Regulatory Program

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers
This form should be completed by following the instructions provided
in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 4/26/19

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWS-2004-357

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:WA County/parish/borough: Skagit City: Mount Vernon
Center coordinates of site (lat/long in degree decimal format): Lat. 48.4535, Long. -122.3029.
Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☒ attached ☒ in report/map titled Wetland/fish/wildlife Assessment.
☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:
☒ Office (Desk) Determination Only. Date: 4/26/19.
☐ Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): .

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Wetland Delineation and Habitat Assessment 10/31/18.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Wetland Delineation and Habitat Assessment 10/31/18.
☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .
Revised Title/Date: .
☐ Data sheets prepared by the Corps. Title/Date: .
☐ Corps navigable waters study. Title/Date: .
☒ CorpsMap ORM map layers. Title/Date: 3/21/19.
☐ USGS Hydrologic Atlas. Title/Date: .
☐ USGS, NHD, or WBD data/maps. Title/Date: .
☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .
☐ USGS maps. Scale & quad name and date: .
☒ USDA NRCS Soil Survey. Citation: 7/5/18.
☒ USFWS National Wetlands Inventory maps. Citation: 6/13/18.
☒ State/Local wetland inventory maps. Citation: 5/11/15.
☒ FEMA/FIRM maps. Citation: 7/5/18.
☐ Photographs: ☐ Aerial. Citation: . or ☐ Other. Citation: .
☐ LiDAR data/maps. Citation: .
☒ Previous JDs. File no. and date of JD letter: NWS-2004-357; 7/14/04.
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

☐ "*navigable waters of the U.S.*" within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "*waters of the U.S.*" within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

☐ (a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

☐ (a)(3): The territorial seas.

- **Complete Table 3 - Required**

☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

☒ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

☒ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

☐ Bordering/Contiguous.

Neighboring:

☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

☒ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

☐ The review area is comprised entirely of dry land.

☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

☐ (b)(2): Prior converted cropland.

☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.[1]

☐ (b)(4)(iv): Small ornamental waters created in dry land.[1]

☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.[1]

☐ (b)(4)(vii): Puddles.[1]

☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.[1]

☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.[1]

☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: .

[1] In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5)Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
Lindegren Creek	Perennial	Skagit River	No	See attached map
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Wetland C	Lundegren Creek	Bordering
Wetland E	Lundegren Creek	Bordering
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	Wetlands A, B, D	Skagit River	See MFR in the administrative record for this project for Similarly Situated Waters and Significant Nexus Determination dated April 26, 2019 for rationale to support a finding of no significant nexus.
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

CENWS-ODR
Reference: NWS-2004-357; Mitzel, Dan

MEMORANDUM FOR RECORD

SUBJECT: **Similarly Situated Waters and Significant Nexus Determination**
The waters specified at paragraph (a)(8) require a determination whether they are similarly situated. Under this step, the agencies apply factors in the determination of when waters evaluated under paragraph (a)(8) should be considered either individually or in combination for purposes of a significant nexus analysis. A determination of ''similarly situated'' requires an evaluation of whether a group of waters in the region that meet the distance thresholds set out under paragraph (a)(8) can reasonably be expected to function together in their effect on the chemical, physical, or biological integrity of downstream traditional navigable waters, interstate waters, or the territorial seas. Similarly situated waters can be identified as sufficiently close together for purposes of this paragraph of the regulation when they are within a contiguous area of land with relatively homogeneous soils, vegetation, and landform (*e.g.,* plain, mountain, valley, etc.).

A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (a)(1) through (3).

NOTE: This evaluation is for Wetlands A, B, and D only. On-site Wetlands C and E are (a)(6) waters based on proximity to Lindgren Creek (approximately 120 feet) and their location in the 100-year floodplain for the creek.

1. Subject Wetlands

    a. Soils: Based on USDA Soil Survey Data, soils at and immediately around the project area of Wetlands A, B, C, D, and E are mapped as Skagit silt loam (0 to 15% slopes – listed hydric soil) and Tokul gravelly medium loam (8 to 15% slopes – non hydric soil). Soils at the project site are mapped as partially hydric (1% -25%) and moderately drained.

    b. Vegetation: Wetland A, 0.62 of an acre (27,073 square feet) (SF) category IV is a Palustrine, Scrub-Shrub, Seasonally Saturated, Continuously Saturated (PSSBD) sloped wetland; Vegetation consists of Alnus rubra (red alder), Juncus effuses (soft rush), Holcus lanatus (common velvet grass), Ranunculus repens (creeping butter cup), and Lysichiton americanum (skunk cabbage);

Wetland B, 0.95 of an acre (41,242 SF) Palustrine Forested, Emergent, Seasonally Saturated, Continuously Saturated wetland (PFO/EMBD) category IV sloped wetland; Vegetation consists of Salix lasiandra (Pacific willow), Salix scouleriana (Scouler's willow), Rubus spectabilis (salmonberry) and Lysichiton americanum (skunk cabbage).

Wetland D, 0.06 of an acre (2,548 SF) Palustrine Forested, Seasonally Saturated (PFOB) category IV sloped wetland; Vegetation consists of Acer macrophyllum (big-leaf maple), Alnus rubra (red alder), Rt,bus spectabilis (salmonberry), Equisetum arvense (field horsetail) and Lysichiton americanum (skunk cabbage).

c. Landform: The wetlands are located in irregular plains moderately well drained land forms. Vicinity has mosaic of wetlands scattered over a wide forested / developed area along a ridge running southwest to northwest and generally slopes west toward Lindgren Creek which flows to an (a)(1) water, the Skagit River. Wetlands A, B, and D are not within the mapped 100-year flood plain and are located upslope from Wetlands C and E.

d. Proximity: Wetlands C and E are within the flood plain and adjacent to Lindgren Creek. Wetlands A, B, and D are not within the flood plain and area located 241-feet, 320-feet, and 544-feet, respectively, from Lindgren Creek.

2. Similarly Situated Characteristics

a. NWS-2004-357 Single Point of Entry (SPOE) basin is delineated in the attached figure. The Lindgren Creek SPOE is located within the lower Skagit River drainage area within Mount Vernon, Washington.

b. Similarly situated waters would be PSS/PFO/PEM/ seasonally saturated sloped wetlands in irregular landforms with soils that have been identified as hydric, moderately drained, located above the 100-year flood plain, and within 4000 feet of OHWM of Lindgren Creek, an (a)(5) tributary that drains to the Skagit River.

3. Similarly Situated Waters Identified
Based on NWI Mapping and characteristics discussed above, three wetlands totaling 8.50 acres were identified as similarly situated wetlands. Other wetlands were excluded because they were not situated within the same land cover, landform class, and soil drainage class.

4. Significant Nexus Determination

The subject waters (Wetlands A, B, and D) either alone or in combination with other similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of the Skagit River based on the discussion below:

Wetlands A, B, and D, functions evaluated include storage of floodwater; recharge of groundwater that sustains river base flow; retention and transformation of nutrients, metals, and pesticides; export of organism or seeds to downstream waters; and habitats needed for stream species.

Wetlands A, B, and D may provide some pollutant filtration as dense, woody plants cover at least half their areas. However, the areas immediately surrounding the wetlands is unmanaged and does not generate pollutants requiring wetland filtration. The wetlands likely provide forage and cover for small terrestrial mammals and birds. However, the diversity of niches within the wetlands are is limited by the presence of only one Cowardin class.
For the subject wetlands, the hydrologic connectively and effects to the downstream WOTUS is severely impacted and disconnected by natural and anthropological conditions (dikes, gated culverts, drainage ditches, artificial wetlands, upland hills). The landscape between Lindegren Creek and Wetlands A, B and D consists of upland areas which slope down to a depression where Wetlands C and E are located. An upland berm is located between Wetlands C and E before sloping down to Lindegren Creek, approximately 145-feet to the west. The downstream connection from the subject wetlands to the Skagit River is approximately 5,200 feet.

As Wetlands A, B and D are low functioning sloped wetlands, their ability to recharge groundwater that sustains river base flow or have a subsurface connection to the Skagit River is highly unlikely. Due to the wetlands location in the landscape above the 100 year flood plain they are unlikely to provide storage of floodwater; have little ability to provide retention and transformation of nutrients, metals, and pesticides; have little ability to provide export of organism or seeds to downstream waters; and no ability to provide habitat for aquatic species.

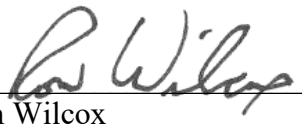
A review of aerial imagery indicates that the three NWI wetlands have similar characteristic to the subject wetlands – no direct connectivity to Lindgren Creek, situated in areas that have been modified through development, and offering little if any functional contributions to conditions in the Skagit River.

As such, Wetland C and the similarly situated wetlands working in combination are not providing significant contributions to flow, sediment and toxin trapping, nutrient recycling, retention and attenuation of flood waters, export of organic matter, or export of food resources at a level that would significantly affect the downstream (a)(1) water..

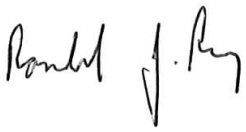
The Skagit River contains Essential Fisheries Habitat for anadromous salmonids that utilize the waters of Oakland Bay. In addition, the river provides rearing and spawning habitat for ESA listed bull trout, steelhead and chinook salmon. No fish use was identified in Lindegren Creek above a fish passage barrier found 3,600 feet downstream from the subject property. The subject waters either alone or in combination with other similarly situated waters in the SPOE basin, do

not contribute to fish habitat conditions in the Skagit River through primary food support, water quality protection, and/or moderation of flow regimes.

5. Conclusion: Because there is not a significant nexus, Wetlands A, B, and D are not waters of the U.S.



30 April 2019
Ron Wilcox Date
Senior Project Manager



30 April 2019
Randel Perry Date
Senior Project Manager

Attachments:
Vicinity Map
Aerial
Site Wetlands Map
Topo Map
SPOE Map
NWI/Drainage Class Map
NWI/Landform Map
NHD Map
NWI Map
Soil Survey