

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

JD 1 of 2

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 9/21/12.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, BNSF Railway, NWS-2011-325.

Name of water being evaluated on this JD form: See attached Table 1, Tributary and Wetland Summary, dated April 9, 2012

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Whatcom City: Custer

Center coordinates of site (lat/long in degree decimal format): Lat: 48.91639 N, Long: -122.69671 W

Universal Transverse Mercator: _____

Name of nearest waterbody: _____

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Birch Bay/ Puget Sound.

Name of watershed or Hydrologic Unit Code (HUC): 17110002.

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: 6/8/12.

Field Determination. Date(s): 9/28-9/29/11.

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: 40 miles 2-8 width (ft) and/or _____ acres.

Wetlands: 465 acres.

c. Limits (boundaries) of jurisdiction based on: **1987 Delineation Manual**, and **Established by OHWM**.

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

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: _____. Describe flow path to a TNW: _____.

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: _____.

- 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: See attached Tributary and Wetland Information Sheets dated April 9, 2012.

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: _____.

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: _____
 - 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: See attached Tributary and Wetland Information Sheets dated April 9, 2012

Provide acreage estimates for jurisdictional wetlands in the review area: 465 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 (CHECK ALL THAT APPLY): 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):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: JLP Environmental.
- 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: _____.
- 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: 7.5 Quad 'Lummi Bay' and 'Blaine'
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Whatcom County Area, 1985.
- National wetlands inventory map(s). Cite name: USFWS, NWI Quads, 'Lummi Bay' and 'Blaine'.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: FEMA Online 'Firmette' Database, Whatcom County, WA; Panels 53073C0675D and 53073C1155E.
- 100-year Floodplain Elevation is: ____ (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____

or Other (Name & Date): Ditch Conveyance Overview Maps with USGS National Hydrography Dataset Overlay,
prepared by JLP Environmental November 2011.

- 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: Corps staff visited the entire project area on November 28 and 29, 2011. Extensive sampling verified the accuracy of the methods used by the consultants to establish wetland boundaries. Corps staff also verified that all wetlands as described in the Table 1 Tributary and Wetland Summary, are hydrologically connected to RPWs that flow directly or indirectly into Birch Bay and are therefore waters of the US. All of the wetlands (with the exception of Wetland J) were determined to abut waters of the US. Wetland J was determined to be adjacent to waters of the US.