

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

Form 2 of 2 – Isolated Wetlands

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1/9/17

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Woodmansee, Joe, NWS-2010-507

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: 48.423368° Long: -122.274293°
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: East Fork Thunderbird Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 17110007

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: 29 December 2016

Field Determination. Date(s): 18 October 2010

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: Wetlands in question have no connections to other waters of the U. S. and are not used for interstate and foreign commerce. Wetlands D, E, F, J, K, and M are "isolated" and are not waters of the U. S. within Corps' jurisdiction under Section 404 and Section 10 regulations.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

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.

- 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: 0.62 acres (Wetlands D, E, F, J, K, and M)

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; supplemental information dated 1 September 2016 was also reviewed.
- 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 Mount Vernon 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): WA State Department of Ecology, 2005.
 - 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): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Site Visit
18 October 2010

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.

13:00 – 15:00

Weather – Overcast, rainy, cool. Significant rainfall during preceding 2 days.

Randel Perry (Corps)

Paul Anderson (Ecology)

Lynden Lee (City of Mt. Vernon consultant)

Jennifer Eldred (consultant)

Site Description: The 58 acre subject site is located in the Thunderbird Creek watershed, in the southeast portion of Mount Vernon, Skagit County, WA. There are no structures on the site. The site is undeveloped and forested. Logging activity occurred on the site approximately 50 years ago; remnants of skid roads and yarding pits are still present. The site straddles the divide between the two watersheds; topography of the site generally slopes north in the western 1/3 of the site and southeast in the eastern 2/3's. The site contains a tributary of East Fork Thunderbird Creek in the western 1/3 of the site. The tributary flows north starting at the southern end of Wetland A/AA. Surficial geology of the site is dominated by glacial till deposits with inclusions of peat and bedrock. The site is bounded by a residential development to the north and west, East Division Street to the south, and a privately owned property with a single family residence to the east. The immediate vicinity around the site is moderately developed for residential uses.

Delineation: A wetland delineation was conducted by The Jay Group in June of 2009. 12 separate wetlands were identified by the consultant.

Soils: Mapped soils are:

Tokul gravelly loam 0% - 8% and Tokul gravelly loam 8% - 15% slopes (non-hydric)

Tisch silty clay loam (hydric) - SW corner of site.

Observed soil colors are:

Wetlands:

10YR 3/1 silty loam from 0"-9"; 2.5Y 3/2 with 2.5Y 5/6 redox features (common, distinct) from 9"-16"

10YR 2/1 silty loam from 0"-7"; 10YR 4/2 with 10YR 4/6 redox features (common, distinct) from 7"-16"

Uplands:

10YR 3/2 silt loam at 0" – 4"; 10YR 3/4 gravelly silt loam (no redox features) from 4" – 16".

Vegetation:

Wetlands Red alder (*Alnus rubra*) FAC

PFO/PSS Creeping buttercup (*Ranunculus repens*) FACW

Soft rush (*Juncus effusus*) FACW

Red alder (*Alnus rubra*) FAC

Reed canary grass (*Phalaris arundinaceae*) FACW

Skunk cabbage (*Lysichiton americanum*) OBL

Salmonberry (*Rubus spectabilis*) FAC+

Western red cedar (*Thuja plicata*) FAC

Slough sedge (*Carex obnupta*) OBL

Black cottonwood (*Populus balsamifera*) FAC

Ninebark

Twinberry

Paper birch

Vine maple (*Acer circinatum*) FAC-

Upland Himalayan blackberry (*Rubus discolor*) FACU

Forest Western red cedar (*Thuja plicata*) FAC

Red alder (*Alnus rubra*) FAC

Sword fern (*Polystichum munitum*) FACU

Western hemlock (*Tsuga heterophylla*) FACU

Salmonberry (*Rubus spectabilis*) FAC+

Vine maple (*Acer circinatum*) FAC-

Snowberry (*Symphoricarpos albus*) FACU

Big leaf maple (*Acer macrophyllum*) FACU

Wetland acreage identified for this determination: 0.62 acres

Wetland acreage to be filled: Unknown

Observations/Discussion:

Corps personnel walked around the perimeter of the subject wetland as identified by the consultants at the time of the visit. Most wetland boundaries were easily identified by changes in topography and noticeable transitions in vegetation communities. The subject wetlands appear to have formed in old road tracks and equipment scars (i.e. yarding pits) from historic logging operations. No observable surface inlets

or outlets were noted. Water collects in these features during severe rain events with periodic shallow ponding during seasonal winter rainy periods. The areas downslope of the wetlands have upland soils and vegetation community. The area around Wetland D may have historically drained south prior to the construction of East Division Street, but no flow paths currently exist (culverts, etc.). Topography rises approximately 4-6 feet from the center of the wetlands and surrounding uplands. Standing water and soil saturation were detected in the wetlands; no flow from the wetlands was observed.

Jurisdictional Determination:

Wetlands D, E, F, J, K, and M 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. These wetlands are not used for interstate commerce including recreational activities, commercial fishing activities, or used for industrial purposes. 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.

These wetlands are isolated and are not waters of the U. S. under Section 404 jurisdiction.

The JD was previously approved on 4 March 2011; the applicant has requested new approved JD which EPA approved on 1/3/17 and Corps HQ approved on 1/9/17.