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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 7 June 2016**.**

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Birk, Balbir, NWS-2016-440.

Name of water being evaluated on this JD form: Wetland A

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: King City: Federal Way

Center coordinates of site (lat/long in degree decimal format): Lat: 47.28331 **N**, Long: -122.3231 **W**

Universal Transverse Mercator: .

Name of nearest waterbody: Hylebos Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Not Applicable.

Name of watershed or Hydrologic Unit Code (HUC): 171100190205.

☒ 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: _____.

☒ Field Determination. Date(s): 2 June 2016.

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

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.

☐ 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: One Wetland, Wetland A, was assessed during a field investigation on 2 June 2016 and determined to be non-jurisdictional. Wetland A does not have a surface water connection, shallow subsurface water connection, or ecological connectivity to navigable or interstate waters of the U.S. There are no habitats, resources, or wildlife species of interest present within the vicinity of Wetland A to attract interstate or foreign travelers. Aquaculture cannot be conducted because of the terrestrial location. Commercial agriculture and/or silvicultural practicies for interstate commerce would not be viable onsite because of the small parcel size. Thus, Wetland A is hydrologically isolated and does not have an interstate commerce connection. See Section B for additional information.

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]

[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.
[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.*

☐ 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: 0.50 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 Exhibit for Arco AM/PM Federal Way, prepared by Barghausen Consulting Engineers, Inc..
☒ 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: Sampling Points A1 and U1, dated 2 June 2016.
☐ Corps navigable waters' study: _____.
☒ U.S. Geological Survey Hydrologic Atlas: Accessed 3 June 2016.

☒ 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: Accessed online 3 June 2016.
☒ National wetlands inventory map(s). Cite name: Accessed online 3 June 2016.
☐ 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: _____.
☐ Applicable/supporting case law: _____.
☐ Applicable/supporting scientific literature: _____.
☒ Other information (please specify): Letter to Mr. Nick Wecker, Barghausen Consulting Engineers, Inc., from the City of Federal Way Regarding Files #16-100208-00-UP & 16-100209-00-SE; Technical Review Comments Arco Facility, 35505 Pacific Highway South, Federal Way, dated 6 May 2016.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Purpose: To determine whether or not wetlands are present within the project site; and, if wetlands do exist, if they are waters of the U.S.

Site Visit: The Corps conducted a site inspection on 2 June 2016 between 1300 and 1430 hours. Weather was overcast with a temperature around 65 degrees Fahrenheit. Attendees were: Kaitlyn White, Juliana Houghton, and Daniel Krenz (Corps); Scott Spooner (Wetlands & Wildlife, Inc.); Balbir Birk (applicant)

Project Site Description: The 4.2-acre project site is located at 35505 Pacific Highway South, Federal Way, Washington. It is bordered by single-family residences to the west, commercial development to the north, and arterial roads to the south and east. Topography is generally flat, with a natural depression located in the north-central portion of the project site. The depression is several feet lower in elevation than the rest of the project site. Historic aerial imagery indicates that it has not been used for development and/or agricultural practices in the past. The site is relatively vacant, but a small gravel pad extends into the southwestern corner of the site and small homeless encampments are scattered throughout the project site.

Soils: The National Resources Conservation Service mapped soil is Everett-Alderwood gravelly sandy loams, 6 to 15 percent slopes, a non-hydric soil, over the entire project site. Observed upland soil colors were: 10YR 2/1 and 10YR 3/3, no redox features. Observed wetland soil colors were: 10YR 3/1 with concentrations of 7.5YR 5/6.

Vegetation: The project site consists of second-growth, mature trees and shrubs. Dominant upland vegetation included western red cedar, big leaf maple, red elderberry, vine maple, stinging nettle, sword fern, and Himalayan blackberry. Dominant wetland vegetation included: Oregon ash, red alder, crabapple, hardhack, red-osier dogwood, and salmonberry.

Site Inspection: The inspection included reviewing data sheets and maps provided by Sewall Wetland Consulting, Inc.; looking for the three wetland paramaters onsite (hydrology, hydric soil, and

hydrophytic vegetation); and looking for surface and subsurface hydrologic connections to waters of the U.S. The Corps verified the presence of one wetland, Wetland A, but was unable to locate an outlet.

Wetland A is located in a natural depression in the landscape and its boundaries were identified by slight changes in topography and noticeable transitions in vegetation communities. No observable surface outlets were noted. During the site inspection, Wetland A had standing surface water, despite recent trends in unseasonably warm weather and a lack of precipitation. Its hydrology likely stems from a high ground-water table, precipitation, stormwater from the commercial development to the north of the project site.

During the site inspection, the Corps noted stormwater drains outletting from the commercial development onto the project site along the northern boundary. According to the applicant, the stormwater drains were repaired approximately 6 months ago to prevent water from entering the project site. However, small holes in the gutter system are still present and likely spilling excess water onto the project site. Despite this artificial hydrology source, it is likely Wetland A is retaining natural hydrologic inputs from the surrounding landscape because it is one of the few depressions remaining within the adjacent developed landscape (see below for more detail).

Jurisdictional Determination: The nearest mapped stream, West Hylebos Creek, is more than 1,500 feet northwest of the project site and separated from Wetland A by commercial development and a single-family residence. Historic aerials show that a large forested corridor previously connected to the project site until 2006 when the commercial development was constructed. Within the forest corridor is West Hylebos Creek, an unnamed tributary of West Hylebos Creek, and multiple wetland complexes (as mapped by the National Wetland Inventory). One lake, Brook Lake, is also mapped in the forested corridor, but also sits in a topographic depression and is not connected to either West Hylebos Creek or Wetland A. Presently, the only connection between the project site and the large forested corridor associated with West Hylebos Creek is a stormwtaer pond associated with the commercial development. Hydrology may enter Wetland A via a subsurface connection with the stormwater pond. However, it is highly unlikely that hydrology from West Hylebos Creek and its associated wetland complexes is entering Wetland A due to the distance separating them and the commercial development and the single-family residence acting as topographical barriers.

Another forested wetland is also mapped by the National Wetland Inventory approximately 1,500 feet southeast of the project site. It is separated from the project site by Pacific Highway South and 356th Street. According to the USGS topography map, the site elevation of this wetland and Wetland A is about the same. However, the scale of the topography map is large and does not show changes in elevation less than 20 feet. Based on visual observations, Wetland A is lower in elevation than the rest of the project site. Hydrology from the surrounding landscape would drain to the lowest point of Wetland A and infiltrate into the ground. A shallow subsurface connection would not connect Wetland A to the wetland south of the project site because it is lower in elevation and separated by arterial roads, which are also acting as a berm.

Wetland A is not used by interstate or foreign travelers for recreation purposes, does not have habitat or resources of special significance which would attract interstate or foreign travelers, lacks birds and wildlife species of special significance which would attract interstate or foreign travelers, supports no fish or shellfish which could be taken or sold in interstate or foreign commerce, and is not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce.

Wetland A is located in a topographical depression and its hydrology infiltrates directly into the ground. Wetland A is not adjacent and/or abutting another water of the U.S. Due to mapped soil

characteristics, distance, and intervening developments that have altered subsurface soil composition, there is no likelihood of water from Wetland A moving through subsurface soils and into nearby streams or wetlands. Wetland A does not have a surface water or subsurface connection to a water of the U.S. Thus, Wetland A is hydrologically isolated and does not have an interstate or foreign commerce connection. Wetland A is not a water of the U.S. and not regulated under Section 404 of the Clean Water Act.

Please note: While the presence of Wetland A was verified, its exact boundaries were not delineated by the Corps. Other state and local agencies should not verify Wetland A's boundaries according to this approved jurisdictional determination.

The JD was coordinated with Corps Headquarters (HQ) and the Environmental Protection Agency (EPA) on 7 June 2016. Twenty-one days were allotted for review and comment. The comment period closed on 28 June 2016. Within the comment period, no comments were received from Corps HQ or the EPA. Because no objections were received, this JD has been finalized. .