



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

April 9, 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-2024-139

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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-139

- 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)
- d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)

3. REVIEW AREA. The 0.57-acre parcel is located at 1428 183rd Street SE in unincorporated Snohomish County, Washington (47.83153, -122.21260). The review area consists of a duplex and forested area. The review area is bounded by 183rd Street SE to the north, undeveloped right of way to the east, and single-family residences with forested areas to the south and west.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Sammamish River located approximately 6.15 miles to the south. The Sammamish River is 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. There is no flow path from the

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.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2024-139

subject aquatic resources or review area to a TNW, the territorial seas, or interstate water. The closest known tributary is an unnamed tributary to Silver Creek, located approximately 0.37 miles east of the review area. Silver Creek flows 5.06 miles to the Sammamish River.

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

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.

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).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 1,844 square feet palustrine forested wetland. Hydrology in Wetland A is provided primarily by direct precipitation and run off from surrounding uplands. Wetland vegetation consists of black cottonwood (*Populus balsamifera*; FAC), red alder (*Alnus rubra*; FAC), Pacific willow (*Salix lasiandra*; FACW), hardhack (*Spiraea douglasii*; FACW), lady fern (*Athyrium filix-femina*, FAC), and Himalayan blackberry (*Rubus armeniacus*, FAC). The NRCS Soil Survey of Snohomish County, Washington identifies Alderwood gravelly sandy loam, 0 to 8 percent slopes, within Wetland A. This soil map unit is described as moderately well drained. Wetland A is not located within a mapped floodplain and does not have an outlet. On March 19, 2025, the Corps conducted a site visit to confirm delineation boundaries and locate a possible subsurface inlet pipe mapped by Snohomish County. No culvert inlet or outlet was observed within the wetland. No outlet from Wetland A was observed. Wetland A does not abut an (a)(1), (a)(2), or (a)(3) water. Therefore, Wetland A does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water and 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.

⁸ 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-2024-139

- a. National Regulatory Viewer Lidar Dataset accessed September 5, 2024: Northwestern Division Regulatory Viewers (army.mil)
- b. National Regulatory Viewer National Hydrography Dataset accessed September 5 2024: Northwestern Division Regulatory Viewers (army.mil)
- c. USFWS National Wetland Index accessed September 5, 2024: National Wetlands Inventory (usgs.gov)
- d. Snohomish County Critical Areas Map accessed September 5, 2024: PDS Map Portal (snoco.org)
- e. WDFW Habitat and Species Map accessed September 5, 2024: PHS on the Web (wa.gov)
- f. WDFW SalmonScape Map accessed September 5, 2024: WDFW SalmonScape (wa.gov)
- g. Snohomish County Drainage Inventory Map accessed September 5, 2024: SWM DI Webmap (snoco.org)
- h. Site visit on 19 March 2025

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
 1428 183RD STREET SE
 PORTION OF SECTION 18, TOWNSHIP 27N, RANGE 05 E, W.M.

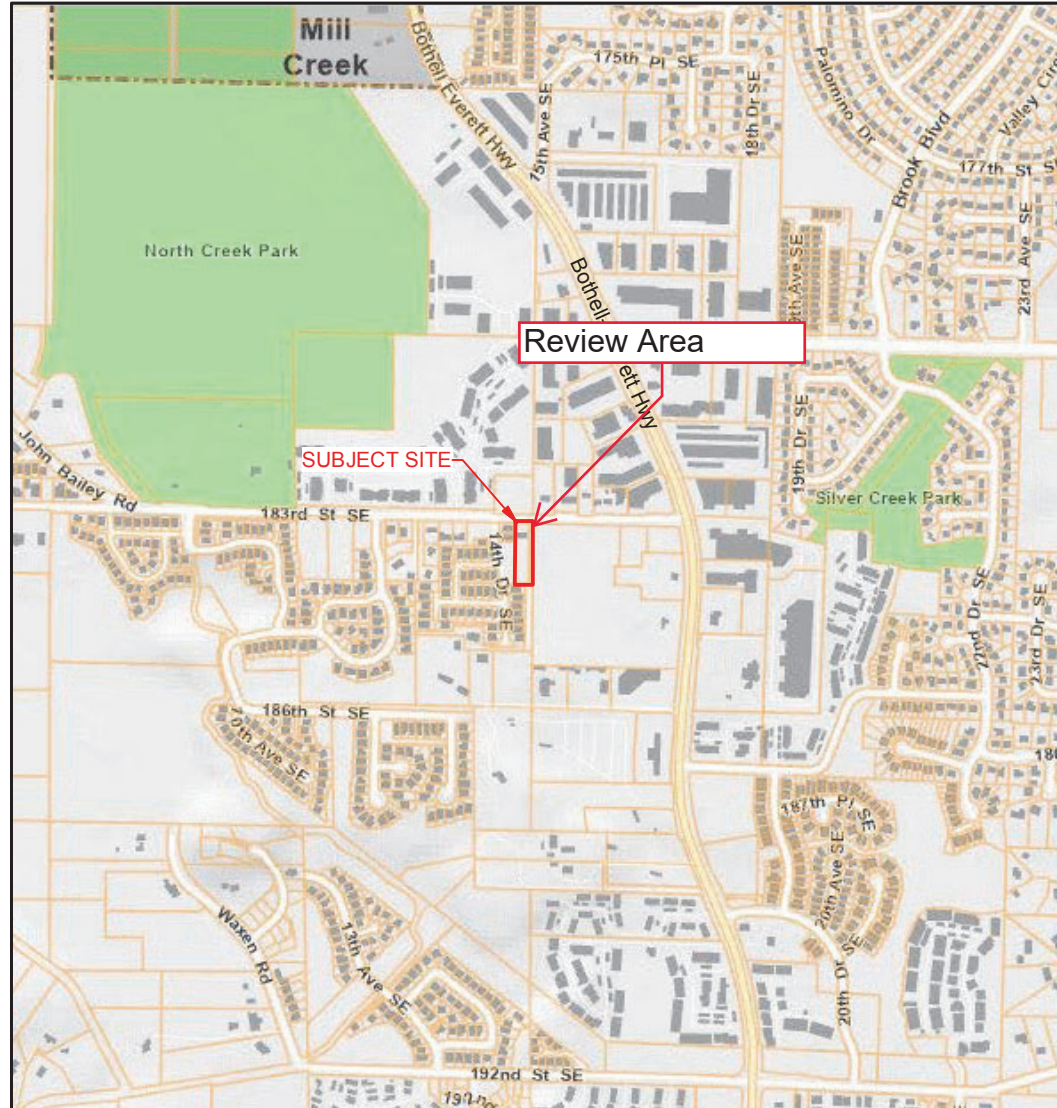


Image source: Snohomish County

Corps Reference #

Applicant:

Tye Atwood
 7125 Antelope Drive
 Argyle, TX 76226

Date: January 30, 2024

Sheet 1/9

Address: 1428 183rd Street SE
 Bothell, WA 98012

Parcel No.: 27051800108200,
 27051800107300

Lat/Long: 47.831530°N, -122.212600°W

WRIA: 8 - Cedar-Sammamish

City: Bothell (unincorporated)

County: Snohomish

State: Washington



Scale 1" = 1,000'



FIGURE 2: LOCAL VICINITY MAP
1428 183RD STREET SE
PORTION OF SECTION 18, TOWNSHIP 27N, RANGE 05 E, W.M.



Image source: Snohomish County

Corps Reference #

Applicant:

Tye Atwood
7125 Antelope Drive
Argyle, TX 76226

Date: January 30, 2024

Sheet 2/9

Address: 1428 183rd Street SE
Bothell, WA 98012

Parcel No.: 27051800108200,
27051800107300
Lat/Long: 47.831530°N, -122.212600°W

WRIA: 8 - Cedar-Sammamish

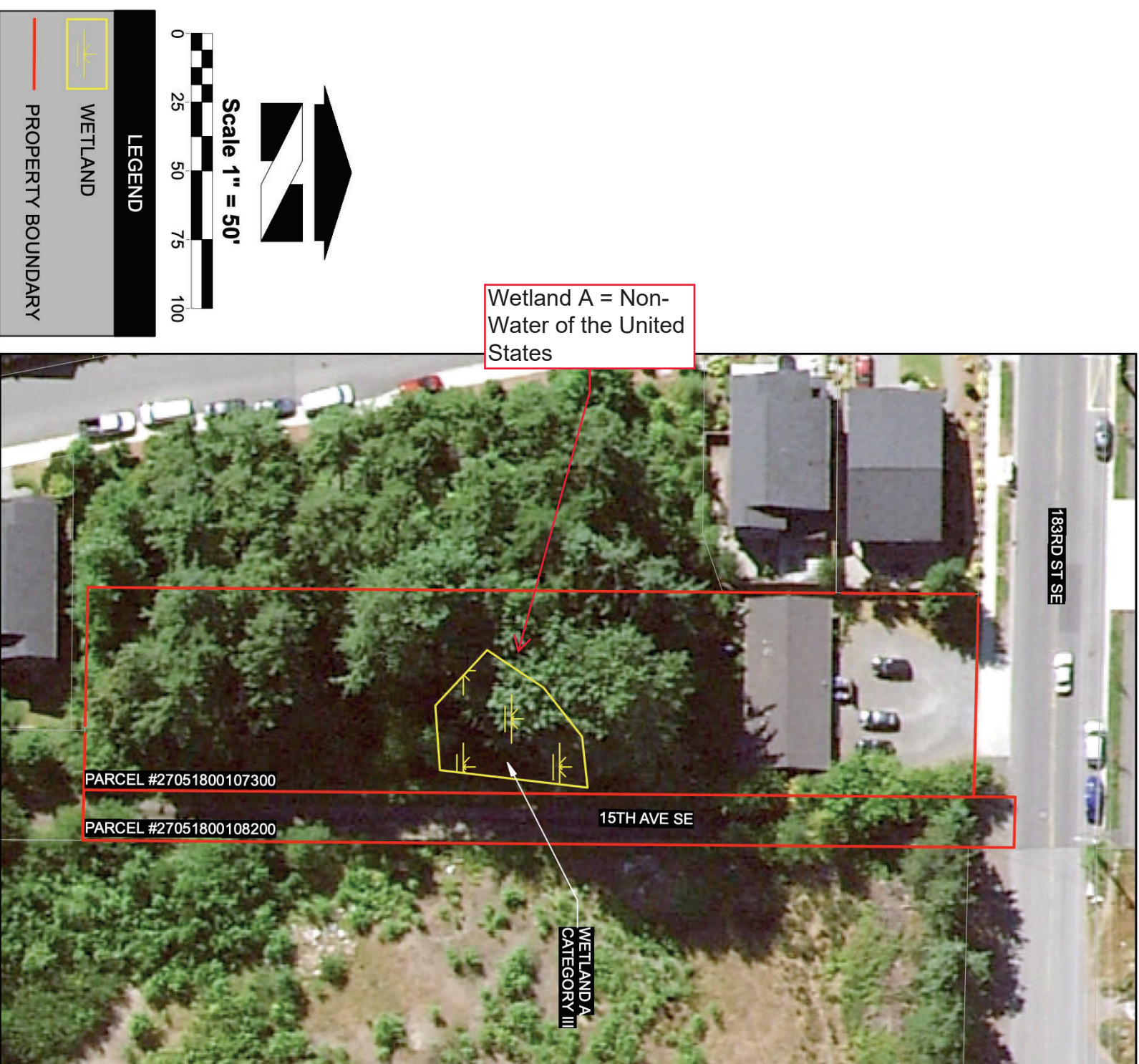
City: Bothell (unincorporated)

County: Snohomish

State: Washington



FIGURE 3: WETLAND DETERMINATION MAP
 1428 183RD STREET SE
 PORTION OF SECTION 18, TOWNSHIP 27N, RANGE 05 E, W.M.



Corps Reference #

Applicant:
 Tye Atwood
 7125 Antelope Drive
 Argyle, TX 76226

Date: January 30, 2024

Sheet 3/13

Address: 1428 183rd Street SE
 Bothell, WA 98012

Parcel No.: 27051800108200,
 27051800107300

Lat/Long: 47.831530°N, -122.212600°W

WRIA: 8 - Cedar-Sammamish

City: Bothell (unincorporated)

County: Snohomish

State: Washington