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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1 August 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Grandview's Cordata Green, LLC, NWS-2008-635-NO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: WA County/parish/borough: Whatcom City: Bellingham
Center coordinates of site (lat/long in degree decimal format): Lat. 48.7955307526273 **N**, Long. -122.507892111811**W**.
Universal Transverse Mercator: Zone 10 N E
Name of nearest waterbody: Bear Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Bellingham Bay
Name of watershed or Hydrologic Unit Code (HUC): Strait of Georgia, 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.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 1 August 2008
☐ Field Determination. Date(s):

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: Stream – 1,440 linear feet: 2 feet wide (avg.) 0.10 acre
Wetlands: 0.27 acres.

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

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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

[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.

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.

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

(i) General Area Conditions:

Watershed size: 955 **square miles**
Drainage area: 427 **acres**
Average annual rainfall: 35 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 **Pick List** river miles from RPW.
Project waters are **1-2** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .
Identify flow route to TNW[4]: Water from wetlands enter the Aldrich Road Ditch, which flows into Bear Creek, a tributary of Silver Creek, which flows into Bellingham Bay.
Tributary stream order, if known: 1st.

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

Tributary is: ☐ Natural
☒ Artificial (man-made). Explain: Ditch along Aldrich Road has replaced natural drainage features.
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 3 feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: Grass species, 85%	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable banks over most of reach.
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: seasonal flow
Estimate average number of flow events in review area/year: 5+
Describe flow regime: **Persistent flow for 9 months out of the year**.
Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: .
Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[5] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☒ shelving	☐ the presence of wrack line

[4] 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.
[5] 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.

☒ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):

☒ sediment sorting
☐ scour
☐ multiple observed or predicted flow events
☐ abrupt change in plant community

☐ Discontinuous OHWM.[6] Explain: .

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

☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
- ☐ fine shell or debris deposits (foreshore)
- ☐ physical markings/characteristics
- ☐ tidal gauges
- ☐ other (list):

☐ Mean High Water Mark indicated by:
- ☐ survey to available datum;
- ☐ physical markings;
- ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water is clear and water quality is good. Tributary conveys water from natural sources and runoff from residential lands and roads.

Identify specific pollutants, if known: petrochemicals and fecal choliform.

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

☒ Riparian corridor. Characteristics (type, average width): Corridor is dominated by field Grasses.
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
- ☐ Federally Listed species. Explain findings:
- ☐ Fish/spawn areas. Explain findings:
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings:

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

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

C. SIGNIFICANT NEXUS DETERMINATION

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:

2. RPWs that flow directly or indirectly into TNWs.

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:

☒ 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: **Per information provided by consultant, the road side ditch has persistent flow for 9 months out of the year (October to June).**

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **1,440 linear feet: 3 feet wide (avg.) 0.10 acre**
☐ Other non-wetland waters: acres.
Identify type(s) of waters:

3. Non-RPWs[7] that flow directly or indirectly into TNWs.

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: **The document titled "*Wetland Reconnaissance and Delineation*," dated April 19, 1993 and the re-**

[6]Ibid.
[7]See Footnote # 3.

verification of boundaries dated May 27, 2008 identifies the boundary of onsite wetlands as extending to the edge of the Aldrich Road ditch with no intervening uplands, berms, etc.

Provide acreage estimates for jurisdictional wetlands in the review area: **26 acres**

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
7. **Impoundments of jurisdictional waters.**[8]

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):[9]

F. Non-jurisdictional waters, including wetlands (check all that apply):

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: project drawings, wetland delineation, and mitigation plan.

☒ 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: 7.5min, Ferndale Quad.

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

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

☒ State/Local wetland inventory map(s):WA Dept. of Ecology, 2001.

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date):WA Dept of Ecology, 2005.
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:

[8] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[9] **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.***