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Regulatory Program



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

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 17-Jun-19

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWP- 2019-165

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County: Lane County City: Eugene

Center coordinates of site (lat/long in degree decimal format): Lat. 44.053891°, Long. -123.083804°

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas were 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: 9-Apr-19, 20-May-19

Office (Desk) and Field Determination. Office/Desk Date(s): <DATE> Field Date(s): <DATE>

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: Submitted as part of the wetland delineation report, dated January 2019, as well as additional figures submitted 16 April 2019.

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:

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: Though the conclusions on the data sheets did not change, the originally submitted sheets had missing data, hydrophytic vegetation calculation errors, and hydrology indicator errors. The delineator resubmitted the forms with corrected data on 16 April 2019.

Revised Title/Date: 16 April 2019.

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM layers. Title/Date:

USGS Hydrologic Atlas. Title/Date: Sring Creek-Willamette River (HUC 170900030601), viewed 09 April 2019

USGS, NHD, or WBD data/maps. Title/Date: Sring Creek-Willamette River (HUC 170900030601), viewed 09 April 2019

USGS 8, 10, and/or 12 digit HUC maps. HUC number: Sring Creek-Willamette River (HUC 170900030601), viewed 09 April 2019

USGS maps. Scale & quad name and date: 7.5 minute, Eugene East 2017

USDA NRCS Soil Survey. Citation: Custom Soil Resource Report for Lane County Area, Oregon (NWP-2019-165), dated 09 April 2019

USFWS National Wetlands Inventory maps. Citation: USFWS, viewed 09 April 2019

State/Local wetland inventory maps. Citation: Submitted as part of the wetland delineation report, dated January 2019.

FEMA/FIRM maps. Citation:

- Photographs: Aerial. Citation: Submitted as part of the wetland delineation report, dated January 2019. or Other. Citation: Submitted as part of the wetland delineation report, dated January 2019.
- LIDAR data/maps. Citation:
- Previous JD's. 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 in 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): 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 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 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 paragraph (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, or 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 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 review area includes a portion of the west bank of the Willamette River. The Willamette River is recognized by the U.S. Army Corps of Engineers Portland District as a navigable water of the U.S. to river mile 183.2. The review area is located downstream of this river mile. The ordinary high water mark of the river was delineated using field indicators, including changes in soil character, vegetation community breaks, and topographic breaks.

The presence of wetlands and other waters landward of the river, within the review area, was investigated. No aquatic resources other than the river itself were observed within the review area. There is a remnant stormwater outfall pipe which would have in the past been evaluated to determine water of the U.S. status. On 06 June 2019, the Oregon Department of Environmental Quality verified the outfall is no longer used (as of 2013) because the University of Oregon installed a closed loop recycle system. The University had previously obtained a National Pollutant Discharge

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.

Elimination System for the Eugene Millrace for which the pipe was an overflow outfall. The review area landward of the river is armored with riprap and cement, and consists of 30%-40% slopes from the river up to the highest elevation portion of the review area.

Some sample locations did include hydrophytic vegetation, though almost all vegetation was facultative. Site soils did not yield hydric indicators. Soil sample refusal because of riprap was met at two to five inches, depending on the sample plot.

Sample locations were chosen based on topography and onsite features (such as the remnant stormwater outfall) in an attempt to select sites most likely to contain wetlands. Though precipitation was drier than normal the three months prior to the site visit, this would not alter the conclusions of the delineation because of soil characteristics and topography. The delineation site visit was conducted during the rainy season when the Willamette River would flow at its seasonally higher level (than during the dry season).

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where the 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.
Willamette River	The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act	The Willamette River is a navigable riverway within the state of Oregon from its confluence with the Columbia River in the city of Portland to approximately one mile upstream of the Interstate 5 bridge over the river in the city of Eugene. Ordinary high water mark indicators in the review area included changes in soil character, vegetation community breaks, and topographic breaks.

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
N/A	N/A	N/A
N/A	N/A	N/A
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 the 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.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

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

ORM Table Data

Waters_Name	State	Cowardin Code	Meas Type	Amount	Units	Waters_Type	Latitude	Longitude	Local Waterway
NWP-2019-165 - Water 1	OR	R2UB-RIVERINE, LOWER PEREN, UNCONSOL BOT	LINEAR	1700	FEET	A1	44.05475	-123.08427	Willamette River