

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 08/11/2016.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Pascolo Estates, NWS-2009-785.
Name of water being evaluated on this JD form: Wetland A

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Pierce City: Edgewood

Center coordinates of site (lat/long in degree decimal format): Lat: 47.23028 N, Long: -122.27489 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Wapato Creek to the south or Hylebos Creek to the north. Note - water from the review area does not flow into these waterbodies.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A.

Name of watershed or Hydrologic Unit Code (HUC): Puyallup; HUC 17110014.

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: 07/15/2016.

Field Determination. Date(s): 12/14/2010.

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: 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 review area includes the wetland on the Pascolo Estates property. During our site inspection, we observed standing water/flowing water and hydrophytic vegetation, south and north of the delineated wetland. The wetland in**

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.

the review area flowed north towards the Edgewood Bowl Pothole. The Edgewood Bowl Pothole is a 1.4 acre permanently ponded area with no outlet and no potential surface water or hydrological connection to downstream waters. There is no interstate commerce connection. See Section IV.B. for detailed information on the site visit and conclusions.

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: estimated 0.5 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: Pierce County.
- 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): City of Edgewood Surface Water Management Plan, Pierce County Public Works Comprehensive Drainage Program Maps for the area.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Corps and EPA visited the site on December 14, 2010. In the week prior to the site visit, the area had approximately 6 inches of rainfall. This allowed us to view any potential surface water connections and the direction of flow in all of the culverts in the area. The review area includes the wetland on the Pascolo Estates property, which is highlighted in blue on Figure 3. The wetland within the review area connects to the Edgewood Bowl Pothole, a 1.4 acre permanently ponded area north of the review area. The Corps did not agree with the data sheets and the delineation that claimed that the wetland on the Pascolo Estates property was 754 square feet. We did not revise the wetland boundary because the area was determined to be nonjurisdictional; however we estimate that the wetland could be 0.25 to 0.5 acre. The Pascolo Estates property is approximately 14.55 acres.

The Pascolo property slopes down toward the north toward the Edgewood Bowl Pothole. The wetland in the review area has a plant community dominated by Ranunculus repens (FACW). On the day of the site visit, there was evidence of some minor surface water flow (no distinct channel) flowing from the wetland toward the Edgewood Bowl Pothole.

We reviewed the surrounding area to determine whether there were any connections from the Edgewood Bowl Pothole to downstream waters. The total area that we looked at for potential connections to downstream waters is estimated to be 230 acres. This area is bordered on the south by 32nd Street E, on the west by 112th Ave E, on the north by 24th St E, and on the east by 112th Ave E. All of these roads had culverts with water flowing towards the permanently ponded area, Edgewood Bowl Pothole. The culvert under 32nd Street E was flowing toward the north; the culverts and drainage ditches on 112th Ave E flowed toward the east; the culverts under 24th St E were flowing south and drainage from this road ran along a private driveway directly into the Edgewood Bowl Pothole ponded area. A culvert under 112th Ave E was flowing westward.

The information provided by the agent explained that the stormwater discharges to this closed depression creates a number of drainage issues for the planned development. Past reports have recommended that capital improvement projects be implemented to create an outlet to downstream waters. No capital improvement projects have been funded or constructed to create an outlet to this system. There is no fish or shellfish in this system, thus none could be sold in interstate or foreign commerce. Because this is private land with no public access, there is no recreation possible for interstate or foreign travelers. There is no industrial use for the wetlands and no current farming, although the area was formerly used for grazing of horses and cattle. The property owner is planning to subdivide and develop a small residential development.

Therefore, because there are no hydrologic connections to a water of the U.S. and there is not an interstate commerce connection, the wetlands in the review area are not waters of the U.S.

On December 21, 2010 we coordinated this JD with Corps HQ and EPA, Region 10. On December 23, 2010, we received concurrence from EPA.

On 18 April 2016, the Corps received a request to re-verify the jurisdictional determination. The consultant (Theresa Dusek Consulting) provided the following statement, "On February 4 and April 6, 2016 I visited the site and viewed the pothole from the site and public rights-of-way. The field review was the same as the review traveled with Tina Tong (Corps), Linda Storm (EPA) and others on December 14, 2010. The reviewed area was the same as the 2010 site visit and water observed was flowing toward center of the enclosed pothole. The project engineers Scott Kaul at AHBL confirmed that the project must still meet the City of Edgewood stormwater requirements for an enclosed pothole as no surface water leaves the pothole low point. Topography maps, soil maps and wetland inventory maps are the same as 2010."

The Corps has reviewed the previous information and documentation and determined that conditions at the site have not changed since our 11 January 2011 determination. The wetland in question is not a water of the U. S. subject to jurisdiction under Section 404 of the Clean Water Act. Email notification was provided to EPA Region 10 and Linda Storm as well as USACE "Isolated Waters" email at HQ on 15 July 2016. No response was received as of 11 August 2016.