

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1 June 2022.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, NWS-2022-397, Community Transit.
Name of water being evaluated on this JD form: Wetland A, Wetland B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Snohomish City: Everett
Center coordinates of site (lat/long in degree decimal format): Lat: 47.921142 N, Long: -122.266945 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Unnamed Tributary to Swamp Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): 17110019 Puget Sound, WA.

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: 20 May 2022.

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 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: _____ 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):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Wetland A and Wetland B 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. These features are not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special**

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.

significance which would attract interstate or foreign travelers, lack bird and wildlife species of special significance which would attract interstate or foreign travelers, support 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 IV.B. for additional information.

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):⁴

- 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: _____ 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: Vicinity Map and Existing Conditions Map provided by Wetland Resources Environmental Consulting within the Delineation Report for Community Transit dated 30 March 2022.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.

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.

- 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: Snohomish WA 1895 (HTMC, 1954 ed.) Scale 1:125000; Snohomish WA 1897 (HTMC 1945 ed.) Scale 1:125000; Mukilteo WA 1953 (HTMC 1969 ed.) Scale 1:24000; Seattle WA 1975 (HTMC 1977 ed.) Scale 1:100000; Seattle WA 1992 (HTMC 1993 ed.) Scale 1:100000; Mukilteo WA 2011 (US Topo) Scale 1:24000; Mukilteo WA 2020 (US Topo) Scale 1:24000
- USDA Natural Resources Conservation Service Soil Survey. Citation: USDA, NRCS Web Soil Survey accessed May 2022.
- National wetlands inventory map(s). Cite name: USFWS NWI accessed May 2022.
- State/Local wetland inventory map(s): City of Everett Stream and Wetland Inventory maps accessed May 2022; Snohomish County Drainage Inventory maps accessed May 2022; WDFW SalmonScape accessed May 2022; WDFW Fish Passage Inventory Map accessed May 2022; City of Everett Public Works map accessed May 2022
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Historic aerial imagery provided by NETRonline accessed May 2022; Historic aerial imagery provided by Google Earth accessed May 2022
or Other (Name & Date): Wetland photographs provided by Wetland Resources Environmental Consulting within the Delineation Report for Community Transit dated 30 March 2022.
- 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:

Existing Conditions:

The subject property is situated in a light industrial setting and is bound by State Route 526 to the north, West Casino Road to the south, and commercial development to the east and west. An existing Boeing manufacturing plant is located immediately north of the site across State Route 526. The property was historically developed with a single-family residence, but has been vacant for several decades and is currently undeveloped. Vegetation is dominated by an immature forest comprised of black cottonwood (*Populus balsamifera*), bitter cherry (*Prunus emarginata*), red alder (*Alnus rubra*), and paper birch (*Betula papyrifera*), with an understory that includes Himalayan blackberry (*Rubus armeniacus*), salmonberry (*Rubus spectabilis*), bracken fern (*Pteridium aquilinum*), and trailing blackberry (*Rubus ursinus*). Topography of the site gradually slopes to the southeast with slight undulations throughout.

According to the Natural Resources Conservation Service (NRCS) Web Soil Survey, the entire subject property consists of Alderwood-Urban land complex, 2 to 8 percent slopes, a non-hydric soil. The soil type is identified as moderately well drained with a very low to moderately low (0.00 to 0.06 inches per hour) capacity of the most limiting layer to transmit water. The depth to water table is 18- to 36-inches, and the typical frequency of ponding and flooding is "none".

Subject Waters:

Two wetlands, Wetlands A and B, were identified during a site investigation on 9 November 2021 and are subject to this AJD. No other wetlands or aquatic resources were identified on the subject property.

Wetland A is a 1,907-square-foot (0.04 of an acre), Category IV depressional wetland located in the southeast corner of the subject property. The subject wetland directly abuts a parking lot along its eastern boundary. No evidence of a surface water outlet was present in Wetland A during a site investigation on 9 November 2021. No evidence of flowing water such as scour or channelization was observed, and no artificial drainage structures such as pipes or culverts were identified. During the site investigation, surface water was not observed within the subject wetland. Saturation was present at a depth of 9 inches, and the water table was observed at a depth of 13 inches.

Wetland B is a 2,003-square-foot (0.05 of an acre), Category IV depressional wetland located in the southern portion of the subject property, approximately 85 feet southwest of Wetland A. The central portion of the wetland is permanently ponded with seasonal flooding reaching the wetland edge. No evidence of a surface water outlet was present in Wetland A during a site investigation on 9 November 2021. No evidence of flowing water such as scour or channelization was observed, and no artificial drainage structures such as pipes or culverts were identified

Hydrology:

Based on a review of the Washington Department of Fish and Wildlife SalmonScape map, an unnamed ephemeral or intermittent surface water feature is present 0.3 of a mile southeast of the subject wetlands. The feature appears to flow to Stickney Lake then Swamp Creek which eventually outlets to Lake Washington. Impervious surfaces including major roadways, driveways, parking lots, and commercial facilities are present between the subject property and surface water feature which would prevent a surface water connection between the features. The Washington State Fish Passage map does not identify any culverts at or within the immediate vicinity of the subject property which could provide a surface water connection between the subject wetlands and a potential water of the U.S. In addition, the City of Everett Public Works map does not identify any storm drainage structures at or within the immediate vicinity of the project site which could provide a surface water connection between the subject wetlands and a potential water of the U.S. Based on a review of imagery (dated August 2008, September 2012, July 2017, August 2018, May 2019, and February 2022) provided by Google Street View, there is no evidence of a roadside ditch that could convey surface water from the subject property to a downstream potential water of the U.S. Based on a review of USGS Historic Topographic Maps dating back to 1895, no wetlands or surface water features were present at

the subject property historically. On the most recent (2020) historic topographic map available, the nearest mapped surface water feature is the unnamed ephemeral or intermittent surface water feature described above, located 0.3 of a mile from the subject property. The nearest mapped wetlands appear to be riparian wetlands associated with the unnamed surface water feature. Based on this information, there is no evidence to suggest that Wetland A or Wetland B has a surface or subsurface connection to a potential water of the U.S.

Nexus to Interstate or Foreign Commerce:

There is no evidence to suggest that Wetland A or Wetland B have historically or are presently used by interstate or foreign travelers for recreational purposes. The subject wetlands have no habitat or resources of special significance which would attract interstate or foreign travelers, lack bird and wildlife species of special significance which would attract interstate or foreign travelers, support 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.

Coordination:

Emails requesting concurrence were sent to EPA and to Corps HQ on 23 May 2022. Concurrence was received from EPA and Corps HQ on 23 May 2022 and 27 May 2022, respectively. Coordination was complete on 27 May 2022.