

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

9 May 2016

Form 2 of 2 - Wetland DSW-2, DSW-3, DSW-7, DSW-8, and SW-4

SECTION I: BACKGROUND INFORMATION

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

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Samish Indian Nation, NWS-2012-54

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Skagit City: Anacortes
Center coordinates of site (lat/long in degree decimal format): Lat: 48.45921° Long: -122.55736°
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: Padilla Bay

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Padilla Bay

Name of watershed or Hydrologic Unit Code (HUC): 17110002 (Strait of Georgia)

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: 31 March

Field Determination. Date(s): 15 July 2015

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.

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 waters² (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:

Wetlands:

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: Wetland DSW-2, DSW-3, DSW-7, DSW-8, and SW-4 do not have a surface water or shallow subsurface connection or ecological connectivity to other navigable or interstate waters of the U. S. or tributaries of waters of the U. S. The subject wetlands are not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, lacks bird and wildlife species of special significance which would attract interstate or foreign travelers, supports no fish or shellfish which could be taken or sold in interstate or foreign commerce, and are not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce. See Section B for additional information.

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
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):
- C. SIGNIFICANT NEXUS DETERMINATION
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):
- 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

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- 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).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- 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: 0.285 acres

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (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: acres.

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: Wetland delineation report dated 22 February 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: 7.5 minute Anacortes South Quad
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): WA State Department of Ecology, 2001
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, 2015.
 - 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): .

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.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Site Visit

15 July 2015

10:00 – 12:30

Weather – Slightly overcast, breezy. No significant rainfall during month.

Randel Perry, Devon Clemens (Corps)

Leslie Eastwood (Samish Tribe)

Marc Beccio (Wetland Consultant)

Site Description: The 14.84 acre site is bounded by State Route 20 to the north, developed property to the northeast, undeveloped property to the southeast, Stephenson Road to the south and Thompson Road to the west. The overall slope of the site trends generally from southwest to northeast. Topography within the study area consists of flat to gently sloping terrain with an elevation ranging from approximately 70 to 84 feet above mean sea level. The entire site is open field with scattered shrubs and saplings. The site was historically developed for agricultural and residential uses with resulting significant manipulations to the topography and soils, particularly the eastern and western 1/3's of the site. Historic aerials show a forested area in the central 1/3 of the site. Several remnants of past development remain; dirt roads, graded driveways, and housing pads.

There are four primary drainage features (ditches) on the site identified as Ditch 1 (approx. 920 feet), Ditch 2 (approx. 372 feet), Ditch 3 (approx. 220 feet) and Ditch 4 (approx. 60 feet). Ditch 4 conveys water from SR 20 into Ditch 1. Ditch 3 conveys water northward along the western edge of the site and into the SR 20 roadside system. Ditch 2 parallels Stevenson road along the southeast edge of the site and flows into Ditch 1. Ditch 1 flows north through the eastern 1/3 of the site, then turns east along the north portion and flows to the property boundary. Water from Ditch 1 flows into a conveyance on the adjacent eastern property, under S. R. 20, then east through a ditch system before flowing into Padilla Bay.

Delineation: A wetland delineation was conducted by Analytical Environmental Services in 2009, 2010 and July 03 2015. Eight separate wetlands were identified by the consultant.

Soils: Mapped soils are: Coveland gravelly loam (0-3% slopes), hydric, over majority of site; Bow gravelly loam (0-3% slopes), hydric, in NW corner; Bow gravelly loam (3-8% slopes), hydric, in SE corner.

Observed soil colors are:

Wetlands:

10YR 2/1 clay loam from 0 to 14 inches with 2.5Y 6/8 redox features (common, distinct) from 4 to 14 inches.

Uplands:

7.5YR 3/2 clay loam from 0" – 16; no redox features

NOTE: In the areas containing the subject wetlands, the soils were extremely compacted with a high clay content and intermixed debris (wood, porcelain chunks, etc.) indicating previous fill.

Vegetation:

Wetlands	Soft rush (<i>Juncus effusus</i>), FACW
PEM	Toad rush (<i>Juncus bufonius</i>), FACW
	Reed canary grass (<i>Phalaris arundinaceae</i>), FACW
	Red fescue (<i>Festuca rubra</i>), FAC

Upland	European hairgrass (<i>Aria caryophyllea</i>), FACU
Field	Canada thistle (<i>Cirsium arvense</i>), FACU
	Oregon bentgrass (<i>Agrostis oregoensis</i>), FAC
	Red fescue (<i>Festuca rubra</i>), FAC

Wetland acreage identified for this determination: 0.285 acres

Wetland acreage to be filled: Unknown

Observations/Discussion:

Corps personnel walked around the perimeter of the subject wetlands as identified by the consultants at the time of the visit. Wetland boundaries were identified by slight changes in topography and noticeable transitions in vegetation communities. The subject wetlands appear to have formed on top of dense fill consisting primarily of clay. No observable surface inlets or outlets were noted. Water collects in these features during rain events with periodic shallow ponding during seasonal winter rainy periods. Dense subsurface soils disconnect these areas from the deeper lying water table. The area downslope of the wetlands have upland soils and vegetation community. No flowpaths currently exist (swales, ditches, culverts, etc.) to other waters including wetlands. Topography rises approximately 2-4 feet from the center of the wetland and surrounding uplands. No saturation was detected in the wetlands at the time of the site visit; no flow from the wetlands was observed.

Additional wetlands occur on the site. A separate jurisdictional determination has been made for Wetlands DSW-1, SW-5, and SW-6 (see Form 1 of 2).

Jurisdictional Determination:

Wetlands DSW-2, DSW-3, DSW-7, DSW-8, and SW-4 do not have a surface water or shallow subsurface connection or ecological connectivity to other navigable or interstate waters of the U. S. or tributaries of waters of the U. S. The subject wetland is not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, lacks bird and wildlife species of special significance which would attract interstate or foreign travelers, supports no fish or shellfish which could be taken or sold in interstate or foreign commerce, and are not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce.

Wetlands DSW-2, DSW-3, DSW-7, DSW-8, and SW-4 are isolated and are not waters of the U. S. under Section 404 jurisdiction.