APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Larabee Springs, Inc., NWS-2007-1539
Form 1 of 3 – Isolated Wetlands (G, J, K, L, N, Q, S, T, AA, BB, and CC)
NOTE: See Form 2 for info on wetlands abutting RPWs and Form 3 for info on wetlands adjacent to RPWs

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: WA County/parish/borough: Whatcom City: Bellingham
Center coordinates of site (lat/long in degree decimal format): Lat: 48º 48' 56.71", Long. 122º 30' 12.86"
Universal Transverse Mercator: Zone 10 N5407093.09 E 536443.63
Name of nearest waterbody: East Bear Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Nooksack River
Name of watershed or Hydrologic Unit Code (HUC): 17110004, Nooksack River
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 18 October 2007
☒ Field Determination. Date(s): 30 August 2007

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☒ Isolated (interstate or intrastate) waters, including isolated wetlands

   NOTE: See Form 2 for info on wetlands abutting RPWs and Form 3 for info on wetlands adjacent to RPWs

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands:

   c. **Limits (boundaries) of jurisdiction** based on:
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: Wetlands G, J, K, L, N, Q, S, T, AA, BB, and CC do not have a surface water or shallow subsurface connection or ecological connectivity to other navigable or interstate waters of the U. S. or tributaries of waters of the U. S. The subject wetlands are not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, lacks bird and wildlife species of special significance which

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

would attract interstate or foreign travelers, supports no fish or shellfish which could be taken or sold in interstate or foreign commerce, and are not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce. See Section IV.B for additional information.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

C. SIGNIFICANT NEXUS DETERMINATION

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows seasonally: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[4] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above.
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

[4]See Footnote # 3.

7. **Impoundments of jurisdictional waters.**[5]
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[6]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 1.12 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Wetland delineation report dated May 2006.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.

[5] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[6] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Ferndale Quad
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☒ State/Local wetland inventory map(s): WA State Department of Ecology, 2001
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): WA State Department of Ecology, 2005; City of Bellingham, 2004.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Date of Site Visit: 8 July 2013
Investigator(s): Randel Perry
Ed Miller, Liliana Guiferro (consultants).

1. Site Description and Significant Resources in the area: The site consists of 3 tax parcels with a total of 71 acres. The site is irregular in shape with a general slope to the south. Surrounding vicinity has been substantially developed for agricultural, recreational and residential uses. The site is bounded by the Bellingham Golf Course to the north, residential developments to the south, and undeveloped property to the east, and residential properties and Aldrich road to the west. Site was historically used for agricultural purposes and continues to be regularly mowed. The site is currently undeveloped and primarily vegetated with a field grasses. Wetlands in question are scattered across the properties. There are identified streams on the project site that are tributaries of East Bear Creek. East Bear Creek is located approximately 0.32 miles southwest of the site.

2. Delineation: The original delineation for the site dated July 2007 and the addendum dated 2 October 2007 identified 25 separate wetlands on site and four streams. The Corps confirmed the wetland boundaries and issued a jurisdictional determination on 11 March 2008. The project consultant provided a revised delineation dated 9 May 2013 that identified 29 wetlands and four streams.

3. Project Purpose and Description: Fill/grade associated with residential development and new roads.

4. Physical / Chemical Characteristics:
a. Streamflow c.f.s.: 0.5 to 2.0cfs
b. Salinity: NA
c. Soils: Whatcom silt loam – 0-3% & 30-60% slopes (non-hydric w/ hydric inclusions).
Whatcom Labounty silt loam 0-8% slope (non-hydric w/ hydric inclusions)
West side wetlands - 0” to 6” – 10YR 3/2 silt loam; 6” to 12” - 10YR 3/2 silt loam w/ 10YR 4/6 concretions (10%, matrix)
East side wetlands - 0” to 6” – 10YR 3/2; 6” to 12” - 10YR 2/2 silt loam w/ 7.5YR 4/6 concretions (20%, matrix)
Uplands – 10YR 2/2, 3/2, and 4/2 silt loam w/ no redox features in upper 16” of soils
10YR 3/3 w/ 10YR 4/3 concretions (<5%, matrix) in upper 16”
d. Hydrology: Saturation at shallow depth and signs of inundation at center of wetlands.

5. Biological Characteristics:
a. Percentage of dominant vegetation FAC or wetter: 95% in wetlands
b. Vegetation species list:
Riparian Wetlands
Soft rush (*Juncus ffuses*), FACW+
Creeping buttercup (*Ranunculus repens*), FACW
Velvet grass (*Holcus lanatus*), FAC
Reed canarygrass (*Phalaris arundinacea*), FACW
Creeping bentgrass (*Agrostis stolonifera*), FAC+
Bluegrass (*Poa* spp.) FAC – FACU
Knotgrass (*Paspalum distichum*), FACW
Meadow foxtail (*Alopecurus pratensis*), FACW

Sawbeak sedge (*Carex stipata*), FACW+
Pacific willow (*Salix lasiandra*), FACW+

Field wetlands
Velvet grass (*Holcus lanatus*), FAC
Creeping buttercup (*Ranunculus repens*), FACW
Creeping bentgrass (*Agrostis stolonifera*), FAC+

Uplands
Canadian thistle (*Cirsium arvense*), FACU+
Reed canarygrass (*Phalaris arundinacea*), FACW
Tenuous bentgrass (*Agrostis tenuis*), FAC
Sweet vernal grass, (*Anthoxanthum odoratum*), FACU

c. Fauna: bird presence.
d. NWI Classification, associations/communities: PEM

6. Lateral Extent of Jurisdiction:
a. OHW, MHHW, MHW and datum: 3' average
b. Acreage of wetlands to be impacted: Approximately 1.53 acres for total site development (applicant's proposed residential development and City of Bellingham proposed roads).
c. Total acreage of wetlands/waters on site: 9.79+ acres of wetlands (some continue offsite)

7. Additional information: The Corps previous jurisdictional determination for the site was conveyed to the applicant by letter dated 11 March 2008. Wetland fill for construction of a residential development was authorized by Nationwide Permit 29 as verified by the Corps letter dated 3 March 2008. The project was not constructed (no wetland fill). Field work to verify and modify wetland boundaries was conducted by the consultant in April of 2013. A majority of the wetlands on the project site had little to no wetland boundary modifications. Wetlands K, L, and N were flagged larger than previously. Three new wetlands were added in the center of the property, Wetlands AA, BB, and CC. Data sheets for the re-delineation and Ecology wetland rating forms for the new wetlands were provided.

Corps personnel walked around the identified boundaries of all wetlands to determine potential flow paths from the wetlands. The flagged wetland boundaries appear to accurately delineate the wetland edges.

For Wetlands G, J, K, L, N, Q, S, T, AA, BB, and CC, no surface water features or flowpath indicators could be identified connecting these wetlands with any other wetland or waterbody. These wetlands are separated from other wetlands or waterbodies by upland soils. The historic removal of woody vegetation and the subsequent use of the site for cattle grazing has compacted the natural soils creating conditions that impound precipitation for extended periods in depressions on the site. These wetlands appear to be a result of this condition.

Wetland O extends offsite to the north. No determination was made for this wetland – it will not be affected by proposed project.

8. Conclusions: Areas may not be jurisdictional wetlands. Wetlands G, J, K, L, N, Q, S, T, AA, BB, and CC do not have a surface water connection to other navigable or interstate waters of the U. S. or tributaries of waters of the U. S. These wetlands are not used for interstate commerce including recreational activities, commercial fishing activities, or used for industrial purposes. These wetlands are isolated and would not be waters of the U. S..