

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

Form 2 of 2 – Wetlands N and O

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 26 June 2017**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District – Spire, LLC, NWS-2016-683**

Name of water being evaluated on this form: Wetlands N and O

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: WA                      County/parish/borough: Skagit                      City: Mount Vernon  
Center coordinates of site (lat/long in degree decimal format Lat: 48.45472° Long: -122.43149°  
Universal Transverse Mercator: Zone

Name of nearest waterbody: Indian Slough

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Indian Slough

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: 16 June 2017

Field Determination. Date(s): 21 April 2017

**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):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (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: 1987 Delineation Manual**

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Wetlands N and O 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, 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

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> Supporting documentation is presented in Section III.F.

industrial, agricultural, or silvicultural activities involving interstate or foreign commerce. See Section B for additional information.

### **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):<sup>4</sup>**

**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: 0.16 acres (Wetlands N and O)

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 22 February 2008.
  - 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: 7.5 minute LaConner Quad
  - USDA Natural Resources Conservation Service Soil Survey. Citation: .
  - National wetlands inventory map(s). Cite name: .
  - State/Local wetland inventory map(s): WA State Department of Ecology, 2001
  - FEMA/FIRM maps: .
  - 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
  - Photographs:  Aerial (Name & Date): Google Earth 2015.
    - Other (Name & Date): Site photos from field visits in 2008 and 2017.
  - Previous determination(s). File no. and date of response letter: NWS-2008-613 dated 16 December 2008.
  - Applicable/supporting case law: .
  - Applicable/supporting scientific literature: .
  - Other information (please specify): .

<sup>4</sup> 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:**

Site Visit

21 April 2017

Partly cloudy; rain during previous 2 weeks.

Randel Perry, Brandon Clinton, Julianna Houghton (Corps)

Kerrie McArthur (wetland consultant)

**Site Description:** The subject site is located in the Indian Slough watershed and is divided into 5 contiguous lots previously numbered 14 through 18 (see attached figure). Topography in the vicinity general slopes from northeast to southwest. The parcel is bounded by developed properties to the north, west, and east and by a maintained pipeline right of way along the southern boundary. The immediate vicinity around the site is extensively developed for industrial and agricultural uses. Sierra Pacific Industries has developed the property to the south and east of the subject sites as a log mill and wood treatment facility. The lots are forested with a mosaic pattern of wetlands occurring in topographical depressions. The area contains a number of drainage ditches constructed to replace natural drainages and facilitate historic agricultural activities and current industrial uses of the applicant's property to the south. There is an existing mitigation wetland along the eastern edge of the site.

**Delineation:** A wetland delineation was conducted by Geomatrix in April of 2008 and 2012. Six separate wetlands were identified by the consultant on the subject parcel – wetlands K, L, M-P, N, O, and Q (see Form 2 of 2 for Wetlands N and O).

**Soils:** Mapped soils are: Mapped soils are –Bow gravelly loam 0% - 3% slopes (listed as hydric)

Observed soil colors are:

Wetlands - 7.5Y 4/2 silty clay loam overlying 2.5Y 5/3 silt loam with mottles.

Uplands - 10YR 2/2 clay loam and 10YR 4/2 silt loam (no mottles).

**Hydrology:** Wetlands are supported by shallow groundwater seepage and precipitation.

**Vegetation:**

- Wetland
  - Red alder (*Alnus rubra*) FACW
  - Slough Sedge (*Carex obnupta*) OBL
  - Black cottonwood (*Populus balsamifera*) FAC
  - Western red cedar (*Thuja plicata*) FAC
  - Piggyback plant (*Tolniea menziesii*) FAC
  - Salmonberry (*Rubus spectabilis*) FAC
  - Trailing blackberry (*Rubus ursinus*) FACU
  
- Uplands
  - Trailing blackberry (*Rubus ursinus*) FACU
  - Red alder (*Alnus rubra*) FACW
  - Piggyback plant (*Tolniea menziesii*) FAC
  - Himalayan blackberry (*Rubus discolor*) FACU
  - Salmonberry (*Rubus spectabilis*) FAC
  - Stinging nettle (*Urtica dioica*) FAC
  - Sword fern (*Polystichum munitum*) FACU
  - Bitter cherry (*Populus emarginata*) FACU
  - Snowberry (*Symphoricarpos albus*) FACU
  - Indian plum (*Oemleria cerasiformis*) FACU

Wetland acreage identified for this determination: 0.16 acres

Wetland acreage to be filled: 0.16 acres (plus 2.41 acres of jurisdictional wetlands – see Form 1 of 2)

**Observations/Discussion:** A previous jurisdictional determination site visit for the subject property was conducted on 21 May 2008. A jurisdictional determination (JD) was issued on 16 December 2008 (Corps reference number NWS-2008-631). The JD determined that wetlands K, L, M-P, N, O, and Q were jurisdictional. Additional information was received on 13 July 2016 that included a delineation confirmation report (based on new sampling) and a hydrology study of surface and groundwater flow paths in Ditch D and the site wetlands. No changes were reported to the boundaries of the previously delineated wetlands. The report did substantiate a minimal hydrological connection between Ditch D and wetlands M-P. The Corps has previously determined that Indian Slough is Traditional Navigable Water under CWA Section 404 and a Navigable Water subject to R&HA Section 10 (Corps reference number NWS-2008-1459; 26 November 2008).

Most wetland boundaries were identified by changes in topography and noticeable transitions in vegetation communities. Wetlands appear to be a braided system that winds through forested areas with numerous "arms" and channels. There is a remnant berm along the northern edge of the pipeline ROW at the tree line that may have contributed to an impoundment of water in the southern portion of Wetland N, but this feature has been breached by erosion in numerous places. As no change to boundaries was noted, the site visit did not investigate the

complete boundary of each wetland. Corps staff walked around the downslope end of the site wetlands to investigate connectivity between wetlands and downstream tributary features.

Wetlands N and O are located on the southern portion of the site. Water from these wetlands flow overland south into a low area in maintained pipeline right of way as evidenced by standing water. There is a rise in elevation in all directions from the area of inundation on the right-of-way. Although intervening soils are mapped as hydric, there is no indication of surface flow features and, based on distance, shallow subsurface flow to Ditch D to the west or ditches and stormwater facilities located 830 feet to the south is unlikely. Any water infiltrating soils in the right of way would likely be captured by the pipeline bedding material which would convey subsurface flow to the west. The pipeline does not surface at any point where subsurface water would be discharged into other waters of the U. S.

Additional wetlands occur on the site. A separate JD has been made for Wetlands K, L, M-P, and Q (see Form 1 of 2).

**Jurisdictional Determination:**

Wetlands N and O 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, 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.

Wetlands N and O are isolated and are not waters of the U. S. under Section 404 jurisdiction.