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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM

U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): February 4, 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWP-2018-457

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:OR County/parish/borough: Washington City: Tigard

Center coordinates of site (lat/long in degree decimal format): Lat. 45.4423, Long. -122.7524.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled .

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: December 10, 2018.

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): .

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: "20181107 AJD Figures from App" .

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: "Jurisdictional Wetland Delineation for Topping Corner" April 2018.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: in Corps AJD folder dated 20190109.

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: from eGIS.

USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

USGS maps. Scale & quad name and date: .

USDA NRCS Soil Survey. Citation: from Wetland Delineation.

USFWS National Wetlands Inventory maps. Citation: from eGIS.

State/Local wetland inventory maps. Citation: from Wetland Delineation.

FEMA/FIRM maps. Citation: .

Photographs: Aerial. Citation: in Wetland Delineation in Corps AJD folder. or Other. Citation: .

LiDAR data/maps. Citation: .

Previous JDs. File no. and date of JD letter: .

Applicable/supporting case law: .

Applicable/supporting scientific literature: .

- Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

• Complete Table 1 - Required

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, **DO NOT USE THIS FORM TO MAKE THE DETERMINATION.** The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

• Complete Table 1 - Required

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.

• Complete Table 2 - Required

- (a)(3): The territorial seas.

• Complete Table 3 - Required

- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

• Complete Table 4 - Required

- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• Complete Table 5 - Required

- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

• Complete Table 6 - Required

- Bordering/Contiguous.

Neighboring:

- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

• Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The study area is surrounded by residential housing to the north, east, and west. Fred Meyers shopping center is located to the south. Two residential houses are located within the study area boundary. The site is predominantly a grass field with a few trees and shrubs scattered throughout. Topography within the site slopes gently from the east to the west and is slightly terraced. Vegetation is dominated by tall fescue and colonial bent grass and is regularly mowed. A road ditch outside of the study area is located along the

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

southern border of the site associated with SW Spruce Street. Culverts are present where driveway crossings exist with SW Spruce Street. A French drain parallels the western property boundary and a drain tile outlet is located in the southwestern corner of the site. Precipitation was average or above average for the consultant's site visit. A total of 4 sample plots were placed in the study area. One soil series, Cornelius Variant Silt Loam, 0 to 3 percent slopes, was identified within the study area and is not considered a hydric soil.

One wetland (3,565 square feet or 0.082 acre) was identified in the study area (Wetland 1). It is a sloped palustrine emergent seasonally flooded/saturated wetland located within the southwestern corner of the site at the toe of a terrace. Topography is a gentle slope to the southwest, where a steep two-foot drop with a retaining wall exists between the study area and the property to the west. The wetland drains to the French drain located along the western property boundary. The eastern wetland boundary is defined predominately by elevation change. The wetland does not extend to the western property boundary, except in the southwestern most corner where it drains down slope to a ditch and culvert in the southwestern corner of the study area. A drain tile discharges hydrology at this location (Photo Point 1 in Wetland Delineation). The southern boundary of the wetland was determined based on elevation. A very slight ridge exists between the wetland and the roadside ditch to the south, offsite of the study area boundary. The distance from the wetland to the roadside ditch is approximately 5-15 feet.

The NWI does not identify any wetlands or waters in the site vicinity. The LWI did not include the study area. The wetland's hydrology appears to be driven by a mix of high groundwater table and surface water runoff. Historically, the site has been unaltered since 1994, except for the removal of a residential house in the southeastern corner.

The roadside ditch along the southern site boundary flows west (along SW Spruce, refer to figure in AJD folder called "20190109 RAI email response_attach figure.pdf"). The ditch is approximately 3-8 feet wide and 3-4 feet deep. The bottom of the ditch is predominately bare ground with litter. Vegetation along the edges include grasses and blackberry. The ditch is outside of the study area boundary. The ditch is ephemeral and driven by seasonal precipitation and runoff. At the western boundary, the ditch enters a catchment basin which diverts water south across Spruce Street. The culvert heads to the west through a series of culverts and open ditches, until it connects with Ash Creek approximately 5,000 feet away. The ditch does not appear to be a relocated tributary or excavated in a tributary. No OHWM was delineated. Historical aerial for 1994 shows that much of the surrounding landscape is the same as it is currently. The ditch does not drain Wetland 1 but maintains a hydrologic surface connection to Wetland 1. Wetland 1 is higher in elevation than the roadside ditches. The slope of the property is west-southwest. Most onsite hydrology runs southwest across the property to the onsite wetland and into the French drain along the western property boundary. The roadside ditch adjacent to the wetland is not considered a tributary pursuant to 33 CFR 328.3(a)(5).

The stream 1,661 feet south of the site is called Red Rock Creek (delineations have been completed for this feature). Refer to admin record in AJD folder called "20190104 eGIS map_distance to nearest trib.pdf". It is south of Hwy 99. Hydrology for the Topping site does not flow to this feature. Topographically, the Topping site flows to the southwest (north of Hwy 99) and does not connect to Red Rock Creek. The city storm sewer map shows the site draining west. Wetland 1 is approximately 1,661 feet from the OHWM of Red Rock Creek (considered a tributary), which flows to Fanno Creek and to the Willamette River. Therefore, the wetland is a potential a(8) and requires a significant nexus determination.

The SPOE map is saved in the admin record. The SPOE drains to the Willamette River. The SPOE overall spans a vast area to the northwest of the Willamette River including the Tualatin River. The SPOE's eastern boundary includes Forest Park, and the southern boundary is Willamette River and Oswego Lake. Similarly situated waters were identified in the SPOE. To determine which waters are similarly situated, the Corps investigates the delineation site and surrounding area for uninterrupted contiguous soils, vegetation, and landform (SVL) which are the same as the delineation site. For the subject delineation area, the uninterrupted contiguous SVL area includes the most restricted layer, which is the landform layer ("20190129 JD Viewer_SVL Landform study area.pdf" in AJD folder). No similarly situated waters were found on the NWI map using the SVL contiguous layers. Approximately 10-12 other potential (a)(8) PEM wetlands that would be considered similarly situated waters were found using the NWI map scattered around in the SPOE ("20190129 eGIS NWI map SPOE.pdf" in AJD folder). This represents a moderately to highly developed SPOE with reduced aquatic resource continuity, function, and services.

The significant nexus determination of the wetland with similarly situated wetlands was evaluated with the following parameters:

Sediment trapping - Wetland 1 and other wetlands do not appear to trap sediment that would eventually drain to the Willamette River. The other wetlands in the SPOE have not been individually evaluated for potential federal

jurisdiction but appear to pond water and, similarly, sediment within their boundaries. Sediments may not travel downslope, outside of the boundaries of the wetland. Any sediment they contain are not expected to eventually travel to the river because there is no appearance of a flow path.

Nutrient recycling - Wetland 1 and other wetlands do not appear to have nutrient recycling that would benefit the Willamette River because any nutrients would not be expected to be traveling to the river. The other wetlands in the SPOE have not been individually evaluated for potential federal jurisdiction but appear to not have a connection to the river.

Pollutant trapping, transformation, filtering and transport - The wetlands would appear to trap pollutants but not pollutants that would otherwise travel to the Willamette River due to no evident appearance of a flow path for the pollutants to travel that distance.

Retention and attenuation of flood waters - The wetlands would appear to hold flood waters but do not appear to hold them to the extent that they would flow to the Willamette River.

Runoff storage - The wetlands would appear to store runoff but the extent of storage which would ultimately go to the river is uncertain but unexpected to be the extent of the river.

Contribution of flow - The wetlands do not appear to contribute to downstream flow to the Willamette River because they have no apparent connection to the river based on evaluation of maps and mapped flow paths.

Export of organic matter - The wetlands do not appear to export organic matter to the Willamette River based on review of mapped flow paths and other maps.

Export of food resources - The wetlands do not appear to export food resources to the Willamette River based on review of mapped flow paths and other maps.

Provision of life cycle dependent aquatic habitat (foraging, feeding, nesting, breeding, spawning, nursery area) - The wetlands do not appear to provide any aquatic habitat for species that utilize the Willamette River.

Note: Waters ORM Table is at bottom of this document.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
SPOE 1	Wetland 1	Willamette River (a)(1)	Wetland 1 is an approximately 0.082 acre PEM wetland, the boundaries of which were delineated using the 1987 Manual and the WMVC Supplement. The wetland does not connect to any nearby aquatic features. There is a ditch 5-15 feet south of the wetland. The distance from Wetland A to the nearest tributary (Red Rock Creek) is 1,660 feet (refer to description above). The SPOE watershed drains to the Willamette River, as seen in the admin record AJD folder, the document called "20190104 JD Viewer_SPOE.pdf". Similarly situated waters were identified (refer to description above). The wetland in combination with similarly situated waters were found to not have a significant nexus because they did not contribute to the chemical, physical, and biological integrity of the Willamette River, for the reasons stated in the above description.

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

Waters_Name	State	Cowardin Code	Meas Type	Amount	Units	Waters_Type	Latitude	Longitude
NWP-2018-457 Wetland 1	OR	PEM-PALUSTRINE, EMERGENT	AREA	0.082	ACRES	OTHERA8F	45.44227	-122.75308