

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

Form 1 of 1 – Wetland A

SECTION I: BACKGROUND INFORMATION

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

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Toll Bros Inc (NWS-2021-1159)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Skagit City: Bothell
Center coordinates of site (lat/long in degree decimal format): Lat: 47.7803893° Long: -122.1813141°
Universal Transverse Mercator: Zone 10 N E Name of nearest waterbody: North Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Sammamish River
Name of watershed or Hydrologic Unit Code (HUC): 17110012 (Lake Washington)

- 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: 12 August 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.

- 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:
Wetlands: 13,272 SF

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

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 does 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, 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 B 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
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):
- C. SIGNIFICANT NEXUS DETERMINATION
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):
- 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

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:

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: Wetland delineation report dated August 24, 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:
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: NWI Mapper, 2022.
- State/Local wetland inventory map(s): City of Bothell, 2022.
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth, 2022.
 - 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): .

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.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Existing Conditions:

Corps PM has reviewed all information submitted for the site. The site is surrounded by large lot residential, high intensity residential, institutional, and undeveloped forested areas. Three houses, outbuildings, and associated infrastructure are located within the property boundary. Topography of the site slopes gently to the south and southeast. An onsite stream and associated wetland were identified, Stream A and Wetland B, and are not included in this jurisdictional determination.

The wetland is located downslope of the onsite Stream A and Wetland B. The existing stream and associated wetland on the northern portion of the site direct flow from east to west, which bypasses the developable portion of the site. This runoff continues offsite to the west where it eventually drains into a roadside ditch on the eastside of 35th Ave SE which connects to the storm in 240th St SE within a quarter mile of the site.

Wetland A is located in the southwest corner of the property. Wetland A is 13,272 square-foot Category IV slope wetland and has a Cowardin classification of Palustrine Forested Wetland, Broad-leaved deciduous, Saturated Only. Vegetation within Wetland A includes: Pacific Willow (*Salix lasiandra*; FACW), creeping buttercup (*Ranunculus repens*; FAC), reed canarygrass (*Phalaris arundinacea*; FACW), bentgrass (*Agrostis sp.*; FAC) and common velvetgrass (*Holcus lanatus*; FAC). Wetland A has no observed outlet, channelization, or impoundments. The wetland receives hydrology from upslope roof/footing drains of residences, precipitation, and groundwater.

The soils underlying Wetland A are generally black (10YR 2/1) sandy loam with 5 percent dark yellowish brown (10YR 4/6) redoximorphic features from 0 to 18 inches. This soil profile displays a hydric soil indicator Redox Dark Surface (F6). Natural Resources Conservation Service Web Soil Survey indicates the wetland is located entirely in areas containing 85% soil unit 2 – Alderwood gravelly sandy loam, 8 to 15 percent slopes. The natural drainage class is moderately well drained and water movement in the most restrictive layer is low. Available water to a depth of 60 inches (or restricted depth) is very low. Shrink-swell potential is low. This soil is not flooded or ponded. A seasonal zone of water saturation is at 26 inches during January, February, March. Minor components of the soil profile include 10 % non-hydric Indianola and Everett soils, and 5% hydric inclusions of Shalcar and Norma expected in local depressions. The wetland was observed with no saturation or groundwater and satisfied secondary hydrology indicators of D2 Geomorphic Position and D5 FAC-Neutral Test.

The wetland abuts the southern property boundary along 240th Street Southeast. City of Bothell Stormwater maps two catch basins near the southwest corner of the wetland and two additional catch basins to the east of the southeast corner of the wetland. The City of Bothell stormwater system conveys flow at these catch basins to the west before outletting into a series of open ditches and piped conveyance before discharging into North Creek. The catch basins are located on either side of two existing raised gravel driveways. Additionally, the property line is mounded at the fence line along the southern boundary of the wetland from years of road shoulder maintenance. No surface water flow connections are possible between the catch basins and existing site topography.

Wetland A does not have a surface water connection to other navigable or interstate waters of the U. S. or tributaries of waters of the U. S. The wetland is not used for interstate commerce including recreational activities, commercial fishing activities, or used for industrial purposes. This wetland is isolated and would not be waters of the U. S.

Coordination:

Emails requesting concurrence were sent to EPA on 29 August 2022. EPA provided concurrence on 31 August 2022. Coordination was complete on 31 August 2022.