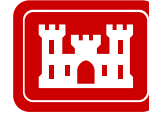




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Regulatory Program



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

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 13 May 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWS-2019-274

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:WA County/parish/borough: Whatcom City: Everson

Center coordinates of site (lat/long in degree decimal format): Lat. 48.913904, Long. -122.285427.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: 7 May 2019 Field Date(s): 15 April 2019.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date:

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date:

USDA NRCS Soil Survey. Citation: 16 October 2018.

USFWS National Wetlands Inventory maps. Citation: 05 October 2018.

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: . or Other. Citation:

LiDAR data/maps. Citation:

Previous JDs. File no. and date of JD letter: 12 May 2018.

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): Historic site use information.

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

• **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

• **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

• **Complete Table 2 - Required**

(a)(3): The territorial seas.

• **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

• **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

• **Complete Table 6 - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
 - **Complete Table 10 - Required**
 - (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
 - (b)(2): Prior converted cropland.
 - (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
 - (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
 - (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
 - (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
 - (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
 - (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
 - (b)(4)(iv): Small ornamental waters created in dry land.¹
 - (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
 - (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
 - (b)(4)(vii): Puddles.¹
 - (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
 - (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
 - (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
 - **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD:

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
Goldsborough Creek Basin	Wetland C	Oakland Bay	See MFR in the administrative record for this project for Similarly Situated Waters and Significant Nexus Determination dated 25 October 2018 for rationale to support a finding of no significant nexus.
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
Barlean Site Wetlands	Wetland conditions formed in depressions left over from gravel and subsoil extraction. See Memorandum for the Record (attached) dated 7 May 2019 for details.
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

INVESTIGATION REPORT and CONCLUSIONS

Reference Number: NWS-2019-274

Reference Name: Whatcom Co. Flood Control
Zone District

Date: 7 May 2019

Field Investigation: 15 April 2019; 13:30-15:00

Investigator (s): Randel Perry, Project Manager and Report Author

Others present: Christine Schoenfelder and Steve Fox, Whatcom County, Diane Hennessy and Chris Luerkens, Ecology, Jeff Ninnemann, wetland consultant

Method of Inspection: Onsite From Adjacent Property Boat

1. Site Description:

The 19.5 acre property is located on Goodwin Road approximately 0.4 miles south of the intersection of South Pass Road and Goodwin Road, in Everson. No structures are currently present on the subject property. The subject property is located approximately 0.17 miles north of Swift Creek. The site topography generally slopes down from east to west. The site has a gravel covered area on the western portion of the property and a large overgrown wood chip pile on the eastern portion of the property. The west-central portion of the property is a grass field with an east west oriented gravel access road that splits the property into north and south halves. The property was used for commercial purposes by Barlean Enterprises.

2. Wetland Summary: There are no NWI mapped wetlands identified on the property. However, Whatcom County Planning and Development Services have mapped one wetland that extends on to the extreme southwest corner of the site. "Wetland features" were identified by the consultant on the western half of the site. The exact boundaries of these features were not delineated. These features occur in areas where large amounts of wood debris – chips and sawdust – are present. The eastern half of the site was reviewed during the site visit; no evident wetland features were seen on the western half.

a. Soils: NRCS soil mapping identifies Clipper silt loam, 0 to 2 percent slopes on the site. Clipper silt loam is a hydric soil.

Soils in uplands had high chroma 3 matrix with no redox concentrations or depletions within the top 12 inches of the surface.

Suspect wetland areas exhibited redoximorphic features and gleyed soils, although the soil profiles were disturbed and mixed. These soils are in areas that were excavated and compacted and had sawdust and woodchips stockpiled in them at depths up to 36 inches. The upper 3 to 6 inches of the suspected wetland areas consist of wood chips, sawdust, and debris (shotgun shells and broken skeets!). Below this, soils are Gley 4/10Y and 2.5/10Y. Gleyed soils were

intermixed with 10 YR 2/1 soils (no redox features) and 2.5 Y 3/2 soils with redox features. Deeper soils (+16 inches) were brighter at 10YR 4/2 and 10YR 2/2 with no redox features.

b. Hydrology: The site is outside the 100-year floodplain of Swift Creek, an A(5) tributary. The suspect wetlands are 1,020 feet from the creek at the nearest point. Swift Creek flows into the Sumas River, a Section 404 designated Traditional Navigable Water

Hydrology is almost exclusively from precipitation with a water table at 10 to 12 feet deep. Saturated soils were identified below the deeper portions of the woodchip fill (approximately 2-foot or deeper). No surface inundation was noted, but signs of standing water (caking and matted leaves) were seen in small depressional areas scattered around the site in the wood chip pit areas.

There are remnant ditches on the site, but none appeared to convey water into the suspect wetlands or from them. Most ditches were interrupted by fill and appeared, at best, to convey precipitation runoff toward the center of the site

c. Vegetation: The study areas vegetation includes emergent and scrub-shrub plant communities on the western half and a mix of bare soil, emergent, scrub-shrub and forest on the eastern half. The western half is dominated by Himalayan blackberry (*Rubus armeniacus*), reed canary grass (*Phalaris arundinacea*), and scotch broom (*Cytisus scoparius*). The eastern half is dominated by red alder (*Alnus rubra*), bare soil, and a mix of scotch broom and soft rush (*Juncus effuses*). There are a few isolated trees and sparsely forested areas along the site perimeter and an intact mixed coniferous and deciduous forest canopy area to the east and south of the subject site. Plant species found in a “wetland-like” area and upland areas were conflicting and at times had both Facultative Upland and Facultative Wetland interspersed.

3. Site history and other information: Whatcom County, on behalf of the Flood Zone District, provided historic information on the site including aerials and anecdotal information from previous Barlean employees and adjacent landowners. The site has been unused since 2011. Aerial photos indicate the following:

1950: Residential and agriculture uses, land clearing and some woody vegetation established. No wetland apparent.

1961: Expansion of structural development and grading activities on the western portions of the property. Maturation of woody vegetation on the eastern portion. No visible wetland areas apparent.

1975: Land clearing on the eastern portion of the site, removal of some of the structures on the western portion of the site. No visible wetland areas apparent.

1981: (infrared aerial) Expansion of stockpiling in the western portion of the site and expansion of stockpiling in the central and eastern portions of the site. Reestablishment of woody vegetation in the eastern end of the site. No visible wetland areas apparent.

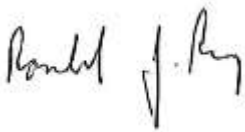
1995: Expansion of the stockpiling and equipment storage. All but the far eastern end of the property is modified and impacted. No visible wetland areas apparent.

From 1979 to 1985, part the area in question (deeper pits) was excavated for gravel extraction. The site was most recently used for the production of topsoil by excavating subgrade soils and mixing with sawdust, wood chips and compost from a nearby mushroom farm. This activity resulted in additional pits being dug at the site, most of which were filled with sawdust and wood chips placed for storage. Topography on adjacent undisturbed properties does not appear to have large depressional features, therefore the depressional features located within the study area appear to be out of place for the alluvial fan environment on which it occurs. Commercial activities at the site ended in 2011.

4. Conclusions: The gravel extraction and topsoil production activity resulted in pits being dug at the site, most of which were filled with sawdust and wood chips placed for storage. The presence of the woody material resulted in excessive soil moisture and low evaporation, water-logging the soils and producing gleying and anaerobic conditions. Hydrophytic vegetation has established itself in areas where soil moisture persists, but these plants were observed to be stressed and interspersed with upland species.

The wetland features on the property formed in the depressions and are not jurisdictional per 33 CFR Part 328.3(b)(4)(v).

Attachments: Sketch Photos Calculations Other None



Prepared by: Randel Perry, Project Manager

7 May 2019

Date