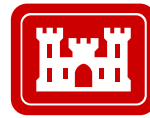




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Regulatory Program



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

This form should be completed by following the instructions provided in the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1 September 2015

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWS-2013-172-2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:WA County/parish/borough: Whatcom

City: Ferndale

Center coordinates of site (lat/long in degree decimal format): Lat. 48.82338°N, Long. -122.70029°W.

Map(s)/diagram(s) of review area (including map identifying single point of entry watershed where applicable) and/or potential jurisdictional areas is/are: ☒ attached ☐ in report/map titled .

☒ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form: Preliminary JD for ditches, streams, and wetlands south of the review area subject to this JD was made on 5 February 2013 (Corps reference number NWS-2015-172).

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office (Desk) Determination, Only. Date:.

☒ Office (Desk) and Field Determination. Office/Desk Date(s): 1 September 2015. Field Date(s): 8 March 2015.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this JD 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: .

☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☐ Office concurs with data sheets/delineation report: . Title/Date: .

☐ Office does not concur with data sheets/delineation report. Summarize rationale and include information on revised data sheets/delineation report that this JD 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: .

☐ USGS Hydrologic Atlas. Title/Date: .

☒ USGS NHD or WBD data/maps. ORM layer access 28 August 2015.

☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

☒ USGS maps. Scale & quad name and date: 7.5 min, Ferndale Quad.

☐ USDA NRCS Soil Survey. Citation: .

☐ USFWS National Wetlands Inventory maps. Citation: .

☐ State/Local wetland inventory maps. Citation: .

☐ FEMA/FIRM maps. Citation: .

☒ Photographs: ☒ Aerial. Citation: GoogleEarth 2015. or ☐ Other. Citation: .

☐ LiDAR data/maps. Citation: .

☒ Previous determinations. File no. and date of jurisdictional determination letter: NWS-2013-172-1, 5 February 2015; NWS-2008-1406, 23 December 2008.

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☐ Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

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.

- List water(s) and area/length within review area – Required:

NOTE: If the navigable water is not included on the District’s Section 10 list, **DO NOT USE THIS FORM.** The District must follow procedures outlined in 33 CFR part 329.14 to determine Section 10 RHA jurisdictional authority, and add a navigable water to its Section 10 list.

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) 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.

- Complete the Spreadsheet Tab “(a)(1)” - Required

☐ This JD form is being used to make an (a)(1) determination on a water which has not previously been designated as such. Documentation required for determination of (a)(1) jurisdiction is attached.

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

- Complete the Spreadsheet Tab “(a)(2)” - Required

☐ (a)(3): The territorial seas.

- Complete the Spreadsheet Tab “(a)(3)” - Required

☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.

- Complete the Spreadsheet Tab “(a)(4)” - Required

☐ (a)(5): All tributaries, as defined in 33 CFR part 328, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.

- Complete the Spreadsheet Tab “(a)(5)” - Required

☐ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- Complete the Spreadsheet Tab “(a)(6)” - Required

☐ Bordering/Contiguous.

Neighboring:

☐ (c)(2)(i): All waters located within the 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.

☐ (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 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, and all waters within 1,500 feet of the OHWM of the Great Lakes.

☐ (a)(7): All waters in paragraphs (i)-(v) of this paragraph 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.

- Complete Spreadsheet Tab “(a)(7)” for the significant nexus determination. Attach a map delineating the SPOE boundary with (a)(7) waters identified in the similarly situated analysis. – Required

☐ Includes water(s) that were 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 required a case-specific significant nexus analysis.

☐ (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 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 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.

- Complete Spreadsheet Tab “(a)(8)” for the significant nexus determination. Attach a map delineating the SPOE boundary with (a)(8) waters identified in the similarly situated analysis. – Required

☐ Includes water(s) that were 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 required a case-specific significant nexus analysis.

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

Check all that apply.

☐ The review area is comprised entirely of dry land.

- ☐ Non-(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.
- Complete the Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE boundary with potential (a)(7) waters identified in the similarly situated analysis. – Required
- ☐ Includes water(s) that were potentially adjacent (a)(6) waters, but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and required a case-specific significant nexus analysis.
- ☐ Non-(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.
- Complete the Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE boundary with potential (a)(8) waters identified in the similarly situated analysis. – Required
- ☐ Includes water(s) that were potentially adjacent (a)(6) waters, but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and required a case-specific significant nexus analysis.
- ☒ Excluded Waters (NonWaters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- Complete the Spreadsheet Tab “NonWaters-Excluded” - 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 lands 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 the Spreadsheet Tab “NonWaters-Other” - Required

D. ADDITIONAL COMMENTS TO SUPPORT JD: Subject ditches were constructed to facilitate operation of the Philips 66 Refinery (previously Cononco Refinery). Attached figure identifies ditches by color coded category. JD request is for “green” and “brown” ditches only. Green ditches were constructed in uplands as part of the Water Treatment Sewer System (NPDES permitted and regulated) designed to treat oily water via primary and secondary waste water treatment plants. Brown ditches were constructed in uplands to convey runoff (primarily from roads) not required to be treated. Both category of ditches convey ephemeral flow only. Neither category was a channelization of previously existing streams, were not excavated in a tributary, nor do they drain wetlands. Note: An approved jurisdictional determination was made for “orange” ditches (along with associated wetlands on 23 December 2008 (Corps reference number NWS-2008-1406).

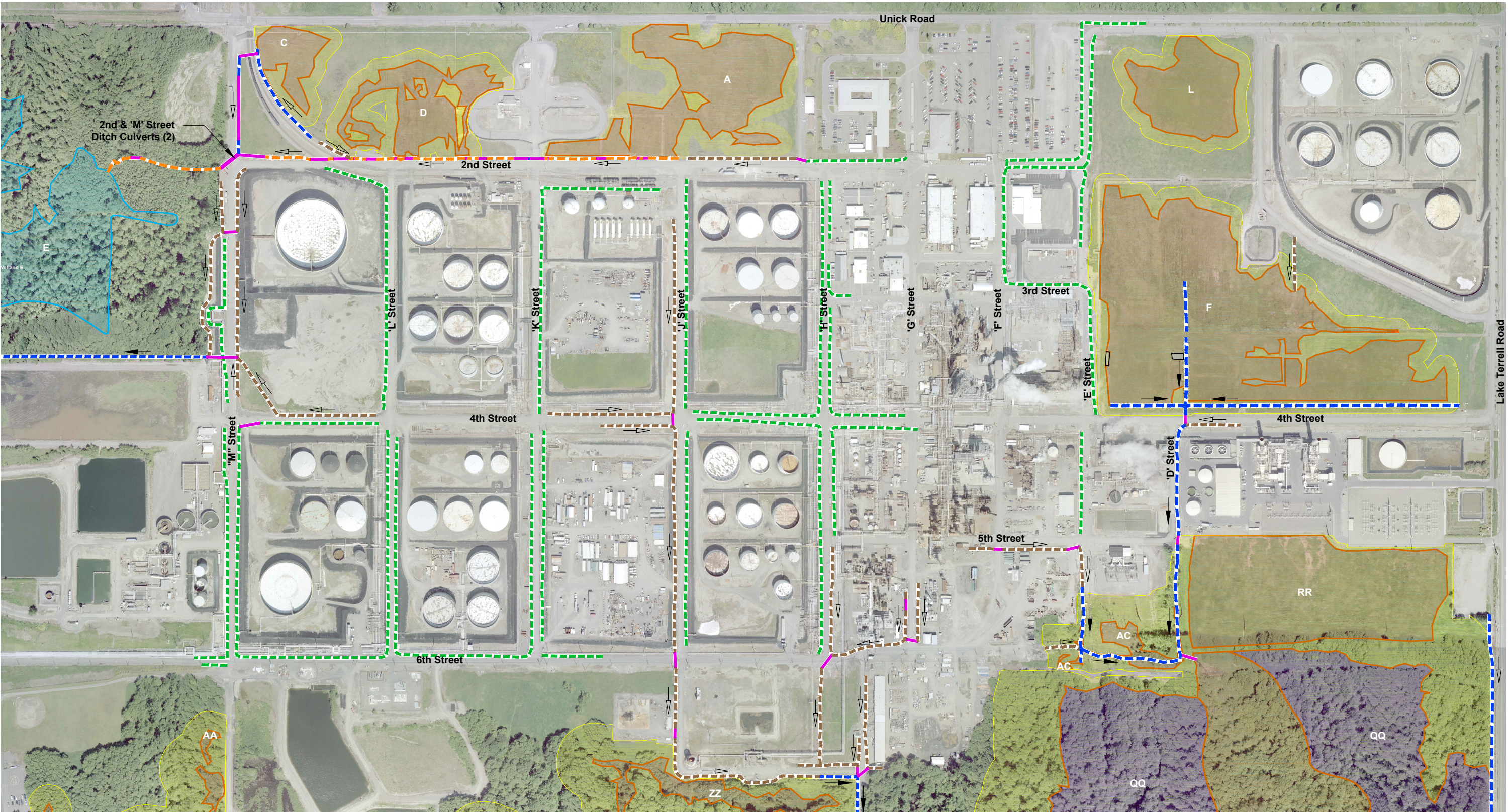
¹ In many cases these excluded features will not be specifically identified on the approved JD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features on a project site.

Aquatic Resources

[illegible]

Excluded Waters or Features

[illegible]



Corps Ref# NWS-2013-172

May 13, 2015

J:\GIS\Projects\Phillips66\Ferndale\SubTasks\Wetland delineation\2015\Jurisdictional Ditches\Proposed Facility Juris Ditches.dwg
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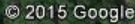


DRAFT - For Discussion Purposes Only

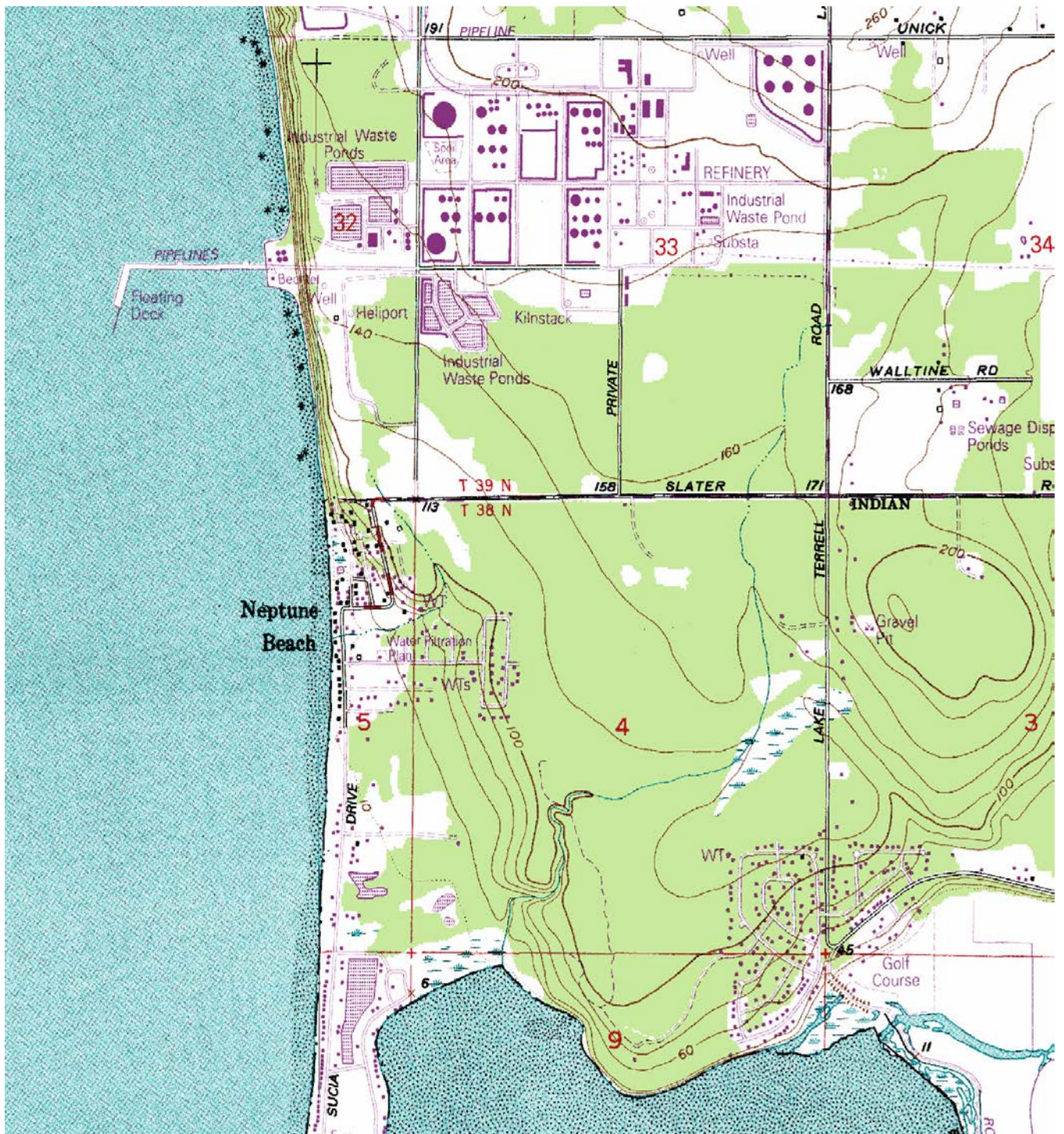
Sheet 2 of 2

Ditches, Wetlands, and Buffers (North)

Phillips 66 Ferndale Refinery
Ferndale, WA



Google Earth Imagery Date: 2 May 2015



Lummi Bay Quad 7.5 Minute