

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

Moore/CE-NWS-ODR

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1 May 2018.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Bainter Group, LLC, NWS-2017-951.
Name of water being evaluated on this JD form: Shaw Creek and adjacent wetlands

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Yakima City: Yakima

Center coordinates of site (lat/long in degree decimal format): Lat: 46.5903 N, Long: 120.6286 W

Universal Transverse Mercator: 10.

Name of nearest waterbody: Shaw Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): HUC 12:170300030205 (Lower Wide Hollow Creek).

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: 1 May 2018.

Field Determination. Date(s): 18 April 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** "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: 370 linear feet 4 width (ft) and/or _____ acres.

Wetlands: 0.08 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual, and Established by OHWM.

Elevation of established OHWM (if known): 1208 feet.

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: _____.

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 – 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:

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide rationale indicating that tributary flows perennial: Flows in Shaw Creek have been altered by irrigation and agricultural land use practices but have a permanent flow from April to October. Describe flow path to a TNW: Shaw Creek flows off the subject property and in to a roadside ditch conveyance at 80th Avenue where it eventually empties in to Wide Hollow Creek. Wide Hollow Creek drains to the Yakima River, a TNW.

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

- Tributary waters: 370 linear feet 4 width (ft).
- Other non-wetland waters: _____ acres.
- Identify type(s) of waters: _____.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: The wetland is classified as riverine and directly abuts Shaw Creek. It receives its hydrology source from shallow subsurface water directly tied to surface water from Shaw Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: 0.08 acres.

- 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): NOT APPLICABLE
- F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS: NOT APPLICABLE

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Critical Areas Investigation and Wetland Delineation Report / Bainter Property dated July 2016 and revised November 2017 prepared by Widener and Associates. Critical Area Mitigation and Reclamation Plan dated February 2015 by Fulcrum Environmental Consulting, Inc.
- 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: 24K, Wiley City WA and Yakima West WA
- USDA Natural Resources Conservation Service Soil Survey. Citation: Provided in November 2017 Critical Areas Investigation and Wetland Delineation Report and confirmed on NRCS web soil survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- National wetlands inventory map(s). Cite name: Provided in November 2017 Critical Areas Investigation and Wetland Delineation Report and confirmed on USFW NWI web mapper: <https://www.fws.gov/wetlands/data/Mapper.html>.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: Accessed on Washington State Department of Ecology website Coastal Atlas: <https://fortress.wa.gov/ecy/coastalAtlas/tools/FloodMap.aspx>.
- 100-year Floodplain Elevation is: _____ (National Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth imagery of the project area including past images dated 2015, 2013, 2011 and 2009
 - or Other (Name & Date): Eight photos from 18 April 2018 site visit in project file. Naming convention is 2017_951_18April2018 [photo number 1-8].
- 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: Shaw Creek has been significantly altered from its historic course for agricultural purposes by straightening and narrowing and through the removal of native vegetation. It was also historically used for irrigation prior to increasing residential development and conversion to piped irrigation delivery systems. In 2012, the applicant excavated an unauthorized "overflow" channel to reduce local flooding that became the primary flow path for Shaw Creek through the property. The previous channel is now by-passed by this overflow channel and as a result, approximately 0.03 acres of wetland was permanently impacted. Up to 13,700 square feet of native riparian vegetation were planted across the buffer area for mitigation in 2012.