

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 15 July 2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District – Skagit, Port of, NWS-2008-19-NO

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

State: WA County/parish/borough: Skagit City: Burlington  
Center coordinates of site (lat/long in degree decimal format): Lat: 48.4705219789548, Long. -122.429597114871  
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: Higgins Slough

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Telegraph Slough/Padilla Bay

Name of watershed or Hydrologic Unit Code (HUC): 17110002, Strait of Georgia

- 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.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination. Date: 25 June, 2008  
 Field Determination. Date(s): 4 September 2003 and 31 March 2004

**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):**<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: 5,475 linear feet: average 3' width (ft) and/or 0.38 acres.  
Wetlands: 2.27 acres

**c. Limits (boundaries) of jurisdiction based on:**

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:

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

<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.

1. **TNW**

Identify TNW:

Summarize rationale supporting determination:

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent":

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

**If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW.** If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: Strait of Georgia (HUC 17110002) 955 **square miles**

Drainage area: 130 **acres**

Average annual rainfall: 32 inches

Average annual snowfall: 16 inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through **3** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.

Project waters are **1-2** river miles from RPW.

Project waters are **2-5** aerial (straight) miles from TNW.

Project waters are **1 (or less)** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>: Onsite wetland s flow into a ditch system (Ditches 1 – 4) which drains to Higgins Slough, which flows into Telegraph Slough, a tributary of Padilla Bay, a tidal waterbody used for interstate and foreign commerce

Tributary stream order, if known: 1.

(b) **General Tributary Characteristics (check all that apply):**

**Tributary** is:

Natural

Artificial (man-made). Explain: Ditch system from airport to Higgins Slough is man made and replaced natural drainage features in the area..

Manipulated (man-altered). Explain: Channelization and flood/tidegates on Higgins and Telegraph Sloughs.

**Tributary** properties with respect to top of bank (estimate):

Average width: 3-6 feet

Average depth: 3 feet

Average side slopes: **2:1**.

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Primary tributary substrate composition (check all that apply):

- |  |  |                                   |
|--|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts  | <input checked="" type="checkbox"/> Sands  | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles           | <input type="checkbox"/> Gravel  | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock           | <input checked="" type="checkbox"/> Vegetation. Type/% cover: grass species, 85% |                                   |
| <input type="checkbox"/> Other. Explain: . |  |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable and vegetated.

Presence of run/riffle/pool complexes. Explain: none.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 3 %

(c) **Flow:**

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **5-10**

Describe flow regime: intermittent and seasonal (responds to precipitation).

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: See additional information below.

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Bed and banks  |   |  |
| <input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply): |   |  |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank            | <input type="checkbox"/> the presence of litter and debris                |  |
| <input type="checkbox"/> changes in the character of soil                                | <input checked="" type="checkbox"/> destruction of terrestrial vegetation |  |
| <input checked="" type="checkbox"/> shelving   | <input type="checkbox"/> the presence of wrack line                       |  |
| <input checked="" type="checkbox"/> vegetation matted down, bent, or absent              | <input type="checkbox"/> sediment sorting                                 |  |
| <input type="checkbox"/> leaf litter disturbed or washed away                            | <input checked="" type="checkbox"/> scour                                 |  |
| <input type="checkbox"/> sediment deposition   | <input type="checkbox"/> multiple observed or predicted flow events       |  |
| <input type="checkbox"/> water staining  | <input type="checkbox"/> abrupt change in plant community                 |  |
| <input type="checkbox"/> other (list):   |   |  |

Discontinuous OHWM.<sup>7</sup> Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by:   | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Site has been listed under the Washington State Model Toxic Cleanup Act based on exceedance of regulated standards for pesticides in site soils. Water conveyed by ditch system is generally clear with moderate organic debris, general water quality is good over total length of ditch system, watershed has been extensively developed for agricultural and residential uses, unnamed tributary system (ditches) and the downstream waters of Higgins and Telegraph Sloughs are not listed on the WA State 303(d) list.

Identify specific pollutants, if known: Pesticides, herbicides, fertilizers.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): shrub/herbaceous (grasses), 100+ feet.
- Wetland fringe. Characteristics: PEM dominated by grass species.
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: .

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

- Wetland size: 2.27 acres
- Wetland type. Explain: PEM depressional (wetlands A – D).
- Wetland quality. Explain: Wetland B, C, D – Category IV; Wetland A –Category III.
- Per Washington State wetland rating System (based on a scale of I to IV, I being the highest functioning)

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Wetlands overflow into non-RPW during annual heavy rain events.

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Unknown**. Explain findings:

- Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: See additional information section.
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.  
Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Site has been listed under the Washington State Model Toxic Cleanup Act based on exceedance of regulated standards for pesticides in site soils. Water conveyed by ditch system is generally clear with moderate organic debris, general water quality is good over total length of ditch system, watershed has been extensively developed for agricultural and residential uses, unnamed tributary system (ditches) and the downstream waters of Higgins and Telegraph Sloughs are not listed on the WA State 303(d) list.  
Identify specific pollutants, if known: pesticides, herbicides, fertilizers.

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): Emergent (herbaceous), 10-80 feet.
- Vegetation type/percent cover. Explain: Emergent (grass species) 95% cover.
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **25-30**  
Approximately 66 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

| Wetland  | Directly abuts? (Y/N) | Size (in acres) | Wetland | Directly abuts? (Y/N) | Size (in acres) |
|--|-----------------------|-----------------|---------|-----------------------|-----------------|
| <u>From 2007 Report</u>                        |                       |                 |         |                       |                 |
| A/B*   | Y                     | 2.20            | I       | N                     | 1.37            |
| C  | N                     | 0.001           | K       | N                     | 0.16            |
| D  | N                     | 0.07            | L       | N                     | 0.23            |
| * Identified as Wetland O and E in 2004 report |                       |                 |         |                       |                 |
| <u>From 2004 Report</u>                        |                       |                 |         |                       |                 |
| A  | Y                     | 0.27            | Q       | Y                     | 0.80            |
| B  | Y                     | 0.55            | R       | N                     | 0.16            |
| C  | Y                     | 0.36            | S       | N                     | 0.06            |
| D  | Y                     | 0.64            | T       | N                     | 0.05            |
| F  | N                     | 0.20            | U       | N                     | 0.18            |
| G  | N                     | 0.30            | V       | N                     | 0.04            |
| H  | N                     | 0.46            | W       | N                     | 0.04            |

In addition, the 2004 report identified approximately 56.5 acres of wetlands in the infield area that were not delineated. These are shown as cross hatched areas on the 2004 delineation drawings attached to this document.

Summarize overall biological, chemical and physical functions being performed: See Section C below for summary.

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Subject wetlands have a significant nexus to downstream TNW.

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Subject reach includes the on site tributaries (Ditches 1 and 2) and associated wetlands. Wetland areas along Taxiway F that extend south from the project site south are hydrologically connected by discrete surface water features to form one continuous drainage feature that flows into Ditch 1. Ditch 1 flows under Taxiway F and into Ditch 2, which flows south for approximately 1,500 feet before joining Ditch 3, which flows east for approximately 3,300 feet before flowing into Ditch 4 which flows south for approximately 2,300 feet into Higgins Slough. Higgins slough flows roughly southwest then northwest for 5.60 miles before entering Telegraph Slough, which flows 1.80 miles north into Padilla Bay.

Watershed has been extensively developed for agricultural, industrial, and aviation uses. Essential Fish Habitat for Pacific Salmon (coho) designated under the Magnuson-Stevens Fishery Conservation and Management Act extends from the TNW (Padilla Bay) upstream through Telegraph and Higgins Sloughs and into Ditch 4. Fish species listed under the Endangered Species Act utilize the waters of Telegraph Slough; designated critical habitat for chinook salmon and bull trout exists in Padilla Bay.

Wetland functions are moderate wildlife habitat and habitat diversity, moderate enhanced food web support, moderate floodwater storage/attenuation, and moderate sediment input reduction and toxin removal.

The wetlands create and transfer organic carbon which supports the downstream food web of the TNW. Wetlands improve downstream water quality in TNW through sediment and toxin interception. The lengthy vegetated tributary/wetland complexes have the capacity to capture pollutants (primarily agricultural herbicides/pesticides and sediments) to reduce the amount of pollutants, sediments or flood waters from reaching the TNW. Wetlands attenuates downstream flooding by reducing peak flow in the watershed during major storm events and attenuates erosion by detaining high flows during storms and reduce the duration of erosive flows, thus decreasing downstream erosion in streams. Wetlands and ditch system contribute significant support to habitat for ESA listed species and Essential Fisheries Habitat

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3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D.¶

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: linear feet width (ft), Or, acres.  
 Wetlands adjacent to TNWs: acres.

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 seasonally:  
 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: Tributaries identified as having continuous flow for 3-6 months. See additional information for details.

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:

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: 5,475 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.  
 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:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

<sup>8</sup>See Footnote # 3.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **2.27** acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**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):<sup>10</sup>**

- 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 (CHECK ALL THAT APPLY):**

- 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: 0.71 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (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: 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 delineation report dated May 2006.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> 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: La Conner Quad
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s): WA State Department of Ecology, 2001
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): WA State Department of Ecology, 2005; Skagit County, 2004.  
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:**

**Dates of Site Visits:** 4 September 2003 and 31 March 2004

**Investigator(s):** Randel Perry, T. J. Stetz

Mr. Scott Mahary (Grette Associates) was also on site at the time of the visits.

1. **Site Description and Significant Resources in the area:** Current project involves wetlands on the Farmers Supply/Tronsdale site, the subject of a Washington State Model Toxic Cleanup Act action. The review area is a linear shaped parcel trending north-south and covering approximately 34 acres. NWI map shows PEM wetlands along the northern portion of the site and a PFO wetland at the central portion of the site, both east of the taxiway. The site is located immediately east of Taxiway "F" at the Skagit Regional Airport. Applicant had previously requested a jurisdictional determination for all wetlands along Taxiway F. Previous site visits were conducted for this reason; no final jurisdictional determination was made. The Corps requested that the boundaries of a number of wetlands be revised based on field observations.
2. **Project Purpose and Description:** Fill/grade associated with commercial development at airport.
3. **Physical / Chemical Characteristics:**
  - a. Streamflow c.f.s.: 0.5 to 2.0cfs
  - b. Salinity: NA
  - c. Soils: Bow gravelly-loam (0% - 3% slope soils) (hydric).  
Xerorthents (0% - 5% slope soils) (non-hydric)  
Wetlands - 10YR 3/1 silt loam  
Uplands - 10YR 3/3 silt loam
  - d. Hydrology: Saturation at shallow depth and signs of inundation at center of wetlands.
4. **Biological Characteristics:**
  - a. Percentage of dominant vegetation FAC or wetter: 95% in wetlands
  - b. Vegetation species list:
    - Riparian Wetlands
    - Soft rush (*Juncus effusus*), FACW+
    - Creeping buttercup (*Ranunculus repens*), FACW
    - Velvet grass (*Holcus lanatus*), FAC
    - Reed canarygrass (*Phalaris arundinacea*), FACW
    - Creeping bentgrass (*Agrostis stolonifera*), FAC+
    - Bluegrass (*Poa* spp.) FAC - FACU
    - Knotgrass (*Paspalum distichum*), FACW
    - Meadow foxtail (*Alopecurus pratensis*), FACW
    - Sawbeak sedge (*Carex stipata*), FACW+
    - Pacific willow (*Salix lasiandra*), FACW+
    - Field wetlands
    - Velvet grass (*Holcus lanatus*), FAC
    - Creeping buttercup (*Ranunculus repens*), FACW
    - Creeping bentgrass (*Agrostis stolonifera*), FAC+
    - Uplands

Canadian thistle (*Cirsium arvense*), FACU+  
Reed canarygrass (*Phalaris arundinacea*), FACW  
Tenuous bentgrass (*Agrostis tenuis*), FAC  
Sweet vernal grass, (*Anthoxanthum odoratum*), FACU

- c. Fauna: bird presence.
- d. NWI Classification, associations/communities: PEM

**5. Lateral Extent of Jurisdiction:**

- a. OHW, MHHW, MHW and datum:
- b. Acreage of wetlands to be impacted: Approximately 1.95 acres (MTCA clean-up and restoration activities)
- c. Total acreage of wetlands/waters on site: 2.27+ acres of wetlands (Wetland A extends offsite)

- 6. Additional information:** The project area contains a number of drainage features (ditches) that appear to be jurisdictional based on the presence of discernable beds, banks and OHW lines and connections to downstream waters. The consultant has separated the drainages into Reach designations, labeled 1-4 (see attached map). The drainages are tributaries of Higgins Slough which flows into Telegraph Slough, a tributary of Samish Bay. Based on site observations and information provided by the consultant:

Ditch 1 - Extends from the project site south to the convergence of Taxiway F and Runway 04/22. Average width is 2 feet and a majority of the length is heavily vegetated with grass species. Flowing water occurs in the ditch following rain events. Ditch 1 passes under Taxiway F via an old culvert and flows into Ditch 2.

Ditch 2 - Flows south along the western edge of the airport property to Ovenell Road. Average width is 4 feet and a majority of the length is heavily vegetated with grass species. Flowing water occurs in the ditch annually between December and March with intermittent flows over the rest of the year after rainfall events. Ditch 2 passes under Ovenell Road and flows into Ditch 3.

Ditch 3 - Flows east along Ovenell Road. Average width is 7 feet and a majority of the length is routinely excavated by County maintenance crews. Riparian area features some stands of alder and willow. Flowing water occurs in the ditch annually between November and April with intermittent flows over the rest of the year after rainfall events. Ditch 3 passes under Ovenell Road and flows into Ditch 4.

Ditch 4 - Is a manipulated natural drainage feature that flows south from Ovenell Road to Higgins Slough. Average width is 6 feet, depth is 5-6 feet, and the channel is well formed with a riparian area featuring extensive stands of alder and willow. Flowing water occurs in the ditch annually for about 9 months of the year. Ditch 4 flows into Higgins Slough at a point close to the intersection of State Route 20 and Higgins Airport Way.

Corps personnel walked around the identified boundaries of all wetlands along Taxiway F during the 2004 site inspections. The Corps had previously requested revisions to some wetland boundaries, but to date has not received them. The applicant provided a new delineation for the project wetlands (A-D); these flagged wetland boundaries appear to accurately delineate the wetland edges based on previous observations.

Wetlands C and D flow into a ditch along the north boundary of the Farmers Supply/Tronsdale site, which also collects water from wetland B before flowing into wetland A. Wetland A abuts Ditch 1.

**Areas are jurisdictional wetlands.** Wetlands B through C are considered adjacent, per the definition found at 33 CFR 328.2(c), to non-relatively permanent waters and Wetland A is considered abutting the non-RPW identified as a tributary of Ditch 1 that drains through Ditches 2, 3, and 4 and into Higgins Slough which flows into Telegraph Slough, a tributary of Padilla Bay, a tidal waterbody used for interstate and foreign commerce. Wetlands A through D and all other wetlands associated with the drainage area for Ditch 1 and the tributary system composed of Ditches 1 through 4 have a significant nexus to downstream traditional navigable waters and are jurisdictional waters of the U. S.