

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

4 August 2016

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 30 June 2016.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, IK Development, Inc (Deer Acres), NWS-2015-369.  
Name of water being evaluated on this JD form: Wetland

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Snohomish City: Marysville

Center coordinates of site (lat/long in degree decimal format): Lat: 48.051263 **N**, Long: -122.134457 **W**

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: Munson Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): 171100110203.

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. List other JDs: \_\_\_\_\_

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: 16 May 2016.

Field Determination. Date(s): 8 January 2016.

**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 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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft) and/or \_\_\_\_\_ acres.

Wetlands: \_\_\_\_\_ acres.

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

Elevation of established OHWM (if known): \_\_\_\_\_

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **The wetland does 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, has no habitat or resources of special significance which would**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

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.

### SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE
- 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):<sup>4</sup>

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: \_\_\_\_\_.
- Other factors. Explain: \_\_\_\_\_.

Identify water body and summarize rationale supporting determination: \_\_\_\_\_

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: \_\_\_\_\_ linear feet \_\_\_\_\_ width (ft).
- Other non-wetland waters: \_\_\_\_\_ acres.

Identify type(s) of waters: \_\_\_\_\_.

- Wetlands: \_\_\_\_\_ acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

- 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: \_\_\_\_\_ 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: Drawings dated 6 May 2015.
- 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.

<sup>4</sup> 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.

- Data sheets prepared by the Corps: \_\_\_\_\_.
- Corps navigable waters' study: \_\_\_\_\_.
- U.S. Geological Survey Hydrologic Atlas: USGS National Map Viewer, retrieved 7 January 2016.
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: \_\_\_\_\_
- USDA Natural Resources Conservation Service Soil Survey. Citation: Retrieved 7 January 2016.
- National wetlands inventory map(s). Cite name: Retrieved 7 January 2016.
- State/Local wetland inventory map(s): \_\_\_\_\_
- FEMA/FIRM maps: \_\_\_\_\_.
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): \_\_\_\_\_  
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): Wetland Delineation Report for IK Development, Inc. - Deer Acres, dated 19 May 2015, which consists of the report, photographs, wetland delineation data forms, and rating forms.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

1. On 8 January 2016 at 1100 a site visit to determine jurisdiction of a small (525 square foot) wetland was conducted at 61st Place Northeast, Marysville, WA.

SW ¼ Section 26, Township 30N, Range 05E  
48.051263N latitude / -122. 134457W longitude

2. The weather was clear, however there had been heavy rain on recent days. Prior to the site visit information from the U.S. Department of Agriculture Web Soil Survey, U.S. Geological Survey National Map Viewer, and the U.S. Fish and Wildlife Service National Wetlands Inventory was used to assess the wetlands delineation report, possible connections to waters of the U.S., and the site topography. The information from these websites corresponded with the information provided in the application and supporting documents. During the site visit the wetland boundary was evaluated to determine size, shape, and hydrologic flow. The wetland is a closed circular depression located under a canopy of cedar and cottonwood. There was very little vegetation within the wetland boundary and the vegetation along the edge was predominately lady fern and salmon berry. The site visit confirmed the size of the wetland to be 525 square feet (0.012 acre). The wetland is located south and downslope of 61st Place Northeast and sits approximately -4 feet in elevation below the road. On the day of the site visit there was standing water to approximately one-foot in the center of the wetland. The source of hydrology is likely precipitation, runoff from the road, and ground water. Walking the perimeter of the wetland did not reveal an outlet to any stream or other drainage feature.

The closest stream is a seasonal stream that is 520 feet to the southwest. Although the wetland is upslope of the stream, there is a house and driveway between the wetland and stream. There did not appear to be any outlet that connects to the home or driveway. The Natural Resource Conservation Services mapped soils are Tokul gravelly medial loam, which is moderately well drained. In order for the water from the wetland to connect to the stream it would have to move subsurface below the adjacent development. However, the development of the intervening roads and housing areas has compacted the native soils between the wetland and unnamed stream to the point that shallow subsurface flow is not likely. Based on mapped soil characteristics (permeability, etc. from soils survey), distance, and intervening developments that have altered subsurface soil composition, there is no likelihood of water from the wetland moving through subsurface soils and into the seasonal stream.

The other stream in the vicinity of the wetland is Munson Creek, which is 940 feet east of the wetland. The Joint Aquatic Resource Permit Application (JARPA) states that the general topography of the area between the on-site wetland and Munson Creek slopes to the west, with Munson Creek located at a higher elevation than the wetland. This was confirmed by the U.S. Geological Survey topographic map, which shows Munson Creek to the east of the wetland and +30 feet above the wetland's elevation. This was also confirmed while driving the perimeter of the site. There is no outlet that would connect the wetland to Munson Creek. The site visit confirmed the information submitted in the wetland delineation report.

3. The surrounding land use is single-family residential with varying density. The residential lots to the east and west are larger multiple acre lots, while development to the north and south is more dense. The wetland does 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, has 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.

4. The wetland is determined to be non-jurisdictional because it does not contribute biologically or hydrologically to downstream waters of the U.S., does not have an interstate commerce connection, and does not play a role in capture of contaminants (from local area runoff) that could flow to downstream waters

5. Documents for coordination were sent via email to the Environmental Protection Agency and U.S. Army Corps of Engineers Headquarters on 8 July 2016. No response was received from either agency. Coordination is complete.