

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

08 April 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-2025-34²

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, non-jurisdictional
 - ii. Wetland 2, non-jurisdictional
 - iii. Wetland 3, non-jurisdictional
 - iv. Ditch A, non-jurisdictional
 - v. Ditch B, non-jurisdictional
 - vi. Ditch C, non-jurisdictional
 - vii. Stormwater Feature 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)
 - 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 approximately 30-acre review area is located at Tacoma, Pierce County, Washington (47.272521, -122.394635). The western half of the review area is currently developed and occupied by a variety of commercial uses.

The eastern half of the review area is currently undeveloped but has been modified by historic fills associated with dredge material disposal and, more recently, clearing, grading, and vegetation and soils management for invasive species control. There is a constructed stormwater facility (Stormwater Feature 1) in the western portion of the review area. Three wetlands and three ditches were identified in the eastern portion of the review area. The review area is bounded by Alexander Avenue East to the south, East 11th Street to the north, Taylor Way to the north, and industrial development to the east.

- 4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Hylebos Waterway, approximately 960 feet northeast of the review area, and the Blair Waterway, approximately 780 feet southwest of the review area. The Hylebos and Blair Waterways are a part of the Puget Sound which is listed on the Navigable Waters of the United States in Washington State dated December 31, 2008.⁶
- 5. FLOW PATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There are multiple flow paths from aquatic resources within the review area to a TNW as described below:

Flow path 1: Water drains from Stormwater Feature 1 into a catch basin in the western portion of the feature. This catch basin outlets to underground stormwater infrastructure that drains approximately 1,000 feet northeast and outlets into the Hylebos Waterway.

Flow path 2: Water in Ditch C drains to underground stormwater infrastructure that drains approximately 2,400 feet southeast along Taylor Way and then approximately 950 feet northeast along Lincoln Avenue before draining to the Hylebos Waterway.

Flow path 3: Wetland 2 drains into a catch basin located just west of a substation along Alexander Avenue. This catch basin drains to underground stormwater infrastructure that drains approximately 1,900 feet southeast along East Alexander Avenue and then southwest approximately 750 feet before draining to the Blair Waterway.

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.

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- 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.
 - 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

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.

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

Stormwater Feature 1: Stormwater Feature 1 is a 1.6-acre east-west trending feature located in the central portion of the review area. Most of the water in the feature discharges to a catch basin on its western end; the catch basin outfalls to the Hylebos Waterway to the north. The feature is located along the southern boundary of the former PQ Corporation silicate manufacturing facility, which was developed from a former tide flat in 1941 and remained in operation until 2009. The feature was excavated from the created uplands (being constructed after former tide flat was filled) and is first visible in aerial photos from 1946. It was constructed for the purpose of collecting and conveying stormwater from the paved operational areas of the PQ Corporation facility. Soil in the feature is contaminated by petroleum hydrocarbons, polycyclic aromatic hydrocarbons, and metals at concentrations above the proposed cleanup levels established for the site.

Stormwater Feature 1 currently receives stormwater generated from the adjacent undeveloped areas and industrial development. The feature is densely vegetated with cattails (*Typa sp.*). The stormwater feature 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 ponded portion of the feature creates a calm area where sediment and debris can settle out of the water, accumulating at the bottom of the pond. The stormwater feature 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." The stormwater feature not a water of the United States.

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).

⁹ 88 FR 3004 (January 18, 2023)

Ditch A: Ditch A flows approximately 400 feet south through the central portion of the review area and drains into Stormwater Feature 1. Ditch A is densely vegetated with Himalayan Blackberry (*Rubus armeniacus*) and mixed herbaceous species. Ditch A does not have a defined bed and bank; no indicators of ordinary high water or relatively permanent flow were observed in Ditch A during a site visit on 10 October 2024. Ditch A 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 A does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch B: Ditch B flows approximately 280 feet northeast through the central portion of the review area and drains into Stormwater Feature 1. Ditch B is vegetated with Himalayan blackberry and mixed grasses. Ditch B does not have a defined bed and bank; no indicators of ordinary high water or relatively permanent flow were observed in Ditch B during a site visit on 10 October 2024. Ditch B 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 B does not meet the relatively permanent standard and is therefore not a water of the U.S.

Ditch C: Ditch C flows approximately 37 feet east along the northeast corner of the review area and drains into stormwater infrastructure as described in Section 5 above. Ditch C is vegetated with Himalayan blackberry and mixed grasses. Ditch C does not have a defined bed and bank; no indicators of ordinary high water or relatively permanent flow were observed in Ditch C during a site visit on 10 October 2024. Ditch C 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 C does not meet the relatively permanent standard and is therefore not a water of the U.S.

Wetland 1: Wetland 1 is a 0.234-acre palustrine emergent wetland in the northern portion of the review area. Wetland 1 is immediately adjacent to Ditch A which is not a Water of the U.S. as described above. Ditch A drains to Stormwater Feature 1 and underground stormwater infrastructure which outlets to the Hylebos Waterway. Subsurface flow through the underground stormwater system does not qualify as a continuous surface connection from Wetland 1 to the Hylebos Waterway. Wetland 1 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 1 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 2: Wetland 2 is a 5.88-acre palustrine emergent wetland in the eastern portion of the review area. Wetland 2 is immediately adjacent to Ditch C, which is not a Water of the U.S. as described above. Ditch C drains to stormwater infrastructure that outlets to the Hylebos Waterway. Wetland 2 also drains south to a catch basin located just west of a substation along Alexander Avenue. This catch basin drains to the storm system within Alexander Avenue before discharging to the Blair Waterway at approximately Lincoln Avenue. Subsurface flow through the underground stormwater system does not qualify as a continuous surface connection from Wetland 2 to Hylebos or Blair Waterways. Wetland 2 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 2 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and is not a water of the U.S.

Wetland 3: Wetland 3 is a 0.024-acre palustrine emergent wetland in the eastern central portion of the review area. Wetland 3 does not have an outlet. Wetland 3 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 3 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) waters and 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. City of Tacoma NPDES Stormwater Permit Information and Map. Accessed 2 March 2025 online at: https://data.cityoftacoma.org/.
 - b. Google Earth Streetview accessed 2 March 2025.
 - c. USACE site visit on October 10, 2024.
 - d. Port of Tacoma Neptune Development Wetland Determination Report by Confluence Environmental Company (January 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.





Reference: NWS-2025-00034

Wetlands and Other Waterbodies Sheet 2 of 2

STATE: Washington COUNTY: Pierce CITY/PORT: Tacoma PURPOSE: Environmental Enhancement and Pad Ready Development DATE: January 2025

DISCLAMER: The information included on this map has been completed by Pot of Tacoma staff from a variety of sources and is subject to change without notice. These data are intended for informational purposes and should not be considered authoritative for engineering, navigational, legal and other sitespecific uses. The Pot of Tacoma makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information.

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