

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

11 Dec 2013

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 11 Dec 2013.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Polygon Northwest Company, NWS-2013-63.
Name of water being evaluated on this JD form: Wetland E and Man Made Pond

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: King City: Sammamish

Center coordinates of site (lat/long in degree decimal format): Lat: 47.592816 N, Long: -122.033133 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Pine Lake.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Sammamish is the nearest navigable waterway (Wetland E and the man made pond do not flow to Lake Sammamish).

Name of watershed or Hydrologic Unit Code (HUC): 17110012.

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: _____

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

Office (Desk) Determination. Date: 11/7/13.

Field Determination. Date(s): _____.

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 no** "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: _____ linear feet _____ width (ft) and/or _____ acres.

Wetlands: _____ acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, 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: **Wetland E and the man made pond do not have a surface water or shallow subsurface connection or ecological connectivity to waters of the US. The subject wetlands are not used by interstate or foreign travelers for**

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.

recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, lack bird and wildlife species of special significance which would attract interstate or foreign travelers, support 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.

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: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- 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):⁴

- 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:

- 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: 0.037 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: _____.
- 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.

⁴ 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.

- Data sheets prepared by the Corps: _____.
- Corps navigable waters' study: _____.
- 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: USGS website
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- 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: Wetland E is small (888 square feet) and is located in the center of the property. Sample pits dug around the wetland indicate there is no hydric soil connection to other wetlands on site. The man made pond is small (731 square feet) and was constructed in uplands. Sample pits dug around the pond indicate that the pond is confined to the bermed area and that there is no hydric soil connection to other wetlands on site. There is no indication that overland flow occurs between these areas and the nearest water of the U.S. The nearest water of the U.S. is Pine Lake located to the southwest of the site. See the attached photos, maps and data forms for existing conditions and sampling results. The jurisdictional determination was sent to Seattle District Office of Counsel on 12 November 2013. A concurrence was received from Francis Eugenio on 14 November 2013. The jurisdictional determination was forwarded to Corps Headquarters and EPA on 15 November 2013. On 29 November 2013, Stacey Jensen of Corps Headquarters responded that she had no comments. Twenty one days have passed and EPA has not responded.