



## 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): <<DATE>> May 10, 2019

B.ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWP-2018-367

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

State: Oregon County/parish/borough: Multnomah County City: Wood Village

Center coordinates of site (lat/long in degree decimal format): Lat. 45.5311°, Long. -122.4165°.

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: Wetland and Streams Delineation Report: NE 238<sup>th</sup> Drive Improvements.

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:

Office (Desk) and Field Determination. Office/Desk Dates: January 28, 2019 Field Date(s): March 14, 2019.

#### **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: Figures A1-A6, March 2018.

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 Determination Data Form-Western Mountains, Valleys, and Coast Region, May 8, 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:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date: SPOE for Wetland C, February 5, 2019.

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

USGS maps. Scale & quad name and date:

USDA NRCS Soil Survey. Citation:

USFWS National Wetlands Inventory maps. Citation:

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation: FEMA Flood Plain Mapping Tool.

- 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.

(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> 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)(vii): Puddles.
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.
- (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: See Table 5 and 6 below.

**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**

<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 flow path to (a)(1)-(a)(3) water or attach map identifying the flow path; explain any breaks or flow through excluded/non-jurisdictional features, etc.</b>
NWP-2018-367- Ditch I A	Ephemeral	Columbia River	No	Ditch A maintains a hydrologic surface connection with flows into Stream D which flows into Arata Creek then into Salmon Creek and into the Columbia River. Ditch A is not manmade and is a tributary of the WOLIS
NWP-2018-367-Stream B	Perennial	Columbia River	Yes	Stream B is four feet wide that flows through a cement structure before flowing into Arata Creek, Salmon Creek into the Columbia River.
NWP-2018-367-Stream C	Intermittent	Columbia River	Yes	Stream C is three to four feet wide that flows through a corrugated pipe that flows into Arata Creek then Salmon Creek and into the Columbia River.
NWP-2018-367-Stream D	Intermittent	Columbia River	Yes	Stream D is three to seven feet wide that receives flow from Ephemeral A and flows into a corrugated pipe that flows in to Arata Creek, then Salmon Creek and into the Columbia River

**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. 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 A	Stream A	Wetland A is 0.04 acre (within the project area) that is neighboring and within 100 feet of the ordinary high water mark of Stream A. Wetland A is a scrub-shrub that has met all three parameters of the 87 wetland delineation manual.

Wetland B	Stream C	Wetland B is 0.06 acre (within the project area) that is neighboring and within 100 feet of the ordinary high water mark of Stream C. Wetland B is a scrub-shrub wetland that has met all three parameters of the 87 wetland delineation manual.
N/A	N/A	N/A
N/A	N/A	N/A

**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 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 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". 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**

<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>
------------------	--------------------------------------	---	--



NWP-2018-367-SPOE-WC	Wetland C	Columbia River	<p>A significant nexus determination was conducted for Wetland C. Wetland C is 0.09 acres within the area, located adjacent to NE 238<sup>th</sup> Drive. The wetland does not extend on the west side of NE 238<sup>th</sup> Drive. Wetland C is located 460 linear feet away from the ordinary high water mark of Stream D and is more than 100 linear feet from the nearest ordinary high water mark of any other a(5) water. The wetland is located 3,489 feet from the nearest on Arata Creek. The distance from the wetland to the Columbia River is 11,263 linear feet. The distances were determined by using USGS Stream Gage, NWI mapper, and FEMA/FIRM Map. The distances were determined by using USGS Stream Gage, NWI mapper, and FEMA/FIRM Map. The SPOE is small and not located near an active flood plain and is not in the 100 year flood plain of Arata Creek or the Columbia River.</p> <p>The wetlands in the project site are not similarly situated to Wetland C, as they receive flow from tributaries and a jurisdictional ditch. .The concept used to determine which wetlands within the SPOE (single point of entry) are “similarly situated”. These are wetlands that would have the same soil, vegetation, and landform as wetland C. The nearest map wetlands in accordance to the NWI mapper are 6,372 linear feet to the northwest and 4,676 linear feet to the northeast. Wetland C does not have the similar functions as the other wetlands in the SPOE and on the project site.</p> <ul style="list-style-type: none"> <li>i) Sediment trapping – due to the distance of the drainage area to the Columbia River (11,263 linear feet) and the landscape settings, the wetland does not contribute significantly to the biological, chemical, or physical integrity of the Columbia River.</li> <li>ii) Nutrient recycling – it is unlikely that the wetland is contributing to the biological, chemical, or physical integrity of the Columbia River.</li> <li>iii) Pollutant trapping – it is probable the wetland is providing some pollutant trapping due to its proximity to 238<sup>th</sup> NE, but overall it is not significant</li> <li>iv) Retention and attenuation of flood water – the wetland is providing an insubstantial effect to retention and attenuation of flood waters as the nearest flood plain of Arata Creek is located 3,489 linear feet away. Therefore the wetland is not providing a biological, chemical, or physical integrity to the Columbia River.</li> <li>v) Runoff storage – it is considered speculative to assume the wetland is providing runoff storage due to the drainage and landscape setting factors. A small of amount may occur due to the construction of NE 238<sup>th</sup> Drive and impervious surface flow from the road during rain events. Overall there is limited contribution to the biological, chemical, and physical integrity to the Columbia River.</li> <li>vi) Contribution of flow – due to the landscape setting and the distance from Arata Creek (3498 linear feet) and the Columbia River (11,263 linear feet), it is unlikely the wetland is contributing to the biological, chemical, or physical integrity of flow to the Columbia River.</li> </ul>
----------------------	-----------	----------------	--

N/A	N/A	N/A	N/A
-----	-----	-----	-----

**Table 10. Non-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 TABLE- exported waters from ORM

Waters name	State	Cowardin Code	Measure Type	Amount	Units	Waters Type	Latitude	Longitude
NWP-2018-367 Ditch A	OR	R6-Riverine, Ephemeral	Linear	20	feet	A5	45.5313	-122.4175
NWP-2018-367 Stream B	OR	R4- Riverine Intermittent	Linear	50	feet	A5	45.5313	-122.4145
NWP-2018-367 Stream C	OR	R4- Riverine Intermittent	Area	0.003	acres	A5	45.5311	-122.4165
NWP-2018-367 Stream D	OR	R4-Riverine Intermittent	Area	0	acres	A5	45.5312	-122.4175
NWP-2018-367 Wetland C	OR	PEM- Paulstrine Emergent	Area	0.09	acres	OTHERA8F	45.5311	-122.4165
NWP-2018-367 Wetland A	OR	PFO-Paulstrine Forested	Area	0.04	acres	A6N1OHWM	45.5312	-122.4142
NWP-2018-367 Wetland B	OR	PSS- Paulstrine Scrub-Shrub		0.06	acres	A6N1OHWM	45.5311	-122.4166