



## Regulatory Program

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

#### **SECTION I: BACKGROUND INFORMATION**

**A.COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD):** 11 March 2019

**B.ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** NWP-2017-508-1

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

State: Oregon County/parish/borough: Yamhill County City: near Amity  
Center coordinates of site (lat/long in degree decimal format): Lat. 45.1285788°, Long. -123.2037096°.  
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 N/A.  
 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): N/A.

#### **D.REVIEW PERFORMED FOR SITE EVALUATION:**

- Office (Desk) Determination Only. Date: 2/12/19.  
 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: Wetland delineation submitted by Turnstone Environmental Consultants for Spirit Environmental, LLC and Whipsnake Solar, LLC.
- 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: Wetland Delineation Report for Whipsnake Solar, Amity, Oregon dated May 2, 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: <https://orm.usace.army.mil:444/orm2cac/f?p=101:229:7305356103129::NO>
- USGS Hydrologic Atlas. Title/Date:  
<https://viewer.nationalmap.gov/basic/?basemap=b1&category=nhd&title=NHD%20View>.
- USGS, NHD, or WBD data/maps. Title/Date: NWP-2017-508-1 NHD Images
- USGS 8, 10 and/or 12 digit HUC maps. HUC number: Yamhill River HUC8: 17090008.
- USGS maps. Scale & quad name and date: McMinnville 7.5 Quad and Historic 7.5 Quad.
- USDA NRCS Soil Survey. Citation: . maps on file from:  
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

- USFWS National Wetlands Inventory maps. Citation: NWP-2017-508-1 NWI Maps on file, <https://www.fws.gov/wetlands/Data/Mapper.html>
- State/Local wetland inventory maps. Citation: .
- FEMA/FIRM maps. Citation: .
- Photographs:  Aerial. Citation: . 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**

**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.<sup>1</sup>
- (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>

<sup>1</sup> 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.

- (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.<sup>1</sup>
- (b)(4)(vii): Puddles.<sup>1</sup>
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>
- (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: A wetland delineation was conducted on April 20 and 25, 2018 during normal rain conditions for the region. The review area is located on a 26.7-acre property, on tax lot 604, located southeast of the intersection of Highway 99 and Highway 233 near Amity, in Yamhill County, Oregon. The review area is located approximately 0.75 mile north of downtown Amity on the east side of Highway 99W. The review area is situated on a west sloped valley bottom terrace with an elevation above sea-level ranging from approximately 250 feet on the east side and 175 feet on the west side. The west and northeast portions of the review area is managed for Christmas tree production. The east portion of the review area has natural land cover with Oregon white oak woodlands with a shrubby understory of poison-oak (*Toxicodendron diversilobum*), Himalayan blackberry (*Rubus armeniacus*), service berry (*Amelanchier alnifolia*) and hawthorns (*Crataegus monogyna* & *C. douglasii*).

A 0.88-acre palustrine emergent wetland (PEM) and two ditch features totaling 0.07 acre were identified in the Wetland Delineation Report dated May 2, 2018 conducted by Turnstone Environmental Consultants. The wetland is located in the northwest corner of the review area contiguous with the roadside drainage along Highway 99W. The roadside ditch along Highway 99W is approximately 0.03 acre in size and flows north to south through a series of driveway and road culverts before discharging beneath Highway 99W to Salt Creek. The road drainage parallels the entire west boundary of the review area and receives hydrology from several outfalls from the east. A drainage along the east boundary of the review area is approximately 0.04 acre in size and has several outfalls. The east ditch flows north to south with a vertical outfall in the south segment that discharges flows subsurface to the west to the roadside drainage along Highway 99W.

Historic aerial records show site alterations within the review area including agricultural production in mid-1950. In the mid-1990s a pole barn and nursery processing area were constructed to the south of the review area. Clay tile fragments were present in soil pits throughout the review area for management of site hydrology. The nearest National Wetland Inventory (NWI) feature is a tributary to Salt Creek approximately 0.25 miles to the west and forested wetlands west of the review area on the west side of Highway 99W.

**Jurisdictional Waters of the U.S.**

Default field entry is "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**

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

**Table 2. (a)(2) Interstate Waters**

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

**Table 3. (a)(3) Territorial Seas**

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

**Table 4. (a)(4) Impoundments**

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

**Table 5. (a)(5)Tributaries**

<b>(a)(5) Waters Name</b>	<b>Flow Regime</b>	<b>(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows</b>	<b>Tributary Breaks</b>	<b>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.</b>
Ditch A (Whipsnake Solar)	Intermittent	Willamette River	Yes	Ditch A flows north to south along the eastern review area boundary. Ditch A has breaks in the bed and bank as well as the ordinary high water mark. Flows continue south through a vertical drain pipe that outfalls to a subsurface network before discharging to Ditch B. The banks are approximately 2-feet wide with interrupted continuity from swales and outfalls. Ditch A flows are intermittent with concaved portions with soil saturation and is dominated by pasture grasses and Queen Anne's lace. Flow Path: Ditch B(a5) to Salt Creek(a5), Ash Swale(a5), Mud Slough(a5), Rickreall Creek(a5), and the Willamette River (a1)
Ditch B (Whipsnake Solar -HWY99W)	Intermittent	Willamette River	No	Ditch B flows north to south along Highway 99W and parallels the west boundary of the review area. Ditch B has contiguous bed and bank with an ordinary high water mark. Reed canary grass (Phalaris arundinacea) lines the bank, which is contiguous with Wetland 1. Ditch flows are intermittent with concaved pools of water and soil surface saturation. The gradient slopes south and several culverts along Ditch B outfall west under Highway 99W to Salt Creek approximately 0.25 miles west of the project area. Culverts are present on the south portion of Ditch B for driveway access. The top of bank is measured at approximately 1-2 feet wide. Flow Path: Salt Creek(a5), Ash Swale(a5), Mud Slough(a5), Rickreall Creek(a5), and the Willamette River (a1)

**Table 6. (a)(6) Adjacent Waters**

<b>(a)(6) Waters Name</b>	<b>(a)(1)-(a)(5) Water Name to which this Water is Adjacent</b>	<b>Rationale for (a)(6) Designation and Additional Discussion.</b> <b>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.</b>
Wetland 1 (Whipsnake Solar)	Ditch B (a5)	Wetland 1 is a HGM Slope wetland and Cowardin Palustrine Emergent Wetland approximately 0.88 acre located in the northwest corner of the review area. The wetland is contiguous with Ditch B along Highway 99W as described in Table 5. The west boundary of Wetland 1 borders the bank of Ditch B. The bank of Ditch B and Wetland 1 are dominated by reed canary grass ( <i>Phalaris arundinacea</i> ). Within the wetland boundaries is a shallow swale or depressional feature where wetland hydrology collects and drains west into Ditch B. The wetland is surrounded by a Christmas tree farm. Christmas tree production is not considered a farming, silviculture, or ranching activities; therefore, Wetland 1 qualifies as an (a)(6) water.

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination</b> <b>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.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

<b>SPOE Name</b>	<b>(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination</b> <b>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.</b>
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" 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**

<b>SPOE Name</b>	<b>Non-(a)(7)/(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus</b>	<b>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.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 10. No-Waters/Excluded Waters and Features**

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

**Table 11. Non-Waters/Other**

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



**ORM Data Table:**

Waters_Name	State	Cowardin Code	HGM Code	Amount	Water Type	Latitude	Longitude
NWP-2017-508-1 Ditch A	OR	R4-RIVERINE, INTERMIT	Riverine	0.04 acre	A5	45.12876	-123.20145
NWP-2017-508-1 Ditch B	OR	R4-RIVERINE, INTERMIT	Riverine	0.03 acre	A5	45.12866	-123.20593
NWP-2017-508-1 Wetland 1	OR	PEM-PALUSTRINE, EMERGENT	Depressional	0.88 acre	A6BWB	45.12917	-123.20522