

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

.Form 1 of 1

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3 June 2022.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Panattoni Development Company, Inc., NWS-2021-947.
Name of water being evaluated on this JD form: Wetlands 2, 2A, 3, 7, 9, 10, 11, 12, 13, and 14; Ditch 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Pierce City: Puyallup

Center coordinates of site (lat/long in degree decimal format): Lat: 47.089422 **N**, Long: -122.339415 **W**

Universal Transverse Mercator:

Name of nearest waterbody: Clower Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Puget Sound.

Name of watershed or Hydrologic Unit Code (HUC): Clower Creek: 171100190302.

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 May 2022.

Field Determination. Date(s): 11 March 2022.

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: **The reviewed wetlands 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 wetland is 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, 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 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): 620 linear feet 3 width (ft).
- Lakes/ponds: _____ acres.
- Other non-wetland waters: _____ acres. List type of aquatic resource: _____.
- Wetlands: 4.31 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 and Fish and Wildlife Habitat Assessment Report-Fred 310, dated Revised 7 April 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: _____
- USDA Natural Resources Conservation Service Soil Survey. Citation: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>.
- National wetlands inventory map(s). Cite name: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.
- State/Local wetland inventory map(s): <https://matterhornwab.co.pierce.wa.us/publicgis/>
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): _____
or Other (Name & Date): Corps PM; 11 March 2022.
- Previous determination(s). File no. and date of response letter: NWS-1999-1558 - records in the national archives, response date unknown.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: On 11 March 2022, the Corps PM, (Jim Carsner, Seattle District, Regulatory Branch) met with Ben Wright (consultant, Soundview Consultants) conducted a site visit to verify the delineated wetland boundaries and assess connectivity to waters of the U.S.

Site description: The roughly 312-acre subject property is located south of 176th Street East and east of Canyon Road East, near Spanaway, Pierce County, Washington Sheet 1 of 9). The property is bounded on the north by 176th Street East, east and south by residential developments, west by Canyon Road East, Fredrickson Industrial Park Road East, commercial development access roadway, and a section of the Weverhauser Company rail line. Three roads, 181st Street East, 184th Street East, and 63rd Avenue East, provide access to the north portion of the property with unimproved compact gravel roads found throughout the south portion of the property (Sheets 2 and 3 of 9). A roughly 2.4-acre constructed stormwater pond (East Storm Pond) is found near and abutting the east-center of the property (Sheet 4 of 9). The property, except for the constructed roads, is undeveloped and dominated by deciduous and coniferous tree species having a shrub and herbaceous understory with some open areas dominated by a mix of shrub and herbaceous species. A series of storm drains were installed in the late-1990s and early-2000s on the north portion of the property for future development and to provide drainage to constructed storm ponds.

Topography: The property has undulating topography with a general slope to the south, ranging from 554 feet above mean sea level (amsl) on the north to 422 feet amsl on the south (Sheet 4 of 9). The topographic map shows the northeastern portion of the property would drain north and into the Clover Creek drainage basin; however, construction of 176th Street East severed the northward flows. In addition, previously installed storm drains direct water southward and downslope to onsite storm ponds.

Soils: NRCS maps four soil series Bellingham silty clay loam (4A); Everett very gravelly sandy loam with 0 to 8 percent slopes (13B), 8 to 15 percent slopes (13C), and 15 to 20 percent slopes (13D); Kapowsin gravelly ashly loam with 0 to 6 percent slopes (19B) and 6 to 15 percent slopes (19C); and Spanaway gravelly sandy loam (41A) (Sheet 5 of 9). All mapped soils, except for the Bellingham series, are consider non-hydric. The Bellingham series is found in the northeastern portion of the property adjacent to 176th Street East and associated with Wetlands "2", "2A", and "11". NRCS describes the non-hydric soils (13B, 13 C, and 13D) soil as somewhat excessively drained with (19B and 19C) and (41A) being classified as moderately well-drained with a restrictive layer below 80 inches. The typical profile for the Everett series is very gravelly sandy loam to 2 feet then very gravelly loamy sand from 2 to 3 feet and extremely cobbly coarse sand below 3 feet. The typical profile for the Kapowsin series is gravelly ashly loam to 15 inches than loam to 29 inches and gravelly loam below 29 inches. The typical profile for the Spanaway series is gravelly medial sandy loam to 14 inches then very gravelly medial sandy loam to 18 inches and extremely gravelly sand below 18 inches.

Wetland delineation: A wetland delineation was conducted by Soundview Consultants, LLC biologists during July 2021. Ten wetlands (Wetlands "2", "2A", "3", "7", "9", "10", "11", "12", "13" and "14") and a roadside ditch (Ditch 1) were identified onsite by the consultant (Sheets 2 and 3 of 10). The National Hydrography Database (NHD) maps a drainage originating along the south side of 184th Street East, identified as Ditch 1, that flows north and west offsite (Sheet 6 of 9). The National Wetland Inventory shows one wetland on the northeast corner adjacent to 176th Street East and a drainage near 184th Street East (Sheet 7 of 9). The Pierce County Wetland Inventory shows several wetlands on the northern portion of the property (Sheet 8 of 9). The Pierce County Storm Water Drainage map show water would collect in catch basins along 176th Street East and drain toward Clover Creek (Sheet 9 of 9); however, there is no connection between the onsite wetlands and the storm drains along 176th Street East. In addition, the Pierce County Storm Water drainage map shows onsite drainage systems that allow water to flow into infiltration storm water ponds constructed in deep, moderately well-drained to somewhat excessively drained non-hydric soils.

The closest RPW is Clover Creek, found roughly 0.4 of a mile north of the site; however, construction of 176th Street East severed the flow north and directed waters from the northeast portion of the site into the East Storm Drainage system. The next closest stream is Muck Creek located roughly 2.4 miles south of the property.

Corps personnel walked around the perimeter of the subject wetlands as identified by the consultants at the time of the visit. Wetland boundaries were identified by minor changes in topography and subtle transitions in vegetation communities. The areas adjacent to and downslope of the wetlands have upland soils with deep, moderately well-drained to somewhat excessively drained soils with to high infiltration rates and upland vegetation communities. Topographic and stormwater drainage maps show no flow path currently exists (swales, ditches, culverts, etc.) between the onsite wetlands and offsite waters including wetlands. Water from Wetlands 2, 2A, 11, and 12 drain into the East Storm Drainage system then into Ditch 1 and the East Storm Pond, constructed in deep, moderately well-drained soils. In addition, water observed flowing in Ditch 1 infiltrated roughly 500 feet from the storm pond (Photos 1 and 2). Water from Wetlands 3 and 7 drain into the West Storm Drainage system then into the Northwest Storm Pond, although no flow was observed from these wetlands at the time of the March site visit. Wetlands 9, 10, and 14 are in shallow depressions formed in deep, moderately well-drained soils with no visible inlet or outlet.

Jurisdictional determination: The Corps agrees with the wetland boundaries as delineated by Soundview Consultants. The site topography showing a general slope to the southwest with no visible drainage pathways. The mapped presence of moderately well-drained to somewhat excessively drained non-hydric soils adjacent to the wetlands support the conclusion that Wetlands 2, 2A, 3, 7, 9, 10, 11, 12, 13, and 14 and Ditch 1 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, 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. The Corps has determined the reviewed wetlands are not waters of the U.S.

Emails requesting concurrence were sent to EPA and to Corps HQ on 24 May 2022. On 24 May 2022, the EPA concurred the non-jurisdictional determination. On 3 June 2022, Corps HQ concurred with the non-jurisdictional determination.