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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 23 September 2014**.**

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: **Seattle District,** Sherk, Keith, NWS-2014-41.
Name of water being evaluated on this JD form: Sherk Wetlands: Wetland A and Wetland B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Washington County: Pierce City: Frederickson
Center coordinates of site (lat/long in degree decimal format): Lat: 47.1186 **N**, Long: -122.3536 **W**
Universal Transverse Mercator: .
Name of nearest waterbody: Clover Creek.
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Puget Sound.
Name of watershed or Hydrologic Unit Code (HUC): 17110019.
☒ 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: 2 July 2014.
☒ Field Determination. Date(s): 7 May 2014.

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 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

   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: **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: **The delineation identifies Wetland A, a 2,268 square foot feature, and Wetland B, a 5,694 square foot feature. They are located just north of 152nd Street East east of Canyon Road East. The site clearly slopes to the southwest, so surface water would follow. Surface water from wetlands A and B on site would flow southward toward 152nd, south**

[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.

through the culvert under the road, and along the roadside ditch on the south side of 152nd Street East and further westward toward Canyon Road East. The topography observed in field conditions is consistent with the topography map submitted by the applicant (sheet 4 of 4). The drainage along Canyon Road East at 152nd flows southward toward 160th Street East. The culvert under 160th Street East and Canyon Road East flows to the Brookdale regional infiltration facility (also known as the Brookdale Pit). There is no surface water hydrologic connection from the facility to a water of the U.S. and there is no interstate commerce connection .

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: 0.18 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: 26 January 2006 report from Habitat Technologies.
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

---

[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.*

☐ 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.
☐ USGS 8 and 12 digit HUC maps.
☐ U.S. Geological Survey map(s). Cite scale & quad name: _____
☐ 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 Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): _____
or ☐ Other (Name & Date): _____.

☒ Previous determination(s). File no. and date of response letter: NWS-2009-1515; 144th Street LLC. The Corps finalized an approved jurisdictional determination for this project on February 1, 2011 with the final determination that the Brookdale Pit is an isolated water and is not a water of the U.S. This project evaluated the Pierce County Brookdale Pit Drainage Report (D150-006, 2001) and the Brookdale Pit Geotechnical Evaluation, Parkland Washington dated March 4, 2003 as part of the determination. A copy of that letter, finalized JD, and associated MFR dated 22 December 2010 have been included in the file for this project. This previous determination includes the downstream portion of this hydrologic flow path starting just north of the intersection at Canyon Ave East and 160th as well as the Brookdale regional infiltration facility, itself. The determination concluded that wetlands and ditches on the 144th Street LLC site, which drain into the Brookdale Pit, were not waters of the United States.

☐ Applicable/supporting case law: _____.
☐ Applicable/supporting scientific literature: _____.
☐ Other information (please specify): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: On 19 August 2014, the Corps provided the JD findings to EPA for coordination. The EPA Region 10 office responded with concerns that this site is connected through subsurface groundwater to Clover-Chambers Creek downstream. EPA provided to the Corps a copy of the USGS report that describes the aquifer and groundwater table. The Corps explained to EPA that the previous finding of no connection in the referenced JD for NWS-2009-1515 was that the depth of groundwater in the Brookdale Pit was 48-56 feet below the surface and that is too deep to be considered a shallow subsurface connection. EPA did not elevate the jurisdictional determination; therefore the Corps finalized our determination that the subject wetlands are not waters of the U.S .