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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 29, 2008.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: **Seattle District,** NWS-2008-371-CRS, Battle Ground Home Depot.
Name of water being evaluated on this JD form: Mill Creek and Wetland D

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Washington County: Clark City: Battle Ground
Center coordinates of site (lat/long in degree decimal format): Lat: 45º 46' 39.1" **N**, Long: 122º 34' 13.9" **W**
Universal Transverse Mercator: .
Name of nearest waterbody: Mill Creek.
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Salmon Creek and East Fork Lewis River.
Name of watershed or Hydrologic Unit Code (HUC): F17080001.
☒ 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: JD 2 of 2 for Wetlands A, B and C (isolated)

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date: April 29, 2008.
☒ Field Determination. Date(s): April 3, 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** "*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
   - ☐ 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: 2000 linear feet 3 width (ft) and/or _____ acres.
   Wetlands: 0.25 acres.

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

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[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: Mill Creek at the project site is about 3 feet wide. Based upon field oberservations, this poriton of the creek flows year round. Creek is depicted as a blueline on maps and is mapped as being a fish bearing water by the WA Department of Natural Resources Forest Practices Application Review System. Describe flow path to a TNW: Mill Creek drains into both Salmon Creek and the East Fork Lewis River, both of which are TNWs. A portion of the water in Mill Creek flows southwest to where it converges with Salmon Creek at about rivermile 6.5. Salmon Creek has been determined to be a TNW at rivemile 7. Salmon Creek is approximately 4.5 aerial miles and 6.2 river miles from the project site. A portion of the water in Mill Creek also flows west then north to the East Fork of the Lewis River. The East Fork Lewis River is approximately 4.5 aerial miles and 5.1 river miles from the project site.

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

☒ Tributary waters: **2000** linear feet **3** 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: Based upon field observations, review of wetland delineation report, and aerial photographs, Wetland D is directly abutting Mill Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.25** 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: "Home Depot (Battle Ground) Wetland Delineation & Assessment Report" prepared by James Barnes dated November 13, 2007 and "Battle Ground Home Depot compensatory Wetland Mitigation Plan" Prepared by James Barnes and dated February 28, 2008..

☒ 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: _____

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: _____.

☐ National wetlands inventory map(s). Cite name: _____.

☒ State/Local wetland inventory map(s): Clark County Digital Atlas for parcels192606-000 and 192956-000 http://gis.clark.wa.gov/imf/imf.jsp?site=digitalatlas&CFID=356418&CFTOKEN=18249092

☐ 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): MFR dated January 30, 2008, Traditional Navigable Water Determination for Salmon Creek in Clark County, Washington.

WA Department of Natural Resources Forest Practices Application Review System at http://fortress.wa.gov/dnr/app1/Fpars/viewer.htm

B. ADDITIONAL COMMENTS TO SUPPORT JD: _____.

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 27, 2008.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: **Seattle District,** NWS-2008-371-CRS, Battle Ground Home Depot.
Name of water being evaluated on this JD form: Wetlands A, B and C

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Washington County: Clark City: Battle Ground
Center coordinates of site (lat/long in degree decimal format): Lat: 45º 46' 39.1" **N**, Long: 122º 34' 13.9 **W**
Universal Transverse Mercator: .
Name of nearest waterbody: Mill Creek.
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Salmon Creek and East Fork Lewis River.
Name of watershed or Hydrologic Unit Code (HUC): F17080001.
☒ 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: JD 1 of 2 for Mill Creek and Wetland D

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: April 29, 2008.
☒ Field Determination. Date(s): April 3, 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):** [1]
   ☐ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (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: Wetlands A, B and C are isolated, not hydrologically connected to Mill Creek.

[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: 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).
☐ 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: 0.60 acres (Wetland A - 21,764 sq ft, Wetland B - 3,031 sq ft, Wetland C 1,152 sq ft).

Isolated determination based upon a field assessment. Wetlands A, B and C are not hydrologically connected to Mill Creek.

* No evidence of surface or shallow subsurface hydrological connections were observed. There is a slight rise in the topography between the creek and Wetland A, inhibiting surface water flowing towards the creek.
* The wetlands are outside the floodplain. Wetland A is approximately 175 feet north of the creek. Wetland A is the closest of the three wetlands to the creek.
* Hydric soils are not mapped on the site. Soils are mapped as Dollar loam (DoB) and Hockinson loam (HuB).
* Hydrology for the three wetlands is assumed to be precipitation.
* The site is a hay-field next to a barn, house, and equipment storage area. The wetlands are 100% vegetated, primarily with *Agrostis stolonifera* (FAC), *Alopecurus pratensis* (FACW), and *Juncus effusus* (FACW).
* No known interstate commerce connection exists. The site is used for the production of hay, but the hay is most likely used locally.
* Wetland A is a depressional wetland, approximately 21,764 sq ft in size. Wetland B is approximately 3,031 sq ft. A depression/swale was observed where surface water likely flows southwest from Wetland B to Wetland A during heavy rain events. Wetlands do not exist between the two wetlands. Wetland C is a much smaller wetland (1,152 sq fet). No swale or surface connection was observed between Wetland C and B.

[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.***

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: "Home Depot (Battle Ground) Wetland Delineation & Assessment Report" prepared by James Barnes dated November 13, 2007 and "Battle Ground Home Depot compensatory Wetland Mitigation Plan" Prepared by James Barnes and dated February 28, 2008.

☒ 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: _____

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: _____.

☐ National wetlands inventory map(s). Cite name: _____.

☒ State/Local wetland inventory map(s): Clark County Digital Atlas for parcels192606-000 and 192956-000 http://gis.clark.wa.gov/imf/imf.jsp?site=digitalatlas&CFID=356418&CFTOKEN=18249092

☐ 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): MFR dated January 30, 2008, Traditional Navigable Water Determination for Salmon Creek in Clark County, Washington.

WA Department of Natural Resources Forest Practices Application Review System at http://fortress.wa.gov/dnr/app1/Fpars/viewer.htm.

B. ADDITIONAL COMMENTS TO SUPPORT JD:. Coordinated with USEPA per Rapanos Guidance on May 5, 2008; however, EPA did not respond within established timeframes. Concurrence assumed.