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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 22 December 2021

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Cowden, Brent, NWS-2021-938
Name of water being evaluated on this form: Pond 1 and unnamed tributary

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: WA County/parish/borough: Whatcom City: Sumas
Center coordinates of site (lat/long in degree decimal format Lat: 48.960632º Long. -122.202007º
Universal Transverse Mercator: Zone
Name of nearest waterbody: Saar Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Strait of Georgia
Name of watershed or Hydrologic Unit Code (HUC): 17110002 (Strait of Georgia)
☒ 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: 15 November 2021
☐ 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): [1]
☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters[2] (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:
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: The subject pond (dug in uplands) and non-RPW tributary (ditches and pipes) has a surface water connection to downstream navigable waters of the U. S. However, the flow contributions to downstream waters is extremely minimal and does not contribute to the biological, chemical, or physical integrity of the downstream TNW. See Section C 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

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW:
Summarize rationale supporting determination:

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation**.** Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: (Saar Creek/Sumas River) 82 **square miles**
Drainage area: 107 **acres**
Average annual rainfall: 42 inches
Average annual snowfall: 10.7 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.
☒ Tributary flows through 5 tributaries before entering TNW.

Project waters are **30 (or more)** river miles from TNW.
Project waters are **1-2** river miles from RPW.
Project waters are **25-30** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Water from the subject pond outflows periodically through an overflow structure and through a drainage path consisting of a buried pipe, ditch, wetland, another pond, another pipe, and a wetland before flowing into an unnamed tributary of Saar Creek. Saar Creek flows north and into the Sumas River in Canada, approximately 8 miles north of the border. The Sumas River continues 8 miles northeast before flowing into the Fraser River. The Fraser River flows 60 miles west and empties into the Strait of Georgia in Canadian territorial waters, then flows an additional 6.1 miles to the Straits of Georgia in U. S. territorial waters.

Tributary stream order, if known: 1st.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☒ Artificial (man-made). Explain: Ditches and piping were constructed to provide drainage when the subject property was developed.
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width: 3.5 feet
Average depth: 3 feet
Average side slopes: **2:1.**

Primary tributary substrate composition (check all that apply):

☒ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☒ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: reed canary grass, 30%	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable ditch
Presence of run/riffle/pool complexes. Explain: none.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 4%

(c) Flow:
Tributary provides for: **Ephemeral flow**
Estimate average number of flow events in review area/year: **2-5**
Describe flow regime: Ephemeral. Flow occurs only during significant rain events.
Other information on duration and volume: Flow in ditch system is absent for most of the year.

Surface flow is: **Confined.** Characteristics: See additional information below.

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Water conveyed by the tributary (ditches and pipes) is generally clear with moderate organic debris; general water quality is good over total length of ditch; watershed has been moderately developed for agricultural and residential land uses; downstream waters of Saar Creek are not listed on the WA State 303(d) list.
Identify specific pollutants, if known: Petrochemicals (road runoff) and herbicides.

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): primarily tree/ shrub species, 25+ feet wide.
☐ Wetland fringe. Characteristics:
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of waterbody adjacent to non-TNW that flow directly or indirectly into TNW (Pond 1)

(i) Physical Characteristics:

(a) General Waterbody Characteristics:
Properties:
Waterbody size: 1.28 acres
Waterbody type. Explain: Man-made pond
Waterbody water quality. Explain: Pond receives clean runoff water from surrounding uplands.
Project waterbody cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Ephemeral flow**. Explain: Pond outflows into a non-RPW tributary (ditches and culverts) only during heavy rain events.

Surface flow is**: Discrete and confined**
Characteristics: Pond abuts the non-RPW tributary; overflow water from the pond flows into a series of ditches and culverts (non-RPW).

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

(c) Waterbody Adjacency Determination with Non-TNW:
☒ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain:.
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
Project waterbody are **5-10** river miles from TNW.
Project waters are **5-10** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) Chemical Characteristics:

Characterize waterbody system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water appears clear with some organic material load..
Identify specific pollutants, if known: No known pollutants.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width): Upland field with 100% grass at one portion of pond; remainder of pond is border by sloped forest.
☒ Vegetation type/percent cover. Explain: No aquatic vegetation species in pond
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all waterbodies adjacent to the tributary (if any)

All waterbodies being considered in the cumulative analysis: **7**
Approximately 5.25 acres (approximate) in total are being considered in the cumulative analysis.
For each wetland and waterbody, specify the following:

Ponds 1-3

Directly abuts? (Y/N)	Size (in acres)
Y	1.28
N	0.64
Y	0.19

Wetlands from onsite delineation:

Directly abuts? (Y/N)	Size (in acres)
Y	1.25
Y	0.25

Wetlands from NWI (1 total – size estimated):

Directly abuts? (Y/N)	Size (in acres)
N	1.64

Summarize overall biological, chemical and physical functions being performed: see Section C.2 below for summary.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

   The subject pond and non-RPW tributary does not have a significant nexus to downstream TNW.

   Subject reach and drainage basin includes the three ponds, two delineated wetlands, and two unnamed tributaries (ditches/pipes). National Wetland Inventory mapping shows one wetland in the subject drainage basin. A site delineation and NWI map polygons indicates a total 0.64 acres of PEM wetlands, 2.50 acres of PFO/PSS wetlands, and 2.11 acres of PABH wetlands (ponds).

   Water from the subject pond outflows periodically (ephemeral) through an overflow structure and through a drainage path consisting of a buried pipe, ditch, wetland, another pond, another pipe, and into a wetland before flowing into a ditched unnamed tributary of Saar Creek. Saar Creek flows north and into the Sumas River in Canada, approximately 8 miles north of the border. The Sumas River continues 8 miles northeast before flowing into the Fraser River. The Fraser River flows 60 miles west and empties into the Strait of Georgia in Canadian territorial waters, then flows an additional 6.1 miles to the Straits of Georgia in U. S. territorial waters., a tidal Section 10 navigable waterbody.

   The 107 acre subject drainage basin was historically developed for agricultural and residential uses and more recently for industrial uses (gravel and rock mining). The tributary in the subject reach receives inputs primarily from the ponds with additional inputs from undeveloped forest lands and residential runoff from developed lands. The subject ponds, wetlands, and tributaries have a negligible contribution to flow in downstream waters. Water quality and habitat conditions in downstream TNW waters are not

affected by residential runoff from the subject basin. Flows from the subject drainage basin have no noticeable effect on downstream TNWs or the habitat they contain.

Essential Fish Habitat for Pacific Salmon (designated under the Magnuson-Stevens Fishery Conservation and Management Act) occurs in Saar Creek 1.6 miles downstream from the subject reach. Endangered Species Act listed steelhead and chinook salmon utilize the U. S. waters of the Strait of Georgia 92 river miles downstream; listed bull trout may occur in the Sumas River south of the U. S./Canada border, but the location is upstream of the Saar Creek/Sumas River confluence. There is no designated Critical Habitat for any species in the review area.

Associated pond and wetland functions in the drainage basin are moderate wildlife habitat and habitat diversity, minimal enhanced food web support, minimal floodwater storage/attenuation, and minimal sediment input reduction and toxin removal.

Because of the minimal flow contribution resulting from the pond outfall downstream through the drainage basin, the ability of the pond and wetlands to create and transfer organic carbon which would support the downstream food web in Saar Creek and the Strait of Georgia is negligible (if any). The ponds and wetlands do not contribute to improving water quality in Saar Creek and the Strait of Georgia; sediment and toxin inputs to the pond are minimal at best. The basin wetlands and ponds may have an extremely minor ability to attenuate downstream flooding by reducing peak flow in the basin during major storm events and attenuating erosion by detaining high flows during storms and reduce the duration of erosive flows, thus decreasing downstream erosion in streams. However, given the contributing area, the volume of water the subject ponds, wetlands, and tributaries intercepts is negligible in relation to the input from other sources in the area.

See Section IV.B for site history and additional information on existing conditions.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

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 seasonally: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Tributaries identified as having continuous flow for 3-6 months. See additional information for details.

   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: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters:
   - ☐ 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.
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

   Provide acreage estimates for jurisdictional wetlands in the review area:

[8]See Footnote # 3.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area:

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area:

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]
☐ 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: .

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 (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: See Section C.2 above.
☐ 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:.

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): 1,900 linear feet, 3.5 feet width (2 tributaries).
☒ Lakes/ponds: 2.11 acres. (3 ponds)
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 1.50 acres. (2 wetlands)

SECTION IV: DATA SOURCES.

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] 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.*

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: Critical Areas Assessment dated October 2021.
- ☐ 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: 7.5min, Kendall Quad
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
- ☒ National wetlands inventory map(s). Cite name: Online Wetland Mapper Tool accessed 15 November 2021.
- ☒ State/Local wetland inventory map(s): Whatcom County Critical Areas Mapping
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth August 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): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

No site visit conducted.

Site Description: The subject property is located in the north-central portion of Whatcom County approximately 3.6 miles southeast of Sumas. The property is bounded on the west by a residential property, on the south and southeast by South Pass Road, and on the north and northeast by forest lands. The majority of the 89-acre subject property is characterized by upland conifer forest with tree stands ranging from approximately 10 to 50 years old. The property has been developed for residential and gravel mining use; historic logging activities have occurred on the site. A wetland delineation identified two wetlands, two manipulated seasonal drainages and three man-made ponds in the review area (drainage basin). All site drainages are non-fish bearing and have ephemeral flow.

Site History: The current landowner, Gerry Hammer, purchased the land in 1994 for the purpose of residential use and commercial forestry. At that time, two ponds (Ponds 1 and 2) were excavated by Mr. Hammer for aesthetic and recreational purposes. Prior to excavation, the areas where the ponds now exist appear to have been forested with conifers. Per the landowner's testimony, these areas were upland forest with no natural watercourses. No natural streams or wetlands were previously, or are currently, associated with the ponds.

Pond 1: Pond 1, the subject of the JD request, is a deep, 1.28-acre pond situated at the base of two prominent hillslopes to the northwest and southeast. The pond is approximately 10 feet deep. The rocky/boulder banks of the pond slope steeply down to deep water. No silt, sand, or clay substrate within the pond was observed from the shore. No vegetation exists within the pond. The northwestern shore slopes steeply up to a forested hillslope. Overhanging vegetation along this side includes big leaf maple (*Acer macrophyllum*) and red alder (*Alnus rubra*). A gravel road exists along the southeastern side. The southern end of the pond contains a floating dock, rope swing, diving board, and small play area with imported beach sand (indicating recreational use).

Pond 2: Pond 2 dates back to at least 1955 and likely was constructed to serve as a farm pond. The pond is approximately 0.64 of an acre in size and is surrounded by maintained lawns and forested areas (similar to Pond 1). The pond contains a small island accessed by a bridge and used for recreational purposes. The pond outlets through a pipe into Wetland 1.

Pond 3: Pond 3 is approximately 0.19 of an acre in size and was likely constructed to serve as a farm pond at the same time Pond 2 was constructed. Pond 3 contains aquatic vegetation along the northern edge where water flows in from a wetland; the riparian area consists of tree and shrub species. The pond is confined by an earthen berm along the southern boundary. Water from the pond outflows via a spillway along the earthen berm and into Wetland 2 along the north side of South Pass Road.

Tributary 1: Consists of a buried pipe, the overflow outlet for Pond 1, and ditches/culverts that convey water from Pond 1 to Wetland 1 (situated between Pond 2 and 3), then into Pond 3 before outflowing though a ditch into Wetland 2. Flow in Tributary 1 is ephemeral.

Tributary 2: Consists of a buried pipe and defined swale-like channel that flows from Pond 2 into Wetland 1. Flow in Tributary 2 is ephemeral.

Wetlands 1 and 2: These wetlands are located at the end of the relevant reach. Wetlands 1 is a forested slope wetland located between Ponds 2 and 3. Wetland 2 is a palustrine scrub-shrub (PEM/PSS) depressional wetland located between Pond 3 and South Pass Road. Water from Wetland 2 flows into a unnamed tributary (ditch) that flows west along the north side of South Pass Road before flowing into another (perennial) tributary of Saar Creek at the downstream end of the relevant reach. Flow from Wetland 2 and in the roadside ditch is ephemeral.

Jurisdictional Determination:
The minimal and sporadic flow from the ponds and wetlands through the man-made drainages to an unamed tributary of Saar Creek and the downstream TNW results in extremely minimal, if any, functional contribution to the chemical and biological conditions in downstream waters, especially to habitat used by ESA listed species and essential fisheries habitat. The subject ponds, wetlands, and non-RPW tributaries in the relevent reach do not have a significant nexus with downstream waters of the U. S.