

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17 July 2017.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, NWS-2017-197, Bay Estates Associates.
Name of water being evaluated on this JD form: Wetlands 1, 3, 4, and 5.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: Pierce City: Gig Harbor
Center coordinates of site (lat/long in degree decimal format): Lat: 47.3446 N, Long: 122.6144 W
Universal Transverse Mercator: _____

Name of nearest waterbody: McCormick Creek.

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

Name of watershed or Hydrologic Unit Code (HUC): 171100190702.

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: 28 March 2017.

Field Determination. Date(s): 29 March 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 1, 3, 4, and 5 do not have a surface water or shallow subsurface connection or ecological connectivity**

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.

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 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: 0.48 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: Russell and Associates (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: Caltopo.com
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: USFWS - NWI.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 27 June 2016
or 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): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Site Visit

29 March 2017

10:00 – 12:00

Weather – Moderate rain during site visit. Record-setting rainfall during previous eight weeks (February/March 2017).

Tom Bloxton (Corps)

Eric Russell (Wetland Consultant)

Site Description: The 37.68 acre site contains mature conifer/mixed deciduous forest and is bounded by Bujacich Road Northwest and the Washington Correction Center for Women to the north, a Puget Sound Energy utilities facility to the east, and mature mixed conifer/deciduous forest to the west and south. The overall topography is relatively flat with an elevation of approximately 330 feet above mean sea level. The site was historically logged by selective thinning but remains largely a closed canopied forest today.

Delineation: A wetland delineation was conducted by Grette and Associates in 2009 and Mr. Eric Russell of Russell and Associates in 2015-2016. A total of six separate wetlands were identified wholly or partly on the property by the consultants. Two of these wetlands, wetlands 2 and 6 extend to other properties, are not proposed to be filled, and are not included in this determination.

Soils: Mapped soils are: Harstine gravelly ashy sandy loam, 6 to 15 percent slopes over the entire site.

Observed soil colors are:

Wetlands: 10YR 2/2 muck in the "A" horizon, in the upper 4-8 inches. The "B" horizon, to 18 inches, is generally 10 YR 4/2 or 10YR 4/1, sand, with extensive 7.5 YR 4/4 and 7.5 YR 4/6 iron soft masses. Redoximorphic features, including iron soft masses and oxidized rhizospheres, were observed in the upper 12 inches of the soil profile, in the mineral soils evaluated.

Uplands:

10YR 3/3 or 10YR 4/3 gravelly sandy loam or gravelly loamy sand from 0-8 inches in depth. The "B" horizon, from 8-18 inches, is mainly 10 YR 4/4 or 10YR 5/3 gravelly sandy loam or gravelly sand.

Vegetation:

Wetlands - Red alder, western redcedar, salmonberry, hard hack, nootka rose, creeping buttercup, water parsely, and subarctic ladyfern.

Upland - Douglas-fir, red alder, bigleaf maple, Pacific madrone, western hemlock, western redcedar, Himalayan blackberry, cutleaf blackberry, osoberry, evergreen huckleberry, swordfern, salal, and Oregon grape.

Wetland acreage identified for this determination: 0.48 acres

Wetland acreage to be filled: 0.48 acres

Observations/Discussion:

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 major changes in topography and noticeable transitions in vegetation communities. No observable surface inlets or outlets were noted. Water collects in these features during rain events with periodic shallow ponding during seasonal winter rainy periods. Dense subsurface soils disconnect these areas from the deeper lying water table. No flowpaths currently exist (swales, ditches, culverts, etc.) to other waters including wetlands. Topography rises approximately six feet from the center of the wetlands and surrounding uplands. Saturation was detected in the wetlands at the time of the site visit but no flow from the wetlands was observed.

Wetlands 3, 4, and 5 are depressional wetlands in the middle of the subject property and no ditches or natural drainages are found within 200 feet of them. Vegetation in them consists primarily of red alder with an understory of salmonberry. The topography around them is very flat with no obvious slope towards a RPW. Upland vegetation surrounding them includes Douglas-fir, swordfern, salal, and evergreen huckleberry. Wetland 1 is located in the northwest corner of the property, also contains red alder and salmonberry, and is located less than 50 feet from Bujacich Road Northwest. The topography surrounding wetland 1 contains uplands composed of Douglas-fir, swordfern, and salal. The roadside does not contain a discernable ditch with an OHW mark and bed/bank. It was raining heavily at the time of the field visit and the region was experiencing one of the wettest winters on record. There was no surface water connection seen from wetland 1 to the roadside area nor was there water flow seen in the roadside area during the field visit. McCormick Creek is located 800 feet from Wetland 1 and is the closest RPW to it. Topographic maps show North Creek originating on the property to the east (Puget Sound Energy facility) approximately 600 feet northeast of wetlands 3, 4, and 5. Evidence of this creek could not be located in the field until reaching the roadside ditch along Bujacich Road where the ditch flows through a culvert underneath the road heading to the east towards Gig Harbor. It appears that this roadside ditch is the origin of North Creek. Due to the flat topography around these wetlands and the presence of distinct upland areas separating them from the surrounding landscape the wetlands appear to be hydrologically isolated from waters of the U.S

Two additional wetlands occur on the site (Wetlands 2 and 6). The property owner is not seeking a jurisdictional determination for these two wetlands since they will not be directly impacted during the planned development.

Jurisdictional Determination:

Wetlands 1, 3, 4, and 5 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, 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 1, 3, 4, and 5 are isolated and are not waters of the U. S. under Section 404 jurisdiction.

Email notification was sent to EPA Region 10 staff, Heather Dean and Tracy Degering, on 26 June 2017. Ms. Dean responded on 12 July 2017 with EPA concurrence that wetlands 1, 3, 4, and 5 are non-jurisdictional isolated waters. Email notification was also sent to USACE HQ on 26 June 2017. As of 17 July 2017 no response was received from USACE HQ.