

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

Seasonal RPW and abutting wetland

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 29 August 2013.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Marysville Dept of Public Works, NWS-2013-139.
Name of water being evaluated on this JD form: Wetland A, Hayho Creek and unnamed tributary of Haybo Creek

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Snohomish City: Marysville

Center coordinates of site (lat/long in degree decimal format): Lat: 48.12883 N, Long: -122.17522 W

Universal Transverse Mercator:

Name of nearest waterbody: Haybo Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Ebey Slough-mouth of Quilceda Creek.

Name of watershed or Hydrologic Unit Code (HUC): 17110011.

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. List other JDs: Marysville Dept of Public Works NWS-2013-139 JD 1 of 2

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 26 April 2013.

Field Determination. Date(s): 28 March 2013.

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~~ "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 waters² (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

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 3400 linear feet 6 width (ft) and/or _____ acres.

Wetlands: 0.58 acres.

c. Limits (boundaries) of jurisdiction based on: Pick List and Pick List

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: _____.

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.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs – NOT APPLICABLE

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

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 1.5 square miles
Drainage area: 40 acres
Average annual rainfall: 46 inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁴: Hayho Creek, Middle Fork Quilceda Creek, Quilceda Creek, Ebey Slough (TNW).
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: this was a broad wetland continuum prior to settlement.
 Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: 6 feet
Average depth: 2 feet
Average side slopes: 3:1.

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Cobbles
- Gravel
- Bedrock
- Vegetation. Type/% cover:
- Other. Explain: .
- Concrete
- Muck

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.

Presence of run/riffle/pool complexes. Explain: mostly runs.

Tributary geometry: Relatively straight

Tributary gradient (approximate average slope): .13 %

(c) Flow:

Tributary provides for: Seasonal flow

Estimate average number of flow events in review area/year: Pick List

Describe flow regime: .

Other information on duration and volume: per reference NWS-2009-426 and numerous site visits along this reach, Corps has observed flow in June and September, so stream is perennial or nearly so.

Surface flow is: Discrete and confined. Characteristics: .

Subsurface flow: No. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

- Bed and banks

⁴ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
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- OHWM⁵ (check all indicators that apply):
- | | |
|---|---|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input checked="" type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): _____ | |
- Discontinuous OHWM.⁶ Explain: _____.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): _____ | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: clear, warms during summer, mostly former farm land.

Identify specific pollutants, if known: _____.

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): 10 feet each side.
- Wetland fringe. Characteristics: generally absent.
- Habitat for:
- Federally Listed species. Explain findings: _____.
- Fish/spawn areas. Explain findings: chum adults are present and might spawn.
- Other environmentally-sensitive species. Explain findings: _____.
- Aquatic/wildlife diversity. Explain findings: _____.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW – NOT APPLICABLE

3. Characteristics of all wetlands adjacent to the tributary (if any) – NOT APPLICABLE

C. SIGNIFICANT NEXUS DETERMINATION – NOT APPLICABLE

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

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 perennial: per reference NWS-2009-426 and numerous site visits along this reach of Hayho Creek, Corps has observed flow in June and September so stream flow is perennial or nearly so.
- 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: Corps repeated visits to site area indicate tributary to Hayho Creek has contained flowing or standing water throughout the winter and first half of spring.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 2500 linear feet 6 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. Provide rationale indicating that wetland is directly abutting an RPW: _____

⁵A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁶Ibid.

- 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: Corps has observed Wetland A bordering OHWM of tributary to Hayho Creek

Provide acreage estimates for jurisdictional wetlands in the review area: 0.58 acres.

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 - NOT APPLICABLE

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS - NOT APPLICABLE

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: "City of Marysville Regional Pond No. 2 Wetland Delineation Report", by Natural Systems Design, dated January 17, 2013; "Marysville Regional Pond No. 2 Critical Areas Report" by ESA Adolfson, dated January 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: 28 March 2013.
- Corps navigable waters' study: The waterbody is on the Section 10 Navigable Waterway List for Seattle District.
- U.S. Geological Survey Hydrologic Atlas: ____.
- USGS NHD data.
 USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Arlington West, Washington
- USDA Natural Resources Conservation Service Soil Survey. Citation: Snohomish County.
- National wetlands inventory map(s). Cite name: ____.
- State/Local wetland inventory map(s): ____
- FEMA/FIRM maps: ____.
- 100-year Floodplain Elevation is: ____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): ____
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: In administrative file, Memorandum for Decision: Jurisdictional Determination for Marysville Public Works (Stormwater Pond Site), dated 26 April 2013, for details on jurisdictional determination.