

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 18 December 2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, Conoco Phillips Refinery, NWS-2008-1406-NO.  
Name of water being evaluated on this JD form: Wetland

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Whatcom City: Ferndale  
Center coordinates of site (lat/long in degree decimal format): Lat: 48.8333307714886, Long: -122.687895790656  
Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Strait of Georgia.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Strait of Georgia.

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: 2 December 2008.

Field Determination. Date(s): 5 November 2008.

**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):**<sup>1</sup>

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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**

Elevation of established OHWM (if known): \_\_\_\_\_.

**2. Non-regulated waters/wetlands (check if applicable):**<sup>3</sup>

**Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:** Wetland in questions has no connections to other waters of the U. S. and is not used for interstate and foreign commerce. Wetland is "isolated" and outside Corps' jurisdiction under Section 404 and Section 10 regulations.

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> 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:
- 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):

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:**

- 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).
  - 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: 2.8 acres.

**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: \_\_\_\_\_.
- 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 minute, Lummi Bay Quad
- USDA Natural Resources Conservation Service Soil Survey. Citation: \_\_\_\_\_.
- National wetlands inventory map(s). Cite name: USFWS - IMP.
- State/Local wetland inventory map(s): \_\_\_\_\_
- FEMA/FIRM maps: \_\_\_\_\_.
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): WA Dept. of Ecology, 2006  
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: \_\_\_\_\_.**

NWS-2008-1406-NO, Conoco Phillips Refinery

5 November 2008

11:30 – 13:00 Weather – Clear, partly sunny, cold. Significant rainfall during preceding 2 days.

Randel Perry (Corps)

Dave Every (consultant)

Tim Conway (applicant)

Site Description: The 9.5 acre subject site is part of the Conoco Phillips Ferndale Refinery Property and is located in the Strait of Georgia watershed, west of Ferndale, Whatcom County, WA. The property is roughly square in shape and slopes to the south. The lot is an undeveloped, open grassy field. The northern edge of the site is bounded by Unick Road (and a roadside ditch); southern edge of the lot is defined by a pipeline; western edge meets an interior refinery road; and eastern edge abuts a

fence surrounding storage tanks. The immediate vicinity around the site is extensively developed for industrial and agricultural uses with some forested areas to the west and northwest. The Strait of Georgia lies approximately 1 mile to the west of the site. The refinery property has an extensive network of ditches and stormwater treatment facilities that have replaced natural drainages in the area. These facilities ultimately drain to the Strait of Georgia.

Delineation: A wetland delineation was conducted by URS in October of 2007. One wetland was identified by the consultant.

Soils: Mapped soils are – #184- Whitehorn silt loam 0% - 2% slopes (listed hydric) and #12 – Birch Bay silt loam 0% - 3% slopes (listed non-hydric with hydric inclusions). Observed soil colors are:

Wetlands: 0” – 7” – 10YR 3/2 with 10YR 4/3 redox features (few).

7” – 12” – 2.5Y 5/1 with 10YR 4/4 mottles (common)

Uplands: 0” – 7” – 10YR 3/2 silt loam with no mottles.

7” – 12” – 2.5Y 4/3 gravelly silt loam with no mottles

NOTE: Upper layer of soils disturbed from historic agricultural activities (tilling, etc.).

Vegetation: NOTE – field is regularly mowed

Wetlands Foxtail (*Alopecurus pratensis*) FACW  
Reed canary grass (*Phalaris arundinaceae*) FACW  
Velvet grass (*Holcus lanatus*) FAC  
Canada thistle (*Cirsium arvense*), FAC  
Red fescue (*Festuca rubra*) FAC  
Bentgrass (*Agrostis spp.*) FAC

Upland Tall fescue (*Festuca arundinacea*), FAC-  
Reed canary grass (*Phalaris arundinaceae*) FACW  
Canada thistle (*Cirsium arvense*), FAC  
Bentgrass (*Agrostis spp.*) FAC  
Sweet vernal grass (*Anthoxanthum odoratum*) FACU  
English plantain (*Plantago lanceolata*) FACU+  
Hairy cat's ear (*Hypochaeris radicata*) FACU

Wetland acreage identified: 2.8 acres

Wetland acreage to be filled: Unknown

Observations/Discussion: Corps personnel walked around the perimeter of the subject wetland as identified by the consultants at the time of the visit. Site slopes gently from the northeast to south-southwest. Wetland occupies a depression in the middle of the lot. No observable surface inlets or outlets were noted. Consultant provided information (from employee interviews) that indicates some sheetflow out of the roadside ditch along the northern edge of the site during severe rain events and periodic shallow ponding during seasonal winter rainy periods. Subsurface movement of water from ditch to wetland may occur. The area downslope of the wetland has upland soils and vegetation community. Topography rises approximately 2-4 feet south and west of the wetland before continuing down to refinery facilities. There are no ditches or other drainage features along the downslope perimeter of the site or in the immediate vicinity. The nearest ditch is over 900 feet south along the edge of “4<sup>th</sup> street”, an interior refinery road. Despite previous days of moderate to heavy rain, there was no standing water in the wetland and no soil saturation detected in the upland areas south and west of the wetland.

NOTE: Additional wetlands exist on the refinery site to the west. Closest wetland to the subject site is 1,400 feet west, with intervening refinery facilities. These wetlands are not the subject of the jurisdictional determination request, but are identified in the Refinery Critical Areas Inventory and the above noted wetland delineation.

Jurisdictional determination:

Wetland in questions has no surface water connections to other waters of the U. S., is so removed and separated by uplands to preclude subsurface connection to downstream waters of the U. S., and provides no significant support for downstream Traditional Navigable Waters. The subject wetland is not used by interstate or foreign travelers for recreational purposes, has no habitat or resources of special significance which would attract interstate or foreign travelers, Lacks bird 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 is “isolated” and outside Corps’ jurisdiction under Section 404 and Section 10 regulations.