

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 6 July 2017.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Chinn Construction LLC, NWS-2016-844.
Name of water being evaluated on this JD form: Wetlands A and B

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: King City: Seattle

Center coordinates of site (lat/long in degree decimal format): Lat: 47.547906 N, Long: -122.285355 W

Universal Transverse Mercator: _____

Name of nearest waterbody: Lake Washington.

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

Name of watershed or Hydrologic Unit Code (HUC): 17110012.

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: 23 May 2017.

Field Determination. Date(s): 23 May 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. [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: **Wetlands A and 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. The subject wetlands are not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which**

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.

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 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: 0.09 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: Figures 1 through 5 from the Critical Areas Report and Proposed Mitigation Plan, prepared by Talasaea Consultants, Inc., 29 August, 2016 and the 2 foot contour LIDAR map submitted by the consultant.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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 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: _____.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): King County GIS, 2014 (Earth Explorer, 2012)
or Other (Name & Date): King County GIS, 2010 LIDAR.
- 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:

Site visit: 23 May, 2017. Conducted by Tina Tong and Susan Buis (Corps) and Jennifer Mariott (wetland consultant), with Katie Heard, Juliana Houghton, Jim Carsner, and Brandon Clinton (Corps).

Site description: The 1.5 acre parcel is located on Martin Luther King Jr. Way South, Seattle, King County Washington. The site is rectangular in shape and surrounded by a strip mall development, an apartment complex, and dense single family dwellings on the other 3 sides. The site has no structures on it but is used as a homeless encampment.

Wetland delineation: A wetland delineation was conducted by Talasea Consultants on 24 September, 2016. Two wetlands were identified by the consultant.

Wetland A is a 4,031 square foot palustrine forested depressional wetland located in the center of the site. It receives runoff from the surrounding developments but does not have an outlet. Vegetation consists of black cottonwood (Populus balsamifera), Oregon ash (Fraxinus latifolia), and common hawthorn (Crataegus monogyna). There is very little understory vegetation, mostly matted leaves overlain by a thin layer of silt. Soils within the wetland met the indicators for Depleted Matrix (F3) and Redox Dark Surface (F6). Indicators of hydrology included water stain lines on tree trunks and water stained leaves.

Wetland B is a 27 square foot palustrine forested depressional wetland located southeast of Wetland A. It receives runoff from the surrounding development and lacks a visible outlet. Vegetation is predominantly young black cottonwood with minimal understory vegetation.

Wetland acreage identified for this determination: 0.09 acres.

Wetland acreage to be filled: 0.09 acres.

Site observations: We walked downslope into a bowl surrounded by dense urban development on all sides. Wetland boundaries were easily identified by a distinct elevation break marked by a ring of blackberries. There were no ditches or pipes observed on or adjacent to the site. Precipitation appears to be the only water source. Water collects in this feature during severe rain events with periodic shallow ponding during seasonal winter rains. The nearest water body is Lake Washington, 1.28 miles away through dense urban residential development. The two wetlands may connect during ponding events but no flowpaths exist offsite. Aquaculture cannot be conducted because of the terrestrial location. Industry, commercial agriculture or silviculture cannot be conducted because of the small size and location of the parcel.

Jurisdictional determination: Wetlands A and 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. 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.

Emails requesting concurrence were sent to EPA and to Corps HQ on 13 June 2017. Heather Dean at EPA concurred on 27 June, 2017. No response was received from Corps HQ. Coordination was complete by 5 July, 2017.

Wetlands A and B are isolated and are not waters of the U.S. under Section 404 jurisdiction.