U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 11/3/2020
ORM Number: NWS-2017-430
Associated JDs: NWS-2018-443
Review Area Location[1]: State/Territory: WA City: Bellingham County/Parish/Borough: Whatcom
Center Coordinates of Review Area: Latitude 48.81175 Longitude -122.48977

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland A	2.38	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year.
Wetland B	0.01	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year.
Wetland C	0.02	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year.
Wetland D	0.02	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3)

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See additional information in Section III.
Wetland E	0.97	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See additional information in Section III.
Wetland F	0.47	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See additional information in Section III.
Wetland K	0.09	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See additional information in Section III.
Wetland L	0.01	acre(s)	(b)(1) Non-adjacent wetland.	The subject wetland does not abut a paragraph (a)(1) through (3) water; is not inundated by flooding from a paragraph (a)(1) through (3) water in a typical year; is not physically separated from a paragraph (a)(1) through (3) water only by a natural berm, bank, dune, or similar natural feature; and is not physically separated from a paragraph (a)(1) through (3) water only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the paragraph (a)(1) through (3) water in a typical year. See additional information in Section III.
Tremont Ave. North Ditch	850	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The subject ditch is not a paragraph (a)(1) or (2) waters; The ditch does not contribute perennial or intermittent surface water flow to a paragraph (a)(1) water in a typical year either directly or through one or more paragraph (a)(2) through (4) waters. Portions of the ditch that may have been constructed in wetlands do not satisfy the conditions of paragraph (c)(1) and therefore is not a paragraph (a)(4) water. See additional information in Section III.
Tremont Ave. South Ditch	850	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The subject ditch is not a paragraph (a)(1) or (2) waters; The ditch does not contribute perennial or intermittent surface water flow to a paragraph (a)(1) water in a typical year either directly or through one or more paragraph (a)(2) through (4) waters. Portions of the ditch that may have been constructed in wetlands do not satisfy the conditions of paragraph (c)(1) and therefore is not a paragraph (a)(4) water. See additional information in Section III.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: “Wetland Delineation Report, Waldron Woods,” dated August 2017 and“Waldron Woods- Critical Area Assessment Addendum,” dated 10 August 2020

This information is sufficient for purposes of this AJD.

Rationale: N/A

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: 2015 Site Photos (delioenation report), 2020 site visit photos, 2018 Google Earth aerial

☒ Corps site visit(s) conducted on: 28 September 2020

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☐ USDA NRCS Soil Survey: Title(s) and/or date(s).

☒ USFWS NWI maps: https://www.fws.gov/wetlands/data/Mapper.html accessed 31 August 2020

☒ USGS topographic maps: 7.5 Bellingham North Quad

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	https://viewer.nationalmap.gov/basic/?basemap=b1&category=nhd&title=NHD%20View accessed 31 August 2020.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	City of Bellingham Wetland/Drainage Mapper at https://maps.cob.org/geviewer/Html5Viewer/Index.html?viewer=cityiq accessed 25 September 2020
Other Sources	N/A.

B. Typical year assessment(s): Although not required for exclusion determinations, a typical year determination was made using the APT. Then report was generated for the start date of 28 September 2020 and indicated that the site visit was performed during the dry season, the draught index was "normal" and the result indicated wetter than normal conditions. The later was consistent with heavy rains during the two weeks previous to the report date.

C. Additional comments to support AJD: NOTE: Due to COVID protection measures, Corps PM did not meet with the wetland consultant on-site. Corps PM conducted a "drive-by" inspection of the perimeter of the site to observe local drainage features (ditches) and site topography. The wetland consultant previously provided information on the site wetlands including drainage pathways and photos.

1. Site Description and Significant Resources in the area: The review area was subject to a Corps' Individual Permit for a new housing development issued on 16 November 2018 (NWS-2017-430). Additional Tremont LLC property to the east was the subject of a Nationwide Permit 39 verification for a new church and storage facility issued on 4 September 2018 (NWS-2018-443). The Corps determined that the two projects had separate and independent utility. No work has been undertaken; no wetlands filled.

The 18-acre review area is a portion of the Tremont LLC property located along Tremont Avenue in the northern area of the City of Bellingham and in the Bear Creek basin. Other than Tremont Avenue bisecting the site, the property is largely undeveloped. The majority of the project area is forested with deciduous trees and a dense understory of shrubs. Due to past logging, the entire project area is predominantly re-forested with single age class red alder and a shrub understory. Parcels west and south of the project site

are currently developed; parcels to the north and east are not. The surrounding vicinity has been moderately developed for residential and commercial land uses.

2. Delineation: A wetland delineation dated August 2015 was provided for the site. Sampling for the report occurred between April and June of 2015. The report identified Seven wetlands totaling 3.97 acres were identified on the project parcels. In addition, East Fork Bear Creek is located approximately 360 feet to the east. An addendum to the delineation dated 10 August 2020 indicated no changes to the wetland boundaries. The addendum was provided to clarify hydrological connections between the wetlands and local drainage features (ditches and a stream). Portions of Wetland F occur on both the residential and church project sites

3. Hydrology: Per the Antecedent Precipitation Tool, the site visit occurred during a wetter than normal period" for precipitation. Heavy rainfall had occurred over the two weeks prior to the site visit.

4. Additional information: There are two shallow drainage features (ditches) running adjacent Tremont Street along both sides. Flow in the ditches is influenced by a topographic break (high point) west of East Fork Bear Creek. The ditches east of the topographic break (high point) flow into East Fork Bear Creek. A site visit was conducted to evaluate the ditches and verify flow paths

Ditches to the west of the topographic break flow westward into constructed stormwater facilities. The ditch along the north side of the road enters the City of Bellingham stormwater system at the edge of an existing residential development. City mapping shows the stormwater system conveys water to a regional detention pond west of the combined project sites. From there the mapping indicates water flows approximately 900 feet through additional piping and into an unnamed tributary of East Fork Bear Creek. The ditch along the southern side of Tremont Street flows to the same regional facility by a different stormwater system route. Based on proximity to the delineated wetlands, a portion of the ditches may have been constructed in wetlands at the time Tremont Avenue was installed, however, there is no current documentation available to verify this. The ditches do not appear to be regularly maintained; they are shallow features that do not currently exhibit wetland characteristics. No flow was observed in the ditches at the time of the site visit. Any flow would be ephemeral.

Wetlands A, C, D, E, and F all eventually drain to roadside diches west of the topographic break as described above. Wetlands A, D, and E directly abut the roadside ditches. Based on topography (slope), Wetlands C and F drain overland into the ditches. Water in these ditches flows through a series of culverts and ditches before eventually emptying into East Bear Creek. The connecting culverts and ditches were all constructed during construction of Tremont Avenue and/or development of single family lots to the west, or commercial development and Horton Road to the south. Outflow from the wetlands and flows in the ditches appears to be primarily from precipitation events; the ditches do not appear to be intermittent or perennial features and do not appear to meet the definition of a (a)(2) tributary.

Wetlands B, K, and L appear to be hydrologically isolated. Wetlands B, K, and L are small PFO closed depressional wetlands. These wetlands receive water from direct precipitation, surface run-off from immediate surrounding areas, and potentially seasonally high or perched groundwater. The wetlands do not appear to have outlets; no flow paths to other areas were identified.