



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

28 March 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-2024-482-WRD²

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 1 is not 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, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area is located on an approximately 6.78-acre property located near 9815 12th Avenue Southwest, Seattle, King County, Washington (47.515537 N latitude, -122.350113 W longitude). The review area consists of one wetland, Wetland 1, bisected by a pedestrian walkway, as depicted in the enclosed figure dated June 17, 2024. There is an additional offsite pond, Pond 1, located south of the review area. Wetland 1 and the offsite pond comprise the White Center Ponds, a regional stormwater facility operated by King County; Wetland 1 and Pond 1 are all 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, approximately 2.1 miles west of the site, is listed as a

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navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. During normal hydrologic conditions, water within the northern portion of Wetland 1 discharges south into the southern portion of Wetland 1 through a box culvert under an existing pedestrian walkway. Based on King County's stormwater conveyance system inventory, the box culvert is 75 inches wide, 50 inches tall, and 20 feet in length. Water within the southern portion of Wetland 1 discharges south into Pond 1 to the south through a culvert under Southwest 100th Street. Based on King County's stormwater conveyance system inventory, the 24-inch diameter culvert is 59 feet long. Water within Pond 1 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, water within the lake flows into a pump station through a subsurface stormwater system, and into a flow splitter near 12th 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 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

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.

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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): 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.,

⁹ 88 FR 3004 (January 18, 2023)

tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetland 1: Wetland 1 is an approximately 2.78 acre palustrine forested and scrub shrub wetland. Portions of Wetland 1 are permanently flooded, seasonally flooded, and saturated only. Wetland 1 is bisected by a pedestrian walkway. For purposes of determining whether a wetland is “adjacent”, artificial structures do not divide a wetland if hydrologic connection is maintained between the divided portions of a wetland. Rather, the wetland is treated as one wetland. Based on historic aerials, the wetlands may have formerly been a single unit that was later bisected by the pedestrian walkway. 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. A culvert under the pedestrian walkway provides a hydrologic connection between the two portions of the wetland. The Corps is evaluating the wetlands as one wetland due to the wetlands maintaining a hydrologic connection through the culvert under the walkway.

As described in Section 5 above, water flows south from Wetland 1, through a 59-foot long, 24-inch diameter culvert, and into Pond 1. Pond 1 is an artificial stormwater pond and settling basin that was constructed in uplands sometime between 1943 and 1969. According to the King County Department of Natural Resources, a drainage ditch was constructed through the review area and the Pond 1 area in 1943 during construction of adjacent residential development to the east. Historic aerial imagery from 1943 and 1944 indicates that Pond 1 was excavated from densely forested upland. A survey map from the Bureau of Land Management dated 10 November 1862 does not depict any aquatic resources within the area where Pond 1 would be constructed. Survey maps from the United States Geologic Service (USGS) dated 1894, 1895, 1897, 1908, and 1909 depict a historic tributary, Longfellow Creek, located northwest of the area where Pond 1 would be constructed; these maps do not depict any aquatic resources within the area where Pond 1 would be constructed. No aquatic resources are shown within the area where Pond 1 would be constructed in USGS maps from 1949, 1958, 1962, 1975, and 1983; Longfellow Creek is no longer depicted by USGS on any maps on or after 1949.

Pond 1 collects stormwater runoff and allows heavier sediment particles to settle to the bottom of the pond due to reduced water velocity, effectively removing pollutants from the water before it is released downstream and functioning as a settling basin for stormwater runoff. The design of a stormwater pond creates a calm area where sediment and debris can settle out of the water, accumulating at

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the bottom of the pond. Pond 1 is an excluded feature under 33 CFR 328.3 (b)(5) as it is an artificial pond in dry land used for a settling basin. Pond 1 is not a water of the United States.

As described in Section 5 above, water flows approximately 602 feet south through Pond 1 and then drains south from Pond 1 into stormwater infrastructure; this infrastructure drains south approximately 711 feet to Mallard Lake. Water drains from Mallard Lake through stormwater infrastructure that flows approximately 0.5 miles to Hicklin Lake. Hicklin Lake drains to stormwater infrastructure that flows to Salmon Creek and the government line; both Salmon Creek and the government line discharge to Puget Sound approximately 1.4 miles southwest of Hicklin Lake.

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. Tributaries that have been channelized in concrete or otherwise have been modified would also still be tributaries so long as they contribute flow to a traditional navigable water, the territorial seas, or an interstate water, but so long as they are not excluded under 33 CFR 328.3(b). Pond 1 is considered excluded under 33 CFR 328.3(b)(5) and as such is not part of a tributary and is not considered an (a)(3) water. Therefore, per the Strahler procedure, Mallard Lake is considered the first order reach, of this tributary system. The upstream limit of the reach is the northern end of Mallard Lake. Based on King County’s stormwater conveyance system inventory, Wetland 1 is at least 1,372 linear feet from Mallard Lake. This distance consists of the culvert between Wetland 1 and Pond 1 (59 feet in length), Pond 1 itself (at least 602 feet in length), and at least 711 linear feet of pipes which convey flows from Pond 1 to Mallard Lake. Additionally, stormwater from the Steve Cox Memorial Park and other adjacent development is routed to the stormwater pipes Wetland 1 and Mallard Lake. The physical distance of 1,372 linear feet between Wetland 1 and a downstream potential water of the U.S. (Mallard Lake) is not sufficient to meet the continuous surface connection requirement. Therefore, Wetland 1 does not have a continuous surface connection downstream to an (a)(1), (a)(2), or (a)(3) water.

Based on the above information, Pond 1 is outside of the review area but is considered an excluded feature under 33 CFR 328.3(b)(5). Therefore, Wetland 1 is located at least 1,372 linear feet from the nearest potential water of the U.S. (Mallard Lake), which is insufficient to meet the continuous surface connection requirement. As such, Wetland 1 is not adjacent to, does not abut and does not

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have a continuous surface connection downstream to an (a)(1), (a)(2), or (a)(3) water. Therefore, Wetland 1 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.
- 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
 - k. Bureau of Land Management 1862 survey map, accessed 27 February 2025
 - l. Phase I Municipal Stormwater Permit issued 1 July 2024
 - m. Record drawings of King County White Center Drainage Improvements, dated August 1981
 - n. White Center Regional Pond Retrofit Pre-Design Report, dated October 2007

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- o. White Center Cell 1 Regional Stormwater Pond Retrofit and Wetland Enhancement Design Report, dated 20 May 2010
- p. King County Determination of Non-Significance for White Center Greenway Regional Detention (R/D) Pond Cell 1 Retrofit-Phase 2, dated 4 February 2011
- q. White Center Pond Retrofit Write Up, dated 4 March 2025

10. OTHER SUPPORTING INFORMATION.

The evaluation the wetlands as a single unit (Wetland 1) 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 joint case-specific policy memoranda for NAP-2023-01223 and SWG-2023-00284. The adaptation of the Strahler procedure to determine flow characteristics of a reach is consistent with the 2023 Rule preamble at 88 FR 3086. The determination that Wetland 1 is not eligible for exclusions listed under 33 CFR 328.3(b)(1) or (6) is consistent with the joint case-specific policy memorandum for NWS-2023-923. The determination that the offsite pond (an excluded feature) is not part of a tributary is consistent with the 2023 Rule preamble at 88 FR 3086. The determination that physical distance between Wetland 1 and a potential water of the U.S. is not sufficient to meet the continuous surface connection requirement is consistent with the joint case-specific policy memorandum NWK-2024-392.

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.

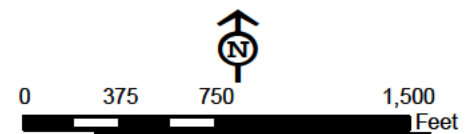


Legend

- 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.



King County Aerial (2019)

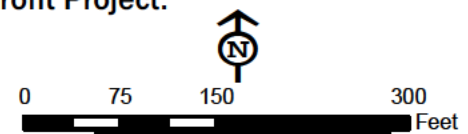
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Legend

- 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.



King County Aerial (2019)

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