



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

4 December 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) ,<sup>1</sup> NWS-2025-716<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 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.

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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 A, non-jurisdictional
  - ii. Drainage 1, non-jurisdictional
  - iii. Drainage 2, 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 1.5 acre review area is located in Mount Vernon, Skagit County, Washington (48.432451, -122.311658). The review area is characterized by grassy uplands, one forested and emergent wetland, and scattered small stands of black cottonwood (*Populus balsamifera*). Two drainages were identified within the central and southern portions of the review area. The review area is bounded by Kulshan View to the north, residential development to the east, Kulshan Avenue to the south, and commercial development to the west.
4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The Skagit River, approximately 1.5 miles downstream and

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southwest of the review area. The Skagit River 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. Drainage 1 and Drainage 2 flow south outside of the review area and into a ditch along the northern edge of Kulshan Avenue. This ditch flows into a catch basin that drains to underground stormwater infrastructure. These stormwater pipes drain west approximately 0.13 miles and outlet to Kulshon Creek. Kulshon Creek flows west approximately 1.4 miles and outlets to the Skagit River.
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.

- 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).

Drainage 1: Drainage 1 flows south approximately 160 feet through the eastern portion of Wetland A and into the Kulshan Avenue ditch. The Kulshan Avenue ditch flows into a catch basin that drains to underground stormwater infrastructure. These stormwater pipes drain west approximately 0.13 miles and outlet to Kulshon Creek. Kulshon Creek flows west approximately 1.4 miles and outlets to the Skagit River. Drainage 1 is approximately 1 foot wide and 6 inches deep. It is vegetated with Himalayan blackberry (*Rubus armeniacus* – FAC) and mixed grasses. No water was observed in Drainage 1 during a site visit on December 3, 2025. According to the antecedent precipitation tool, there were normal precipitation conditions during this site visit during the wet season.

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

According to data collected at the Mount Vernon 0.8 SW weather station, there was 0.42 inches of rain the day prior to the site visit; there was 1.36 inches of rain in the ten days prior to the site visit. No water is visible in Drainage 1 in any aerial imagery. Drainage 1 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 Drainage 1 does connect downstream to a TNW water, but it does not meet the relatively permanent standard and is therefore not a water of the U.S.

Drainage 2: Drainage 2 flows south approximately 40 feet from Wetland A and into the Kulshan Avenue ditch. The Kulshan Avenue ditch flows into a catch basin that drains to underground stormwater infrastructure. These stormwater pipes drain west approximately 0.13 miles and outlet to Kulshon Creek. Kulshon Creek flows west approximately 1.4 miles and outlets to the Skagit River. Drainage 2 is approximately 1 foot wide and 1 foot deep. It is vegetated with Himalayan blackberry and sparse reed canary grass (*Phalaris arundinacea* – FACW). No water was observed in Drainage 2 during a site visit on December 3, 2025. According to the antecedent precipitation tool, there were normal precipitation conditions during this site visit during the wet season. According to data collected at the Mount Vernon 0.8 SW weather station, there was 0.42 inches of rain the day prior to the site visit; there was 1.36 inches of rain in the ten days prior to the site visit. No water is visible in Drainage 2 in any aerial imagery. Drainage 2 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 Drainage 2 does connect downstream to a TNW water, but it does not meet the relatively permanent standard and is therefore not a water of the U.S.

Wetland A: Wetland A is a 0.54 acre palustrine forested and emergent depression wetland in the central portion of the review area. Drainage 1 and Drainage 2, which are not considered waters of the U.S. as documented above, flow south through and from Wetland A. Drainages 1 and 2 drain south approximately 40 feet to the Kulshan Avenue ditch and underground stormwater infrastructure that drains west approximately 0.13 miles before discharging into Kulshon Creek as documented above. This physically remote hydrologic connection does not establish a continuous surface connection between Wetland A and the Kulshan Avenue Ditch or Kulshon Creek. 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) waters and is not a water of the U.S.

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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. Site visit on December 3, 2025
- b. Washington State Department of Natural Resources LiDAR Portal accessed on 10/21/2025 at <https://lidarportal.dnr.wa.gov/>
- c. Washington State Fish Passage Map accessed on 10/21/25 at <https://geodataservices.wdfw.wa.gov/hp/fishpassage/index.html>
- d. Mount Vernon Storm Sewer System Map accessed on 10/21/25 at <https://mountvernonwa.gov/DocumentCenter/View/60/Storm-Sewers>
- e. "Wetland and Fish and Wildlife Habitat Assessment Report: Kulshan View" dated September 2025 by Soundview Consultants
- f. Google Earth aerial imagery accessed on 12/4/25 at [earth.google.com](https://earth.google.com)

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.