

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

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 2, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-ODG, N of Ave. H, E of Crater Lake Highway, NWP-2021-546

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Jackson City: White City
Center coordinates of site (lat/long in degree decimal format): Lat. 42.439555° **N**, Long. 122.835043° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Agate Slough

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

Name of watershed or Hydrologic Unit Code (HUC): Whetone Creek - Rogue River (171003080202)

☒ 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: November 2, 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. [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** "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: The Vernal Pool Complex includes 13 wetlands and is 0.86 acres.

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: See Section F for additional details.

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

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM ⁶ (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: .	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
 - ☐ Federally Listed species. Explain findings: .
 - ☐ Fish/spawn areas. Explain findings: .
 - ☐ Other environmentally-sensitive species. Explain findings: .
 - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: The Vernal Pool Complex includes 13 wetlands and is 0.86 acres

Wetland type. Explain: Wetlands 1-13 are vernal pools that are classified as palustrine emergent wetlands.

Wetland quality. Explain: The hydrological sources for Wetlands 1-13 are incident rainfall and stormwater runoff from surrounding roadways and the neighboring commercial development. Stormwater flowing off impervious surfaces delivers pollutants to the Vernal Pool Complex which has resulted in a loss of ecological function in the aquatic habitat. Jackson County, Oregon Open GIS (2022) has mapped the Review Area as vernal pool habitat with intact topography and altered vegetation.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Aerial images from March 12, 2021 (Digital Globe) and June 2018 (Google Earth Pro) show surface water in the Vernal Pool Complex and the adjacent non-TNW that is outside the Review Area (Offsite Waterway). The wetland delineator identified biotic crust in wetlands, and found that vegetation was dominated by obligate hydrophytes. As such, surface water was determined to be present in Wetlands 1-13 for at least three months each year during the wet season.

Surface flow is: **Confined**

Characteristics: Wetlands 1-13 lack evidence of channelization and are confined to topographic depressions. During high precipitation events and floods, water exits the normal boundaries of Wetlands 1-13 as overland sheetflow where it can then flow to the northwest and enter the Offsite Waterway.

Subsurface flow: **Yes**. Explain findings: The Review Area is underlain by Agate-Winlo soil. Typical of this soil type, there is an impermeable, indurated clay hardpan layer at approximately 8-23 inches in the soil profile in vernal pools. This clay hardpan layer is also present in mounded uplands between vernal pools and occurs between 20 and 30 inches in the soil profile. The hardpan layer allows for subsurface lateral flow in the upper portion of the soil profile. Water that is not evaporated or is not part of the overland sheetflow will percolate to the hardpan layer and move laterally above this layer towards topographical low points. Vernal pool wetlands in the Review Area discharge subsurface water to the northwest where it enters the Offsite Waterway.

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☒ Ecological connection. Explain: Wetlands 1-13 maintain an ecological connection with Offsite Waterway 3 as described above under Section B.2i(b) through subsurface flow. Wetland 2 is located roughly 10 feet landward of the Offsite Waterway. While this feature extends outside the Review Area, it does not directly abut the Offsite Waterway. Wetland 12 is the furthest distance from the Offsite Waterway and is located roughly 400 feet from its' edge.

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **2 - 5-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

The hydrological sources for Wetlands 1-13 are incident rainfall and stormwater runoff. The Rogue Valley Council of Governments (2012) has documented significant wet weather stormwater flow from the urbanized portions of the watershed in White City in waters near to the Review Area. Development in the vicinity of the Review Area has also removed riparian shading of streams and increased water temperature. For example, water temperature in the summer months often reaches 68 degrees in Whetstone Creek, which is

slightly higher than acceptable to support salmonids. In turn, dissolved oxygen levels trend toward the lower range of what is acceptable for salmonids (Rogue Valley Council of Governments, 2012). As such, water quality in the Review Area is poor.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☐ Riparian buffer. Characteristics (type, average width): .

☐ Vegetation type/percent cover. Explain:

Percent cover of vegetation and bare ground is highly variable in wetland features. .

☐ Habitat for:

☒ Federally Listed species. Explain findings: In a communication between the consultant and the USFWS, vernal pool fairy shrimp are considered present in all intact vernal pools along Avenue H in White City (Schott & Associates, 2022). Federally listed plants, such as Cook's lomatium and large flowered woolly meadowfoam may also occur in the Review Area in vernal pools and on their flanks. The seeds of both species float and are transported via surface water through the Vernal Pool Complex to the Offsite Waterway.

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Vernal pools provide seasonal breeding and foraging habitat for amphibians and aquatic insects, and provide water and forage for mammals (e.g., foxes, coyotes, rodents). Subsurface flows through the vernal pool complex in the Review Area have lower temperatures than surface water and contribute to cooling downstream waters that drain into the Rogue River, which is beneficial for salmonids and other fish. In addition, subsurface flows are not subject to evaporation and this hydrologic input to downstream waters can increase surface water levels and seasonal duration which has a positive impact on plants, fish, and wildlife in the watershed.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **13**

Approximately (0.86) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Wetland</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 1: N		0.28			
Wetland 2: N		0.36			
Wetland 3: N		0.03			
Wetland 4: N		0.06			
Wetland 5: N		0.03			
Wetland 6: N		0.03			
Wetland 7: N		0.004			
Wetland 8: N		0.001			
Wetland 9: N		0.01			
Wetland 10: N		0.01			
Wetland 11: N		0.03			
Wetland 12: N		0.01			
Wetland 13: N		0.01			

Summarize overall biological, chemical and physical functions being performed:

In a communication between the consultant and the USFWS, the federally listed vernal pool fairy shrimp are considered to be present in all vernal pools along Avenue H in White City (Schott & Associates, 2022). Vernal pool fairy shrimp migrate between aquatic features during high precipitation and flood events and have the ability to survive in a desiccated state in drylands for several consecutive years (USFWS 2011). Federally listed plants, such as Cook's lomatium and large flowered woolly meadowfoam may also occur in the Review Area. The seeds of both species float and are transported via surface water between Wetlands 1-13 in the Review Area during high rainfall and flood events.

Stormwater runoff from the areas surrounding the Review Area influences the chemical composition of the water in the Vernal Pool Complex through the discharge of pollutants from impervious surfaces, elevation of water temperature, and reduction in dissolved oxygen levels. Wetlands in the Review Area filter pollutants out of the ecosystem before surface and subsurface water flows downstream. Downstream waters and the Rogue River support the federally listed Southern Oregon/Northern California Coast Coho salmon and the chemical composition of water impacts this species' survival. As described above in B.2(iii), Subsurface flow through the Vernal Pool Complex also contributes to cooling water and increasing surface water levels in downstream. In addition, Wetlands 1-13 provide flood attenuation by capturing and storing water during the wet season.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

Significant nexus findings for wetlands adjacent to an RPW but that do not directly about the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

Wetlands 1-13 have a biological, chemical, and physical connection to an Offsite Waterway that is immediately outside the Review Area's western boundary. The Offsite Waterway was impacted as part of a previous development project (Corps No. NWP-2004-775) that created a bioswale in the feature to treat stormwater. The Offsite Waterway flows to the southwest along Highway 62 to a culvert inlet and 30 inch stormwater pipe at the eastern corner of the intersection of H Avenue and Highway 62 (Rogue Valley Sewer Services, 2022). Stormwater flows through the pipe to the east and then heads south alongside Division Avenue, and west alongside Avenue G. The pipe delivers water to a daylit waterway that is south of the Review Area alongside Highway 62, and flows downstream into Agate Slough, Whetstone Creek, and ultimately the Rogue River (a TNW). In an email to the Corps dated September 27, 2021, Rogue Valley Sewer Services confirmed the hydrologic connection between the stormwater infrastructure along Avenue H and the Rogue River that is described above and depicted on their Service Area Maps.

The Offsite Waterway was not included in the wetland delineation, but an image from Google Earth Street View (dated May 2021) shows that the tributary has a discontinuous ordinary high water mark (OHWM) that is distinguished by a change in vegetative cover and substrate, where the channel bottom is bare and the upper banks support vegetation. Immediately west of the Review Area, where the bioswale was located on construction plans for NWP-2004-775, the stream banks and OHWM are well defined for approximately 490 feet based on Google Earth Street View images (no date). Surface water is evident in aerial images from March 12, 2021 (Digital Globe) and June 2018 (Google Earth Pro).

The Corps determined that the Offsite Waterway has a direct, downstream connection to a TNW through surface water and subsurface pipes. Wetlands 1-13 are physically connected to the Offsite Waterway through subsurface flows that travel laterally through the upper soil profile above a hardpan layer. A chemical connection between the wetlands and the Offsite Waterway is present because subsurface flows through the vernal pool complex have lower temperatures than surface water and contribute to cooling downstream waters, which is beneficial for salmonids and other fish. In addition, Wetlands 1-13 improve the water quality of downstream waters by removing pollutants from the aquatic ecosystem before water leaves the Review Area.

A biological connection is present due to the ability for aquatic wildlife, and species protected by the ESA to migrate and reproduce within and between wetlands in the Review Area and downstream waters. Suitable habitat for federally listed Cook's lomatium, large flowered woolly meadowfoam, and vernal pool fairy shrimp occurs in the Review Area in vernal pools and their flanks, and in downstream waters. The seeds of both plant species float and are transported via surface water between discontinuous wetland features during high rainfall and flood events. Vernal pool fairy shrimp migrate between aquatic features during high precipitation and flood events and have the ability to survive in a desiccated state in drylands for several consecutive years (USFWS 2011). Based on the above information Wetlands 1-13 have more than a speculative and insubstantial nexus downstream to the Rogue River.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

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: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

⁸See Footnote # 3.

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
☐ Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **The Vernal Pool Complex includes 13 wetlands and is 0.86 acres.**

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):¹⁰

- ☐ 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.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ 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.

Identify type(s) of waters: .
☐ Wetlands: acres.

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): **Ditch 1 in the project site is a linear, manmade feature that slopes gently to the west along Avenue H outside the Review Area. A dry bed in Ditch 1 is visible in aerial images from 2010 to 2020 (Google Earth Pro). Photographs provided as part of the wetland delineation survey show dry conditions, upland vegetation in and on the bed and banks, and the lack of OHWM field indicators. The construction plans for the project associated with NWP-2004-775 show that another bioswale was planned to be constructed in Ditch 1, but this was not completed as proposed. Surface water is retained in Ditch 1 during- and immediately following rainfall events as there is no downstream culvert outlet which is evident from Google Street View Image from May 2021. As such, the Corps determined Ditch 1 is not a tributary that flows directly or indirectly into a TNW and is not a jurisdictional feature.**

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: acres.

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): **85** linear feet, **3** 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:
Schott & Associates. 2021. Wetland Delineation for Avenue H and Crater Lake Highway.
- ☒ 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. 2022. Portland District Regulatory Web Map Application. Online: <http://geoportal.nwd.usace.army.mil/>.
USGS. 2022. 8 HUC Map (17100308) and 12 HUC Map (171003080202).
☒ USGS NHD data.
☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:
USGS Topoview. 2022. Eagle Point, 2020, 1:24k. Online: <https://ngmdb.usgs.gov/topoview/viewer/>.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Schott & Associates. 2021. Jurisdictional Wetland Delineation for Avenue H and Crater Lake Highway.
- ☒ National wetlands inventory map(s). Cite name: Schott & Associates. 2021. Jurisdictional Wetland Delineation for Avenue H and Crater Lake Highway.
- ☒ State/Local wetland inventory map(s): Jackson County Interactive GIS Viewer. 2022. Wetland and Vernal Pool Datasets. Online: <https://gis.jacksoncounty.org/datasets/>.
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):
Google Earth Pro (Software Version 7.3.3.7786). 2000-2020.
Digital Globe. 2019-2022. Online: <https://evwhs.digitalglobe.com/>.

or ☒ Other (Name & Date): Schott & Associates. 2021. Jurisdictional Wetland Delineation for Avenue H and Crater Lake Highway. September 2021 Photographs.

Google Earth Street View. 2021. Online: <https://www.google.com/earth/education/tools/street-view/>.

☐ Previous determination(s). File no. and date of response letter: .

☐ Applicable/supporting case law: .

☒ Applicable/supporting scientific literature:

Rogue Valley Council of Governments, 2012. Whetstone Creek Restoration Plan for Improved Fish Passage, Water Quality, and Riparian Conditions.

USFWS. 2011. Programmatic Formal Consultation on the U.S. Fish and Wildlife Service's Vernal Pool Conservation Strategy for Jackson County, Oregon (FWS Reference Number 13420-2011-F-0064).

☒ Other information (please specify):

Rogue Valley Sewer Services. 2022. ArcGIS Web Viewer. Online:

<https://jcgis.maps.arcgis.com/apps/webappviewer/index.html?id=f25b233391614be6bb05aa84b37963dd>.

Other information was obtained from internal documents associated with Corps File No. NWP-2004-775.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Review Area is a former rural, agricultural property located in an area of White City undergoing urbanization. The wetlands in the site were once part of the historic Agate Desert Vernal Pool Complex. In the 1950s, the Camp White U.S. Army Training Base was built in the complex and in the Review Area.

The Review Area is immediately adjacent to a previously authorized commercial development project (Corps No. NWP-2004-775). The Section 404 permit conditions required the permittee to construct a mitigation site in the current Review Area to compensate for impacts to waters of the U.S. (vernal pools) as a result of building the commercial development on the eastern corner of the intersection of Avenue H and Highway 62. The permittee did not construct the mitigation site which resulted in a Section 404 Violation. The Corps did not previously issue an approved jurisdictional determination for the project, but received several delineations from 2006-2011. The September 2021 wetland delineation varied only slightly in the sizes and boundaries of the wetlands within the vernal pool complex from the 2011 delineation. Coordination between the Corps and Environmental Protection Agency was completed on October 24, 2022.