

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

Wetlands E/H, F, G, and I

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 5 April 2018.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Rising Tides LLC, NWS-2014-117.
Name of water being evaluated on this JD form: Wetlands E/H, F, G, and I

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Clark City: Battle Ground

Center coordinates of site (lat/long in degree decimal format): Lat: 45.762531 N, Long: -122.515398 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Salmon Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): 17080001.

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: 23 January 2018.

Field Determination. Date(s): 4 January 2018.

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):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: _____ 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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Wetlands E/H, F, G, and I are located in shallow depressions on a relatively flat portion of the property approximately 1,200 feet north of Salmon Creek. These wetlands 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**

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.

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 IVB 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):⁴

- 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: 0.83 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: Cedar's Landing Wetland Delineation and Assessment (Updated) report dated 27 October 2014.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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.

- 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation:
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.asp>.
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/data/Mapper.html>.
- State/Local wetland inventory map(s): <http://gis.clark.wa.gov/maponline/?site=Environmental&ext=1>
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____
or Other (Name & Date): Site photographs from 4 January 2018 field visit by Jim Carsner (Corps).
- 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

4 January 2018

Jim Carsner (Corps)

Rebecca Rothwell (WDOE)

Kevin Grosz (wetland consultant)

Site Description: The roughly 48-acre site is an agricultural property, actively used for haying and grazing, bounded on the west by a large-lot single-family residence, on the north by Northeast 194th Street, on the east by a single-family residence and undeveloped agricultural and forested lands, and on the south by Salmon Creek and the Cedars at Salmon Creek Golf Course. Property is roughly rectangular in shape and generally slopes to the south. The western portion of the property, is a mix of coniferous and deciduous forest and pasture; of which the northern portion, approximately 6.5 acres, is within the review area. The review area is relatively flat with undulating topography and generally slopes to the south and southeast.

Delineation: A wetland delineation was conducted by The Resource Company, Inc. in October of 2013 and all onsite wetland boundaries verified by Steve Manlow (Corps) in 2014 and wetland boundaries within the review area were re-verified in 2018. Eight wetlands have been delineated within the 47.9-acre property but only four wetlands, Wetlands E/H, F, G, and I are within the review area by request of the agent. On 4 January 2018, the Corps walked completely around the four wetlands within the review area and did not observe any surface connection between the reviewed wetlands or to wetlands outside the review area. The reviewed wetland boundaries are primarily defined by a topographic rise and a change in vegetation to a dominance of FAC and FACU species. Photographs taken during the 4 January 2018 site assessment show the existing condition of these wetlands.

Soils: Mapped soils are:

Hillsboro silt loam, 0-5 percent slopes (non-hydric) - comprising approximately 70 percent of review area.

Hockinson loam, 0-3 percent slopes (hydric) - comprising approximately 30 percent of review area.

Observed soil colors are:

Wetlands:

Wetland E/H: 10YR 3/2 silt loam from 0" – 8" with 15% 5YR 3/4 redox features (prominent); 10YR 3/1 silt loam from 8" - 18" with 20% 5YR 3/4 redox features (prominent) - meeting F6 hydric soil criteria.

Wetland F: 10YR 3/2 silt loam from 0" – 3" with 15% 5YR 3/4 redox features (prominent); 10YR 3/1 silt loam from 3" - 15" with 20% 5YR 3/4 redox features (prominent) - meeting F6 hydric soil criteria.

Wetland G: 10YR 3/2 silt loam from 0" – 5" with 15% 5YR 3/4 redox features (prominent); 10YR 3/1 silt loam from 5" - 15" with 20% 5YR 3/4 redox features (prominent) - meeting F6 hydric soil criteria.

Wetland I: 10YR 2/2 silt loam from 0" – 6" with 15% 5YR 3/4 redox features (prominent); 10YR 3/1 silt loam from 6" - 15" with 20% 5YR 3/4 redox features (prominent) - meeting F6 hydric soil criteria.

Uplands:

10YR 3/2 silt loam to 14" with no observed redox features as typically found within 5 feet of the wetland boundaries.

Hydrology:

Version 2-8-08 Isolated & Non-Waters Only

Wetlands are supported by precipitation and surface sheet flow.

Wetland E/H was observed to have a water table at 9 inches and saturation at 7 inches.

Wetlands F was observed to have surface water ponded at a depth of 6 inches near the center of the depression.

Wetland G had a water table at 1 inch below ground with saturation at the surface an offside ponding, approximately 2 inches deep.

Wetland I had an observed water table at 9 inches and saturation at 6 inches.

Within the upland areas near the wetland boundaries, no water table or saturation was observed within 16-inches of the surface.

Vegetation:

Wetland E/H is a depressional PEM dominated by dominated by lamp rush, creeping buttercup, velvet grass (FAC), and colonial bentgrass.

Abutting the Wetland E/H boundary, the upland area is dominated by Douglas fir with a herbaceous understory dominated by orchard grass, sweet vernal grass, creeping buttercup, and colonial bentgrass.

Wetland F is a depressional PEM dominated by lamp (soft) rush (FACW), creeping buttercup (FAC), and garden bird's-foot trefoil (FAC).

Abutting the Wetland F boundary, the upland area is dominated by Douglas fir (FACU) with a herbaceous understory dominated by orchard grass (FACU), sweet vernal grass (FACU), creeping buttercup, and colonial bentgrass (FAC).

Wetland G is a depressional PEM dominated by lamp rush and creeping buttercup. Abutting the Wetland G boundary, the upland area is dominated by Douglas fir (FACU) with a herbaceous understory dominated by orchard grass, sweet vernal grass, creeping buttercup, and colonial bentgrass.

Wetland I is a depressional PEM dominated by soft rush, creeping buttercup, velvet grass and colonial bentgrass. Abutting the Wetland I boundary, the upland area is dominated by orchard grass, sweet vernal grass, and colonial bentgrass with scattered lamp rush.

Wetland acreage identified within the review area for this determination: 0.83 acres

Wetland acreage to be filled: 0.83 (Wetlands E/H, F, G, and I)

Observations/Discussion:

Corps personnel walked around the identified boundaries of all wetlands within the review area and did not observe any surface outlets or drainages from any of the reviewed wetlands. All wetlands within the review area have been disturbed by grazing. The flagged wetland boundaries appeared to accurately delineate the wetland edges.

Wetlands within the review area are separated from wetlands outside the review area by uplands and a topographic. The closest wetland, outside the review area, is approximately 110 feet east of Wetlands F and G and topography of the site suggests these wetlands would not have a shallow sub-surface connection to wetlands outside the review area.

Additional wetlands occur within the subject property but outside the review area. No determinations are being made for these areas.

Jurisdictional Determination:

Wetlands within the review area, wetlands are separated by topographic rises with no visible draiange path between any of the wetlands, including wetlands outside the review area. The wetlands reviewed have no surface water connection to other onsite wetlands or other waters of the U.S.; soil conditions described as moderately well-drained for the Hillsboro series allow for infiltration and topographic land form preclude a shallow subsurface connection to wetlands outside the review area and other downstream waters of the U.S.; and the wetlands do not provide any biological, physical, or chemical support for downstream TNWs. The reviewed wetlands are not used for interstate commerce, including recreational activities, commercial fishing activities, or used for industrial purposes. I have concluded that these four wetlands, Wetlands E/H, F, G, and I are isolated and are not a waters of the U. S.

On 9 July 2018, the Environmental Protection Agency concurred with Corps decision that Wetlands E/H, F, G, and I are not jurisdictional under the CWA and are not considered waters of the U.S. As of 11 July 2018, Corps Headquarters has not responded to the 3 May 2018 request for concurrence and their 30-day review period and time for response has expired.