

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

Form 2 of 2 – Wetlands B and D

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 29 April 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Grandview Inc., NWS-2019-1012

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Whatcom City: Ferndale
Center coordinates of site (lat/long in degree decimal format): Lat: 48.869229° Long: -122.581533°
Universal Transverse Mercator: Zone 10 N E

Name of nearest waterbody: Whiskey Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 17110004 (Nooksack River)

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: 14 April 2020

Field Determination. Date(s): 26 March 2020

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 B 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. 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 B for additional information.

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
- 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: 0.29 acres

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.
- 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 Ferndale Quad
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: NWI Mapper, 2020.
- State/Local wetland inventory map(s): City of Ferndale, 2005
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, 2018.
 - Other (Name & Date): Site Photos, 2019 and 2020.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

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.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Date of Site Visit: 26 March 2020

Investigator(s): Randel Perry, Jeff Mallahan (consultant).

NOTE: Due to COVID protection measures, Corps PM did not meet with consultant on-site. Corps PM conducted a “drive-by” inspection of the perimeter of the site to observe local drainage features (ditches) and site topography. Consultant was on-site and communicated by phone with Corps PM to provide additional info (photos, etc.).

1. Site Description and Significant Resources in the area: The site consists of one tax parcel totaling of 18 acres. The site is rectangular in shape with a general slope to the south. Surrounding vicinity has been substantially developed for agricultural, commercial and residential uses. The site is bounded by Kaas Road to the north, a residential development to the south, undeveloped property to the east, and Portal Way to the west. Site was historically used for agricultural purposes and continues to be regularly mowed. The site is currently undeveloped and primarily vegetated with a field grasses. Wetlands in question are scattered across the properties. There are identified tributaries adjacent to the project site that flow into Whiskey Creek, a tributary of the Nooksack River. Whiskey Creek is located approximately 400 feet southeast of the site at its closest point.

2. Delineation: A wetland delineation dated 20 November 2019 was provided for the site. Sampling for the report occurred between September and November 2019. The report identified four wetlands on the subject property. Three off-site wetlands and one off-site stream were identified within 300 feet of the subject property.

3. Project Purpose and Description: Provide information for site development planning.

4. Physical / Chemical Characteristics:

- a. Streamflow c.f.s.:
- b. Salinity: NA
- c. Soils: Mapped units are:
45 - Edmonds-Woodlyn loams, 0 to 2 percent slopes – Non-hydric with hydric inclusions (Woodlyn, Fishtrap, Hale, Woodlyn undrained)
100 - Lynden sandy loam, 3 to 8 percent slopes - Non-hydric with hydric inclusions (Hale)
165 - Tromp loam, 0 to 2 percent slopes - Non-hydric with hydric inclusions (Hale)

Soil Colors:

Wetlands - 0” to 4” – 10YR 3/2 sandy loam; 4” to 22” - 10YR 3/2 sandy loam w/ 7.5 YR 3/4 concretions (10%, matrix)

Uplands – 0” to 16” - 10YR 3/3 and 10YR 3/2 sandy loam, no concretions

d. Hydrology: Minor amount of rainfall (0.3 inches) in week preceding site visit. Saturation starting between 4” and 8” from surface in wetlands reported by consultant on day of site visit. Delineation report indicates oxidized rhizospheres along living roots and saturation visible on aerial imagery

5. Biological Characteristics:

- a. Percentage of dominant vegetation FAC or wetter: 95% in wetlands
- b. Vegetation species list:
Field wetland (D)
Agrostis spp. FAC
Whit clover (*Trifolium repens*), FAC
Reed canarygrass (*Phalaris arundinacea*), FACW
Hairy cat’s-ear (*Hypochaeris radicata*) FACU
Common dandelion (*Taraxacum officinale*) FACU
Creeping buttercup (*Ranunculus repens*), FACW

Forested/Scrub-Shrub Wetlands (B)

Red alder (*Alnus rubra*), FAC
Salmonberry (*Rubus spectabilis*), FAC
Giant horsetail (*Equisetum telmateia*), FACW
Reed canarygrass (*Phalaris arundinacea*), FACW
Himalayan blackberry (*Rubus armeniacus*), FAC
Creeping buttercup (*Ranunculus repens*), FACW

Field Uplands

Poa spp., FAC
Common tansy (*Tanacetum vulgare*), FACU
Narrow-leaf plantain (*Plantago lanceolata*), FACU
Common sheep sorrel (*Rumex acetosella*), FACU
Canadian thistle (*Cirsium arvense*), FACU

Forested/Scrub-Shrub Uplands

Douglas fir (*Pseudotsuga menziesii*), FACU
Western red cedar (*Thuja plicata*), FAC
Red alder (*Alnus rubra*), FAC
Himalayan blackberry (*Rubus armeniacus*), FAC
Reed canarygrass (*Phalaris arundinacea*), FACW
Salmonberry (*Rubus spectabilis*), FAC
Lady fern (*Athyrium filix-femina*), FAC
English holly (*Ilex aquifolium*), FACU

- c. Fauna: bird presence.
- d. NWI Classification, associations/communities: PEM and PSS/PFO

6. Lateral Extent of Jurisdiction:

- a. OHW, MHHW, MHW and datum:
- b. Acreage of wetlands to be impacted: Unknown.
- c. Total acreage of wetlands/waters on site: 2.04 acres of wetlands.

7. Additional information: Corps PM has reviewed all information submitted for the site and determined that the flagged wetland boundaries appear to accurately delineate the wetland edges. Topography of the project site has been altered by historic agricultural activities. Local drainage patterns have been altered by developments; most previously existing streams or drainage channels in the area have been routed into ditches. A wetland and stream headwater (“Stream A”) exists offsite between the southern project site border and the residential area to the south. This system would convey water eastward into an unnamed tributary of Whiskey Creek. Overland and channelized flows from the north would be intercepted by the ditch along the south side of Kaas Road and conveyed east to Whiskey Creek.

Wetland D occupies a minor depression in the southwest corner of the site. Any flow from the wetland would be toward the south. There are no discernible flow paths from the south end of this wetland towards any drainage feature; there are no ditches, stormwater culverts, etc. for water to flow into.

Wetland B is approximately 100 feet from offsite Wetland E and 630 feet from “Stream A”. Forested uplands occupy the area between Wetlands B and E; this area is approximately 4 to 6 feet higher than the elevation of the wetlands. Mapped soils for the upland area is non-hydric, although they may have hydric inclusions. There are no discernible flow paths from the south end of this wetland towards Wetland E or Stream A.

8. Conclusions: Wetlands B and D do not have a surface water connection 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. These wetlands are isolated and would not be waters of the U. S. On 29 April 2020, the Environmental Protection Agency concurred with these findings.