



**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

18 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-2025-483-WRD; MFR 1 of 1.²

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 A1 is not a water of the U.S.
 - ii. Wetland A2 is not a water of the U.S.
 - iii. Wetland B is not a water of the U.S.
 - iv. Unnamed Stormwater Ditch 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)
- 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 review area is 1.5-acre in size and located between 57th Avenue South between South Langston Road and Martin Luther King Jr. Way South near Bryn Mawr-Skway, King County, Washington (47.492 N latitude, -122.261 W longitude). The review area includes three wetlands (Wetlands A1, A2 and B) and an unnamed stormwater ditch as depicted in the enclosed figure dated May 29, 2025. The review primarily consists of a King County right-of-way associated with 57th Avenue South and includes portions of single-family residential property. 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. Duwamish River, approximately 1,637 feet southwest and 1,937 feet downstream of the review area. The Duwamish River is a listed navigable waterway on the Navigable Waters of the United States in Washington State dated December 31, 2008.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Wetland A drains to Unnamed Stormwater Ditch and flows within the ditch infiltrate in uplands at the downslope (southern edge) of Wetland A. Wetland B is also adjacent to Unnamed Stormwater Ditch; however, no surface water leaves the unit. As described below, any surface water within the Unnamed Stormwater Ditch infiltrates in uplands at the southern edge of Wetland A. There is no flow or standing water in the ditch south of Wetland A. Unnamed Stormwater Ditch is an open channel along the eastern edge of 57th Avenue South for approximately 550 feet, connected through a series of culverts. After 550 feet, the open channel drains to a catch basin and a subsurface piped system. The subsurface piped system flows south for 193 feet along 57th Avenue South, crosses under Martin Luther King Jr. Way South, and discharges to an unnamed tributary to the Duwamish River. The unnamed tributary flows 1,194 feet southwest to the Duwamish River.
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.
8. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - a. The Territorial Seas (a)(1)(ii): N/A
 - b. Interstate Waters (a)(1)(iii): N/A
 - c. Impoundments (a)(2): N/A
 - d. Tributaries (a)(3): N/A
 - e. Adjacent Wetlands (a)(4): N/A
 - f. Additional Waters (a)(5): N/A
9. 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).

Unnamed Stormwater Ditch: Unnamed Stormwater Ditch receives both locally high groundwater and stormwater southward along the east side of 57th Avenue South for approximately 550 linear feet as an open channel before draining into King County's subsurface stormwater system. As described above in Section 5, surface water within the Unnamed Stormwater Ditch infiltrates on the southern edge of Wetland A2. The applicant has conducted six site visits on the following dates and no surface water or flow was observed south of Wetland A2 within the ditch: October 25, 2023, April 10, 2024, May 17, 2024, October 15, 2024, March 25, 2025, and June 10, 2025. During the site visits on October 25, 2023, October 15, 2024, and March 25, 2025, hydrologic conditions were normal, per the antecedent precipitation tool, and standing water and flow was observed in Wetlands A1 and A2; however, no surface water was observed in the Unnamed Stormwater Ditch south of Wetland A2. During the site visit on April 10, 2024 and May 17, 2024, hydrologic conditions were drier than normal, per the antecedent precipitation tool, and standing water and flow was observed in Wetlands A1 and A2; however, up to 0.5 inches and 0.03 inches of rainfall accumulated in the 14 preceding days, respectively. During these dates, no surface water was observed south of Wetland A2 in the ditch. No surface water was observed during the June 10, 2025 site visit which occurred during drier than normal hydrologic conditions, per the antecedent precipitation tool. While there is a connection to the Green River, any flows within the Unnamed Stormwater Ditch occur as a direct response to precipitation. Therefore, the Unnamed Stormwater Ditch does not meet the relatively permanent standard. Therefore, Unnamed Stormwater Ditch is not a water of the U.S.

Wetland A1: Wetland A1 is the northern unit of a 5,545-square foot slope, depressional wetland bisected by a non-culverted driveway. The wetland is within the northern portion of the review area. Wetland A1 drains to Wetland A2 and then the Unnamed Stormwater Ditch which is not considered a relatively permanent tributary as documented above. While the Unnamed Stormwater Ditch connects to underground stormwater infrastructure and eventually the Duwamish River, any flows within the ditch terminate at the southern edge of Wetland A2. This physically remote hydrologic connection does not establish a continuous surface connection between Wetland A and the unnamed tributary to the Duwamish River. Wetland A1 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland A1 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.

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Wetland A2: Wetland A2 is the southern unit of a 5,545-square foot slope, depressional wetland bisected by a non-culverted driveway. The wetland is in the northern portion of the review area. Wetland A2 drains to Unnamed Stormwater Ditch which is not considered a relatively permanent tributary as documented above. While the Unnamed Stormwater Ditch connects to underground stormwater infrastructure and eventually the Duwamish River, any flows within the ditch terminate at the southern edge of Wetland A2. This physically remote hydrologic connection does not establish a continuous surface connection between Wetland A and the unnamed tributary to the Duwamish River. Wetland A2 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland A2 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 B: Wetland B is an approximately 1,216 square foot slope, scrub-shrub wetland within the central portion of the review area. Wetland B abuts Unnamed Stormwater Ditch which is not considered a relatively permanent tributary as documented above. No surface water leaves Wetland B. While the Unnamed Stormwater Ditch connects to underground stormwater infrastructure and eventually the Duwamish River, any flows within the ditch terminate at the southern edge of Wetland A2 located north of Wetland B. This physically remote hydrologic connection does not establish a continuous surface connection between Wetland B and the unnamed tributary to the Duwamish River. Wetland B does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland B 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.

10. 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 May 2, 2023, submitted by the applicant: Preliminary Critical Areas Report 57th Avenue South Sidewalk CIP 1144823 dated December 2024
- b. U.S. Geological Survey topo viewer accessed May 29, 2025
- c. U.S. Geological Survey hydrography dataset accessed May 29, 2025
- d. Washington Department of Fish and Wildlife Passage map accessed May 29, 2025
- e. King County wetland inventory accessed May 29, 2025

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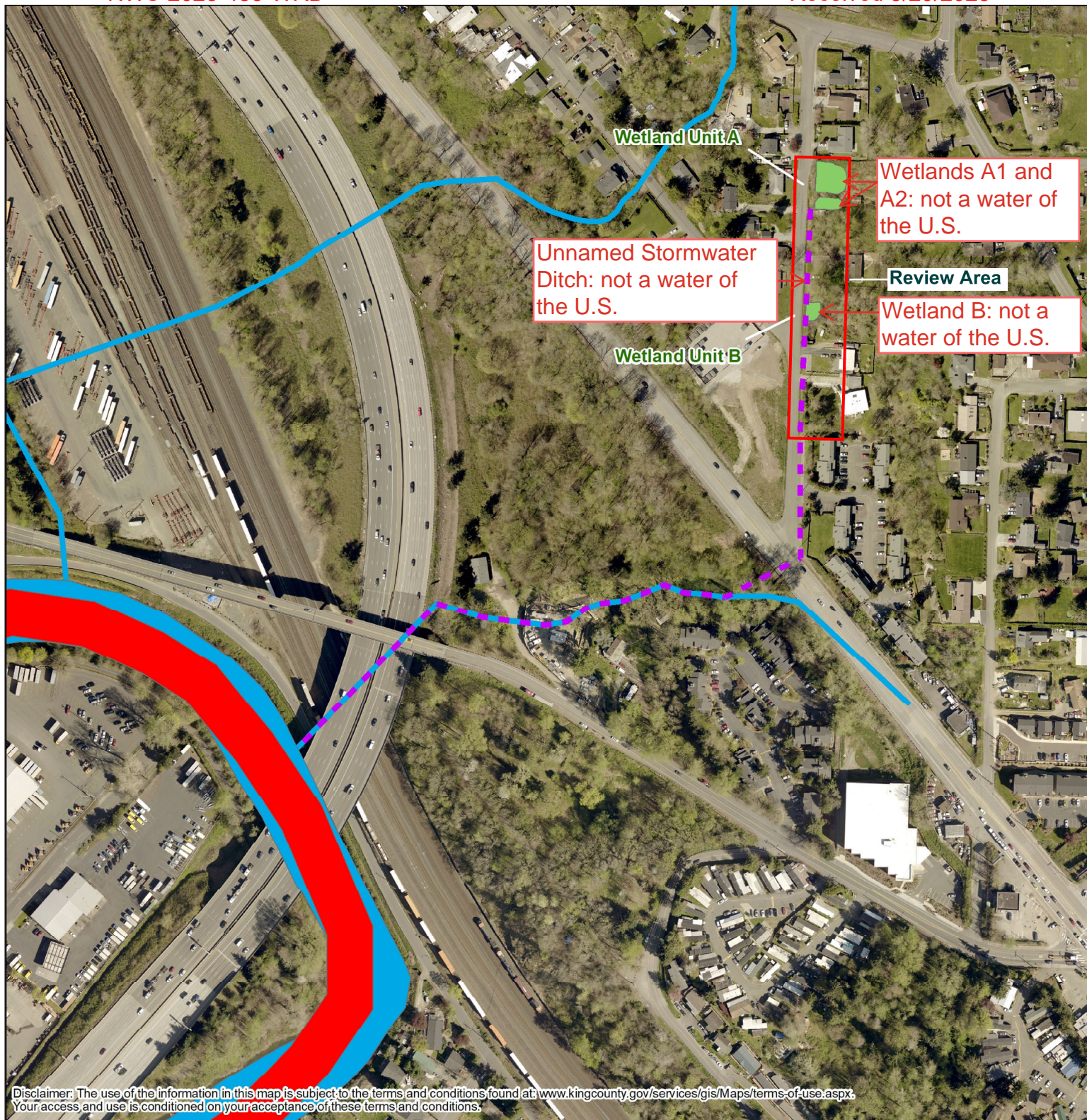
f. Google Maps Street View accessed May 30, 2025.

g. Response to information request submitted on by the applicant on June 12, 2025

11. OTHER SUPPORTING INFORMATION.

The determination that the stormwater ditch abutting Wetland A and B is insufficient in maintaining a continuous surface connection is consistent with the joint policy memorandum, dated March 12, 2025, regarding the implementation of “continuous surface connection” under the definition of waters of the U.S.

12. 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.



57th Avenue South Sidewalk Project

Streams and Rivers

Drainage Path

0 250 500 1,000 Feet

