

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

01 Apr 2022

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/7/2021.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Tacoma, Port of, NWS-2020-557-WRD.
Name of water being evaluated on this JD form: Wetland A and Wetland B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Pierce City: Tacoma

Center coordinates of site (lat/long in degree decimal format): Lat: 47.264 **N**, Long: -122.401 **W**

Universal Transverse Mercator: 10.

Name of nearest waterbody: Sitcum Waterway and Blair Waterway.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Sitcum Waterway and Blair Waterway.

Name of watershed or Hydrologic Unit Code (HUC): 171100190205, Hylebos Creek-Frontal Commencement Bay.

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: 12/7/2021.

Field Determination. Date(s): _____.

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** "*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** "*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: 3500 linear feet _____ width (ft) and/or _____ acres.

Wetlands: 4.42 acres.

c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters, and

1987 Delineation Manual and Regional Supplement

Elevation of established OHWM (if known): Mean Higher Water the jurisdictional boundary of Section 10 of the Rivers and Harbors Act is 11.02-feet relative to mean lower low water (MLLW).

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: _____.

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

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: Blair Waterway and Sitcum Waterway.

Summarize rationale supporting determination: Subject to the ebb and flow of the tides and on NWS regulatory's list of Section 10 Navigable Waters.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": All wetlands are adjacent to a TNW because they are separated from the TNW by manmade berms. Wetland A is located 0.25 of a mile from the Blair Waterway (a TNW) and is separated from the TNW by manmade fill. Wetland B is located 0.35 of a mile from the Blair Waterway and is separated from the TNW by manmade fill. Additionally, both Wetland A and Wetland B are separated from the Sitcum Waterway by manmade fill and are located a distance of 0.6 of a mile and 0.42 of a mile, respectively.

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

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. If the waterbody⁴ 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: _____ **Pick List**

Drainage area: _____ **Pick List**

Average annual rainfall: _____ inches

Average annual snowfall: _____ inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: _____.

Identify flow route to TNW⁵: _____.

Tributary stream order, if known: _____.

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

Tributary is: Natural

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.

- Artificial (man-made). Explain: _____.
- Manipulated (man-altered). Explain: _____.

Tributary properties with respect to top of bank (estimate):

Average width: _____ feet
 Average depth: _____ feet
 Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover: _____
- Other. Explain: _____.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: _____.

Presence of run/riffle/pool complexes. Explain: _____.

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): _____ %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: _____.

Other information on duration and volume: _____.

Surface flow is: **Pick List**. Characteristics: _____.

Subsurface flow: **Pick List**. Explain findings: _____.

Dye (or other) test performed: _____.

Tributary has (check all that apply):

- Bed and banks
 - OHWM⁶ (check all indicators that apply):
 - clear, natural line impressed on the bank
 - changes in the character of soil
 - shelving
 - vegetation matted down, bent, or absent
 - leaf litter disturbed or washed away
 - sediment deposition
 - water staining
 - other (list): _____
 - the presence of litter and debris
 - destruction of terrestrial vegetation
 - the presence of wrack line
 - sediment sorting
 - scour
 - multiple observed or predicted flow events
 - abrupt change in plant community
- 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:
 - oil or scum line along shore objects
 - fine shell or debris deposits (foreshore)
 - physical markings/characteristics
 - tidal gauges
 - other (list): _____
- Mean High Water Mark indicated by:
 - survey to available datum;
 - physical markings;
 - vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: _____.

Identify specific pollutants, if known: _____.

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

- Riparian corridor. Characteristics (type, average width): _____.
- Wetland fringe. Characteristics: _____.
- Habitat for:
 - Federally Listed species. Explain findings: _____.

⁶A 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.

⁷Ibid.

- Fish/spawn areas. Explain findings: _____.
- Other environmentally-sensitive species. Explain findings: _____.
- Aquatic/wildlife diversity. Explain findings: _____.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: _____ acres

Wetland type. Explain: _____.

Wetland quality. Explain: _____.

Project wetlands cross or serve as state boundaries. Explain: _____.

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: _____.

Surface flow is: **Pick List**

Characteristics: _____.

Subsurface flow: **Pick List**. Explain findings: _____.

Dye (or other) test performed: _____.

(c) Wetland 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 wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: _____.

Identify specific pollutants, if known: _____.

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

Riparian buffer. Characteristics (type, average width): _____.

Vegetation type/percent cover. Explain: _____.

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 wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately (_____) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: _____.

C. SIGNIFICANT NEXUS DETERMINATION

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: _____.
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: 3500 linear feet _____ width (ft), or _____ acres.
 Wetlands adjacent to TNWs: 4.42 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 perennial: _____.
 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: _____.

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-RPWs⁸ 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: _____ linear feet _____ width (ft).
 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. Provide rationale indicating that wetland is directly abutting an RPW: _____
 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: _____ acres.

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 jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

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.

⁸See Footnote # 3.
Version 2-8-08

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

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: _____.

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 (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: _____ 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: PORT OF TACOMA OFF-DOCK CONTAINER YARD AND STORMWATER PROJECT WETLAND ANALYSIS REPORT, 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.

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.

- Data sheets prepared by the Corps: _____.
- Corps navigable waters' study: The waterbody is on the Section 10 Navigable Waterway List for Seattle District.
- 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): 20210917-StormWaterSvsAerials
or Other (Name & Date): 20210910-SitePhotos.
- Previous determination(s). File no. and date of response letter: NWS-2009-38, October 21, 2009, and reaffirmed July 30, 2010.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): E-mails detailing stormwater system dated September 10, 2021, and September 17, 2021.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Wetland A is a 1.68 acre Category 2 paulstrine forested wetland.

Wetland B is a 2.73 acre Category 2 palustrine forested wetland.

Both wetlands formed on top of fill material placed over 50 years ago to fill the estuary of the Puvallup River and construct the Port of Tacoma. The hydrology of the wetlands consists mainly of surface water input and a high groundwater table.

The wetlands provide an important water quality function by filtering out many pollutants associated with the surrounding industrial uses prior to surface water stormwater entering the TNW. The forested habitat of the wetlands is virtually the only remaining forested habitat within the Port with close proximity to the marine environment. The wetlands provide habitat to birds and insects with whom interact directly with the marine environment of the TNW.

On 21 October 2009, the Corps determined that there were three Wetlands located on the subject properties all of which were waters of the U.S. as described in an Approved Jurisdictional Determination (AJD). The Port of Tacoma appealed this decision. The appeal was determined to have merit and the decision was remanded back to Seattle District. On 2 July 2010, representatives from the Corps, Washington State Department of Ecology, and the Environmental Protection Agency conducted a site visit. On 30 July 2010, the Corps reaffirmed the three wetlands are waters of the U.S.

The Port of Tacoma submitted a new request for an AJD for wetlands on the same properties on 10 June 2020. However, changes have occurred regarding the number and size of the subject wetlands. One wetland on Parcel 72 was determined to no longer meet all the criteria of a wetland. The wetland delineation conducted in 2005 as part of the AJD was completed prior to the issuance of the Regional Supplement. The previous wetland was then delineated in 2013, however, the consultant at that time did not find any hydric soil indicators and determined the wetland to be "problematic" due to historic fill, and assumed seasonal flooding occurred. The assumption is false that the soil had been recently disturbed and/or filled. The soil had been in place for decades. Wetland B is located within close proximity. Wetland B has hydric soils and clear boundaries between hydric soils and non-hydric soils. No seasonal flooding was present during the 2020 delineation which occurred after record setting rainfall. For this reason, the previous wetland on Parcel 72 has been removed from the current delineation and AJD. Additionally, the size of Wetland B has changed significantly between the last three delineations. In 2005 Wetland B was 134,834 square feet (3.1 acres). In 2013 Wetland B 117,612 square feet (2.7 acres). In 2020 Wetland B was 119,289 square feet (2.7 acres). In between the 2005 delineation and the 2013 delineation, Wetland B on Parcel 72 shrunk by 16,772 square feet (0.4 acre). This reduction in size is due to the 2005 delineation being conducted prior to the publication of the regional supplement. The 2013 and 2020 delineations using the regional supplement are similar sizes. There have been no alterations to the hydrology patterns within the subject properties and the surrounding landscape since the 2010 AJD. The applicant provided updated drawings, narratives, and aerial imagery with detailed information on how the stormwater moves throughout the landscape. The information provided by the applicant further reinforced the 2010 AJD determination of the presence of waters of the U.S., specifically wetlands adjacent to a TNW. As discussed in the 2010 AJD and the 2020 wetland delineation submitted by the applicant, there is a high ground water table and the wetlands sit upon a fill pad higher in elevation than the surrounding roadways. The subject properties are surrounded by drainage ditches which carries water that drains from the subject wetlands due to the high ground water table through the soil, or by directly overtopping the wetlands during high precipitation events. These drainage ditches all lead to City of Tacoma stormwater system catch basins. The path of the stormwater system is known and shown in the aerial imagery provided by the applicant. The paths all lead to a direct discharge into either the Sitcum Waterway or the Blair Waterway depending on which side of the subject property the water leaves the wetlands.

In summary, the two wetlands in the Review Area are adjacent to a TNW because they are separated from a TNW by man made barriers, have a continuous surface or shallow subsurface connection, and is reasonably close to a TNW to have an ecological interconnection.