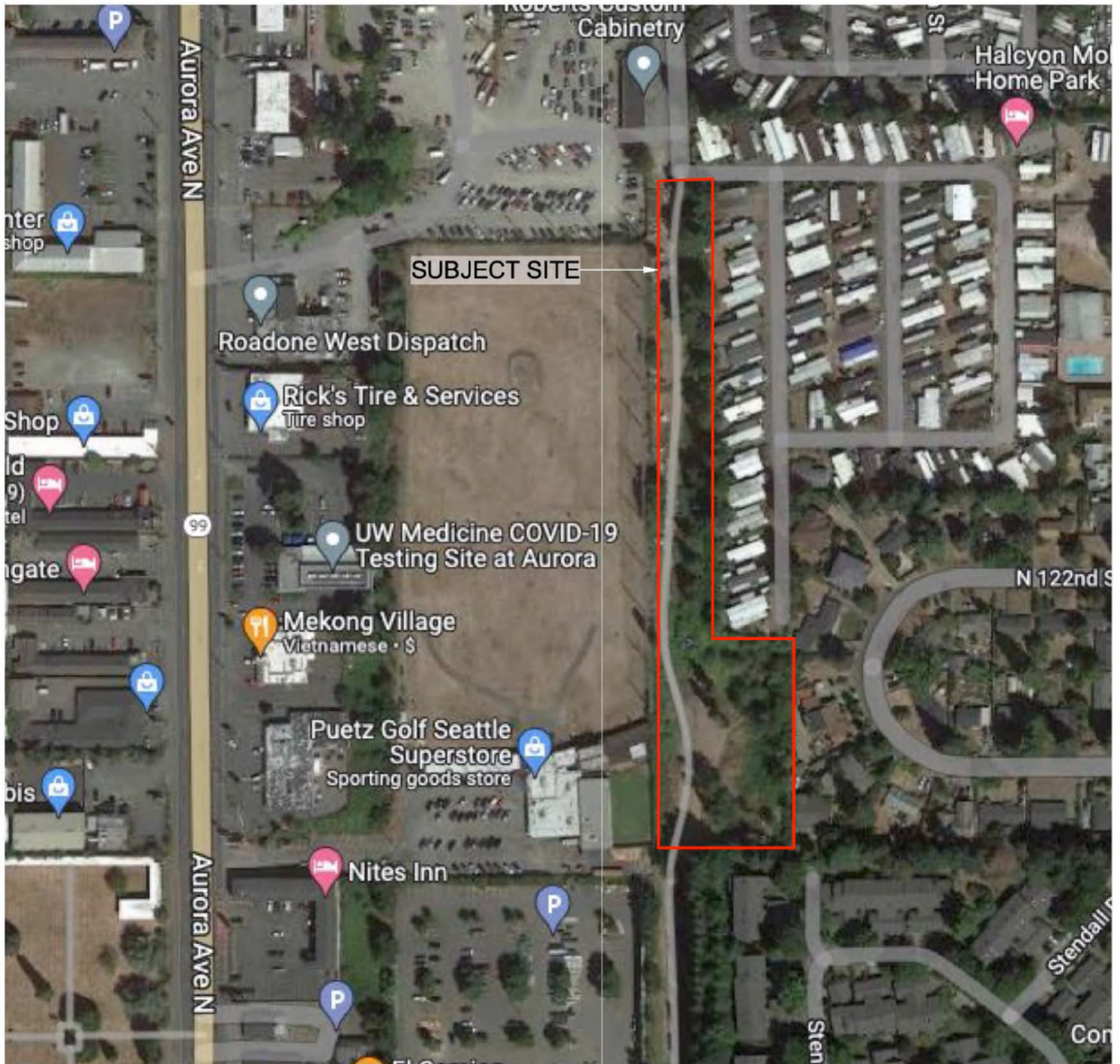
WRIA: 8 - Cedar - Sammamish

City: Seattle

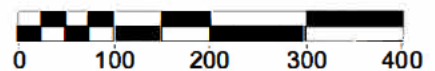
County: King

State: Washington

FIGURE 2: LOCAL VICINITY MAP
2 DEGREES
PORTION OF SECTION 30, TOWNSHIP 26N, RANGE 4E, W.M.



Scale 1" = 200'



Corps Reference # NWS-2022-771



Date: 5/5/2025

Sheet 2/4

Address: 11762 Aurora Ave N, Seattle, WA 98133

Parcel #s: 3026049100

Lat/Long: 47.716298° N, -122.342012° W

WRIA: 8 - Cedar - Sammamish

City: Seattle

County: King

State: Washington

FIGURE 9: SCHEMATIC MAP - AERIAL
2 DEGREES
PORTION OF SECTION 30, TOWNSHIP 26N, RANGE 4E, W.M.



Corps Reference # NWS-2022-771



Date: 5/05/2025

Sheet 3/4

Address: 11762 Aurora Ave N, Seattle, WA 98133

Parcel #s: 3026049100

Lat/Long: 47.716298° N, -122.342012° W

WRIA: 8 - Cedar - Sammamish

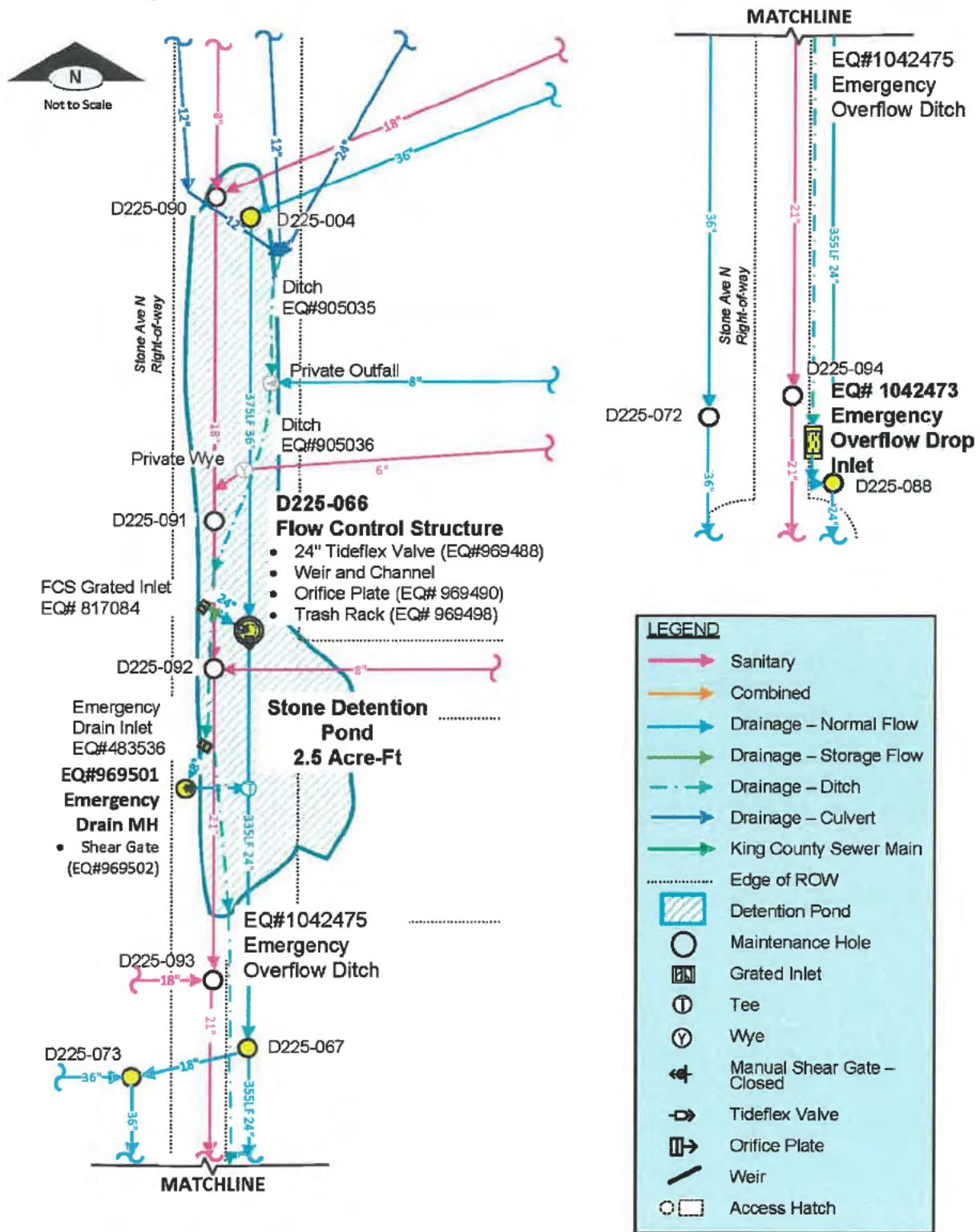
City: Seattle

County: King

State: Washington

FIGURE 8: FACILITY SCHEMATIC
2 DEGREES
PORTION OF SECTION 30, TOWNSHIP 26N, RANGE 4E, W.M.

2. Facility Schematic



*FACILITY SCHEMATIC RETRIEVED FROM FACILITY OPERATIONS PLAN, STONE POND, CITY OF SEATTLE

Corps Reference # NWS-2022-771



Date: 5/5/2025

Sheet 4/4

Address: 11762 Aurora Ave N, Seattle, WA 98133

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