



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

26 January 2026

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) ,<sup>1</sup> NWS-2025-570<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> 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.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use <https://orm.ops.usace.army.mil/orm/f?p=101:1:14903666639768:::::> 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.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> 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-2025-570

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. Ditch 1, non-jurisdictional
  - ii. Wetland 200, non-jurisdictional
  - iii. Wetland A, non-jurisdictional
  - iv. Wetland 2, non-jurisdictional
  - v. Wetland 3, non-jurisdictional
  - vi. Wetland 4, 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 21 acre review area is located near Port Orchard, Kitsap County, Washington (47.4371, -122.6673). Most of the review area consists of undeveloped forested areas. The upland forested areas onsite are dominated by red alder (*Alnus rubra*), Douglas fir (*Pseudotsuga menziesii*) and big leaf maple (*Acer macrophyllum*), with an understory dominated by salmonberry (*Rubus spectabilis*), salal (*Gaultheria shallon*), western swordfern (*Polystichum munitum*), hairy bracken fern (*Pteridium aquifolium*), and Himalayan blackberry (*Rubus armeniacus*). Five wetlands and one ditch were identified within the review area as described below. The review area is bounded by a gravel mining operation to the south and east and undeveloped forested and cleared land to the north and west.

CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2025-570

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. Henderson Bay, approximately 4.5 miles south of the review area. Henderson Bay is a part of the Puget Sound which is listed as a navigable waterway on the Navigable Waters of the United States in Washington State list dated December 31, 2008.<sup>6</sup>
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. There is no flowpath from the subject aquatic resources to a TNW, the territorial seas, or interstate water.
6. SECTION 10 JURISDICTIONAL WATERS<sup>7</sup>: 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.<sup>8</sup> 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.

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<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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-2025-570

- 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).<sup>9</sup> 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 extends southwest approximately 190 feet from the southern portion of Wetland 200. The entirety of Ditch 1 is vegetated. The northern portion of Ditch 1 is dominated by slough sedge (*Carex obnupta*) and the southern portion is dominated by Himalayan blackberry (*Rubus armeniacus*). The channel width varies between 3 and 5 feet wide and is characterized by compacted fine sediment. Based on a review of Google Earth aerial imagery, the ditch appears to have been constructed between November 2015 and July of 2016. Flows from Ditch 1 outlet and disperse into an upland area vegetated with red alder (*Alnus rubra*), soft rush (*Juncus effusus*), and spirea (*Spiraea douglasii*). Hydric soils and primary indicators of wetland hydrology were not observed in this area. Ditch

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<sup>9</sup> 88 FR 3004 (January 18, 2023)

1 does not connect to any other aquatic resources or downstream waters. The Corps has determined that Ditch 1 does not connect downstream to an (a)(1) water and is therefore not a water of the U.S.

Wetland 200: Wetland 200 is an approximately 0.4-acre depressional palustrine forested wetland in the western portion of the review area. Wetland 200 drains south to Ditch 1, which is not considered a water of the U.S. as documented above. Wetland 200 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 200 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 A: Wetland A is an approximately 0.4-acre depressional palustrine forested wetland in the northwest portion of the review area. Wetland A does not have an outlet. 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 a water of the U.S.

Wetland 2: Wetland 2 is an approximately 0.04-acre depressional palustrine forested wetland in the eastern portion of the review area. Wetland 2 does not have an outlet. 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) water and is not a water of the U.S.

Wetland 3: Wetland 3 is an approximately 0.2-acre depressional palustrine forested, scrub shrub and emergent wetland in the northeastern 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) water and is not a water of the U.S.

Wetland 4: Wetland 4 is an approximately 0.4-acre depressional palustrine forested wetland in the eastern portion of the review area. Wetland 4 does not have an outlet. Wetland 4 does not abut an (a)(1), (a)(2) or (a)(3) water. Therefore, Wetland 4 does not have a continuous surface connection to an (a)(1), (a)(2), or (a)(3) water 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. "Wetland and Fish and Wildlife Habitat Assessment Report Sidney Road" dated January 2025 by Soundview Consultants

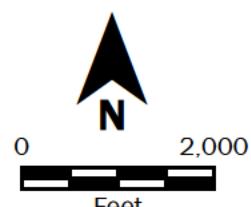
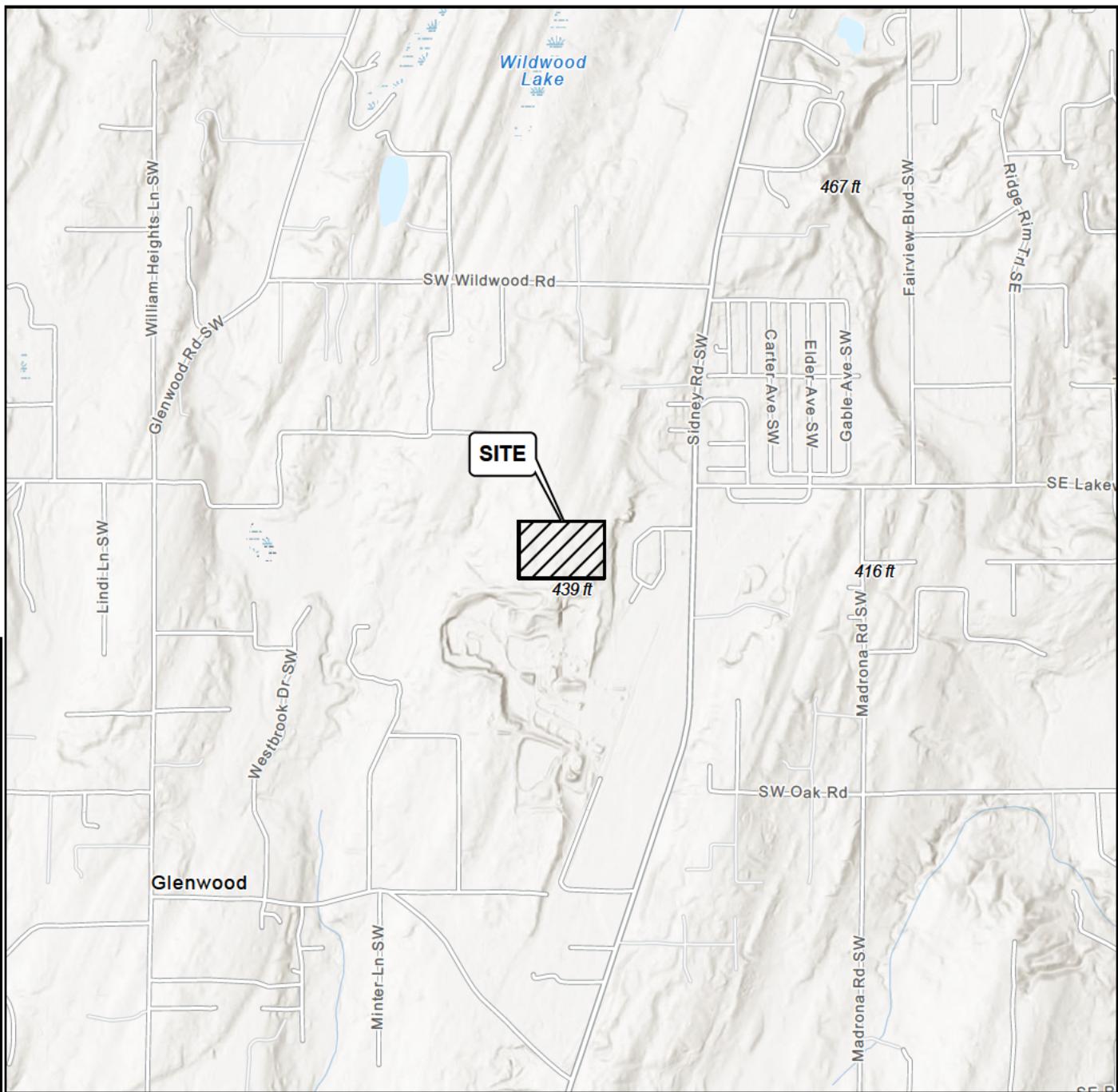
CENWS

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), NWS-2025-570

- b. "Sidney Mine Wetland Verification and Delineation Memo" dated January 8 2026 by GeoEngineers
- c. Washington State Department of Natural Resources LiDAR Portal accessed on 7/30/2025 at <https://lidarportal.dnr.wa.gov/>
- d. Google Earth accessed on 7/30/2025 at <https://earth.google.com/web/>

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.



Vicinity Map

Sidney Gravel Mine  
Kitsap County, Washington

Figure 1

Source(s):

- ESRI

Coordinate System: NAD 1983 UTM Zone 10N

**Disclaimer:** This figure was created for a specific purpose and project. Any use of this figure for any other project or purpose shall be at the user's sole risk and without liability to GeoEngineers. The locations of features shown may be approximate. GeoEngineers makes no warranty or representation as to the accuracy, completeness, or suitability of the figure, or data contained therein. The file containing this figure is a copy of a master document, the original of which is retained by GeoEngineers and is the official document of record.

