

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

4/30/2018

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 30 April 2018.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, WA St Dept of Transportation (Olympic Region Maintenance and Administration Facility), NWS-2018-147-DOT.

Name of water being evaluated on this JD form: Wetlands A, B, C, and D

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Thurston City: Lacey

Center coordinates of site (lat/long in degree decimal format): Lat: 47.075495 N, Long: -122.781491 W

Universal Transverse Mercator:

Name of nearest waterbody: Eagle Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): Puget Sound Watershed - HUC 17110019.

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: 21 March 2018.

Field Determination. Date(s): 2 November 2017.

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 A, B, C, and D are small depressional wetlands that 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**

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.

waters of the U.S. These 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, lack bird and wildlife species of special significance which would attract interstate or foreign travelers, support 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):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: 0.58 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: Appendix B maps (Soils, NWI, SalmonScape, and Washington Dept of Fish and Wildlife Priority Habitat and Species) from the Wetland Assessment Report prepared by WSDOT Environmental Services Office and Soundview Consultants, dated 15 August 2017.

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.

- 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: _____.
- 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): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Site Visit: Conducted on 2 November 2017 by Susan Buis (Corps), Caroline Corcoran (WA State Department of Ecology wetland specialist), Paul Dreisbach (WSDOT wetland biologist) and WSDOT maintenance staff.

Site Description: The 38 acre property is located off Marvin Road in an urbanizing area of unincorporated Thurston County called Hawks Prairie, commonly considered to be part of the city of Lacey. The property consists of agricultural fields and forested areas with no buildings present. The surrounding area is a mix of commercial, residential, and agricultural uses. The four wetland clusters are located near each other on the southwest portion of the property in a field recently used for cattle grazing.

Wetland delineation: Wetlands A, B, and parts of C were delineated in May and June of 2016 by Soundview Consultants. A wetland delineation report was drafted and submitted to WSDOT Olympic Region in January of 2017. The rest of Wetland C and Wetland D were delineated by WSDOT biologists in May 2017. Wetlands A and B consist of clusters of small wetland depressions. Wetland C has 3 long thin lobes and Wetland D is a small slope wetland nearby. The 4 wetlands total 0.58 acres together. The wetlands receive precipitation and potentially runoff from the surrounding area. All 4 wetlands are rated Category 4 according to the Washington State Wetland Rating System for Western Washington (Hruby, 2014). All 4 wetlands have soils that are mapped as Alderwood gravelly sand loam, 8 to 15 percent slopes, and Everett very gravelly sandy loam, 8 to 15 percent slopes. Both soils are listed as not hydric on the Thurston County Hydric Soils List (NRCS, 1995). Alderwood soils are moderately well drained, with a depth to water table of 18 to 37 inches, and forms on ridges and hills. Everett soils are somewhat excessively well drained, with a depth to water table and restrictive features of more than 80 inches, and forms on eskers, kames, and moraines. Vegetation in all wetlands consists of stunted and stressed pasture grasses such as red fescue, foxtail, and various rushes, especially soft rush.

Wetland A is a complex of 5 small palustrine emergent wetlands that total 3,081 square feet. Hydric soil indicators are redox depressions at 5 to 16 inches. Primary indicators of hydrology are algal mats or crusts and sparsely vegetated concave surfaces.

Wetland B is a complex of 3 small palustrine emergent wetlands that total 4,460 square feet. Primary indicators of hydrology are sparsely vegetated concave surfaces, sediment deposits, and oxidized rhizospheres along living roots. Hydric soil indicators are a depleted matrix with mixed redox features at 0 to 7 inches.

Wetland C is composed of 3 long thin lobes in a flat depression, totalling 17,188 square feet. Hydric soil indicators are depleted matrix and redox dark surface with prominent or distinct concentrations at 0 to 16 inches. Hydrology indicators are saturation, algal mats or crusts, sparsely vegetated concave surfaces, and in some areas, oxidized rhizospheres along living roots.

Wetland D is a single 745 square foot palustrine emergent depression wetland that gradually slopes downhill. A culvert empties into this wetland, presumably from the commercial development upslope. Primary hydric soil indicators are a depleted matrix with faint concentrations at 3 to 8 inches and prominent concentrations at 8 to 16 inches. Hydrology indicators are a high water table, algal mats or crusts, and sparsely vegetated concave surfaces.

There is a stormwater pipe that runs along 32nd Avenue Northeast and daylight into Eagle Creek at a stormwater pond near the intersection of Eagle Drive Northeast and 32nd Avenue, approximately 1000 feet west of the subject property. The ground between the wetlands and Eagle Creek is flat and the soil is extremely well drained. A WSDOT wetland biologist reported to me that water moving through Wetland C disappeared into the ground at the northwest end of the wetland during the rainy season. In addition, it appears that the Washington State Department of Natural Resources has erroneous information in their database about the subject property. They identify a type F stream running across the northeast portion of the property approximately where the stormwater pipe appears to be, but field investigation found nothing present, no defined banks or evidence of surface flows or drainage.

Site observations: We walked the downslope edge of the property near the wetlands and found no ditches or pipes on or adjacent to the property. Aquaculture cannot be conducted because of the terrestrial location. Industry, commercial agriculture, and silviculture cannot be conducted because of the small size and location of the wetlands.

Jurisdictional determination: Wetlands A, B, C, and D 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 by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, lack bird and wildlife species of special significance which would attract interstate or foreign travelers, support 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.

Emails requesting concurrence were sent to EPA and to Corps HQ on 3 April 2018. No response was received from either office. Coordination was complete by 24 April 2018.

Wetlands A, B, C, and D are isolated and are not waters of the U.S. under Section 404 jurisdiction.