

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

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 19 May 2020.

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Seattle District, NWS-2020-37, Wetland Resources Inc. (Zahradnick Property).

Name of water being evaluated on this JD form: Wetland A

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Washington County: Snohomish City: Arlington

Center coordinates of site (lat/long in degree decimal format): Lat: 48.15352 N, Long: -122.1152 W

Universal Transverse Mercator: \_\_\_\_\_

Name of nearest waterbody: West Fork Prairie Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): 17110011.

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: 2 April 2020.

Field Determination. Date(s): \_\_\_\_\_.

**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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **Wetland A is an isolated wetland with no surface or sub-surface connection to other waters of the U.S.**

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> 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: 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):<sup>4</sup>

- 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: 0.361 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: Delineation Report for Zahradnick Property; prepared by Wetland Resources Inc; dated 16 December 2019. Figures and Maps for Zahradnick Property; prepared by Wetland Resources Inc.; dated 16 December 2019. Memorandum for the Record; provided by Wetland Resources Inc.; dated 26 March 2020.
- 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: \_\_\_\_\_.

<sup>4</sup> 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.

- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Mount Vernon, Washington; HTMC, 1911 ed.; Scale 1:125000
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey; accessed 2 April 2020.
- National wetlands inventory map(s). Cite name: NWI Surface Waters and Wetlands; accessed 2 April 2020.
- State/Local wetland inventory map(s): \_\_\_\_\_
- FEMA/FIRM maps: \_\_\_\_\_.
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Historic Aerial Imagery of the site from 1954 through Present; prepared by Historic Aerials by Netronline; accessed 2 April 2020. USGS Earth Explorer aerial imagery of West Fork Prairie Creek on the following dates: July 9, 1941, September 4, 1953, and October 16, 1971 accessed 6 May 2020.  
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): City of Arlington Water Schematic; prepared by City of Arlington; accessed 13 March 2020.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Wetland A is a depressional wetland with no known surface outlet. No flowing surface water was observed leaving the on-site wetland during site assessments conducted by Wetland Resources Inc. in July 2019, December 2019, and March 2020. Although Wetland Resources Inc. looked for one, no piped inlet or outlet was found. During periods of ponding within the wetland, no water was observed in adjacent catch-basins. No signs of flowing water such as scour, sediment deposits, defined channels, or ditches were observed on-site or leading to the catch-basins. The nearest potential water of the U.S. is West Fork Prairie Creek which is approximately 250 feet from Wetland A. The potential for a subsurface connection between Wetland A and West Fork Prairie Creek is unlikely based on the presence of surficial development structures (road, residential housing) and the slow rate of hydraulic connectivity of the soils between Wetland A and West Fork Prairie Creek, which limits movement of water between the wetland and waterbody. Based on this information, the Corps has concluded that the subject wetland is an isolated wetland with no surface or subsurface connection to flowing waters of the U.S.

Wetland A is a 0.361-acre, shrub-scrub wetland dominated by hardhack (*Spiraea douglasii*), Himalayan blackberry (*Rubus armeniacus*), salmonberry (*Rubus spectabilis*). Wetland A does not provide significant habitat or special resources that would attract interstate or foreign travelers. No bird or wildlife species of special significance were observed or known to occur within the on-site wetland that would attract interstate or foreign travelers. Wetland A does not contain habitat that can support fish or shellfish species. Wetland A does not provide industrial use, as its small size and seasonal flooding do not provide a significant water source for industrial use. In addition, the City of Arlington provides water to adjacent industrial and commercial properties. Based on historic aerial photographs, no past or present agricultural practices have taken place within Wetland A. There are no species of tree used for silviculture practices in Wetland A. Based on this information, no interstate commerce connection exists for Wetland A. Based on this information, the Corps has concluded that the subject wetland's on-going use (or potential use), degradation, or destruction would not affect interstate or foreign commerce including recreation, fish harvest, or industrial activities.

This determination was coordinated with EPA, Region 10 and Corps HQ via email on 9 April 2020. On 6 May 2020, the EPA concurred with our determination. No response was received from Corps HQ.