

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): 4/6/2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-ODG, Pleasant Valley - 8000 SE 190th Drive, NWP-2020-93

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Multnomah City: Pleasant Valley

Center coordinates of site (lat/long in degree decimal format): Lat. 45.464893° N, Long. -122.466030° W.

Universal Transverse Mercator:

Name of nearest waterbody: Kelly Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 170900120101 Upper Johnson Creek

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: March 16, 2020

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 (Kelly Creek, Ditch 1)

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs (Wetlands 1, 4)

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs (Wetlands 2, 3, 5)

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: Ditch 1 = 193-linear feet: width (ft) and/or Kelly Creek - 0.20 acre.

Wetlands: Total = 5.5 acres. Wetland 1 = 4.95 acres, Wetland 2 = 0.10 acre, Wetland 3 = 0.26 acre, Wetland 4 = 0.12 acre,

Wetland 5 = 0.07 acre.

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: .

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 (Kelly Creek, Ditch 1)

(i) General Area Conditions:

Watershed size: 595 acres

Drainage area: 38.9 acres

Average annual rainfall: 37 inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 10-15 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

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

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

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

Identify flow route to TNW⁵: Kelly Creek (RPW) to Johnson Creek (RPW) to Willamette River (TNW). Ditch 1 flows to an offsite ditch, then to Kelly Creek, Johnson Creek, and the Willamette River.

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.

Tributary stream order, if known: .

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

Tributary is: Natural
 Artificial (man-made). Explain: Ditch 1 was excavated from Wetland 1.
 Manipulated (man-altered). Explain: Kelly Creek has been altered and straightened due to past development practices.

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

Average width: 10 feet
Average depth: 0.5 feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: .

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

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

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime:

Kelly Creek - Flow regime is year round, flows directly into Johnson Creek. The delineation report describes the stream flow to be mapped as a small (average annual flow of two cubic feet per second or less), perennial, and of unknown fish-bearing status.

Ditch 1 was 2 to 5 feet wide and approximately 50 feet long and contained several inches of flowing water during March 2019 field work.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: .

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

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

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.

(iii) **Chemical Characteristics:**

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

Explain: Water appears clear on surface with silty substrate in site photos. Water would contain runoff chemicals/nutrients from the agricultural practices onsite.

Identify specific pollutants, if known:

(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: The channel supports smaller invertebrate species as well as any smaller mammals, reptiles, and amphibians in the area. It is unknown if fish are present in the channel.

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: Wetland 2 = 0.10 acre, Wetland 3 = 0.26, Wetland 5 = 0.07 acre acres

Wetland type. Explain: Wetlands 2 and 3, 5 = flats HGM, PEMB.

Wetland quality. Explain: Agricultural wetland including pasture grass, scattered weedy forbs.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: Wetland 1 is drained by Ditch 1 and water flows directly into an offsite ditch which flows into Kelly Creek. Wetlands 2, 3, and 5 have intermittent flow to Kelly Creek in response to onsite hydrology. Wetland 4 is directly adjacent and has perennial flow with Kelly Creek.

Surface flow is: **Overland sheetflow**

Characteristics:

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

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting (Wetlands 1, 4)

Not directly abutting (Wetlands 2, 3, and 5)

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain: Wetlands 2, 3, and 5.

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 **500-year or greater** 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: Wetland would contain agricultural chemicals/nutrients from onsite practices.

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: Wetlands 1, 2, 3, and 5- Emergent wetland species – creeping and colonial bentgrass, meadow foxtail, tall fescue, velvet grass, sweet vernal grass, and birdsfoot trefoil.. Wetland 4 – Emergent wetland species – meadow foxtail, field horsetail, creeping buttercut, stinging nettle, and occasional skunk cabbage, spreading rush.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: The wetlands support smaller invertebrate species as well as any smaller mammals, reptiles, and amphibians in the area.

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

All wetland(s) being considered in the cumulative analysis: **5**

Approximately (5.5) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

| <u>Directly abuts? (Y/N)</u> | <u>Size (in acres)</u> | <u>Directly abuts? (Y/N)</u> | <u>Size (in acres)</u> |
|------------------------------|------------------------|------------------------------|------------------------|
| Wetland 1 – Y | 4.95 acres | Wetland 4 – Y | 0.12 acres |
| Wetland 2 - N | 0.10 acres | Wetland 5 - N | 0.07 acres |
| Wetland 3 - N | 0.26 acres | | |

Summarize overall biological, chemical and physical functions being performed: Onsite wetlands would hold and filter water containing agricultural nutrients and pollutants from the onsite agricultural operations. The wetlands support smaller invertebrate species as well as any smaller mammals, reptiles, and amphibians in the area for food, nesting, and habitat needs. The wetlands provide sediment retention and nutrient cycling as they filter runoff water. The wetlands would contribute to downstream organic carbon export and would provide a seed source for downstream waters.

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:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut 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 onsite would overtop during periods of heavy water flow and sheetflow down the slope to other wetlands or to the Kelly Creek. Wetlands provide an area for sediment retention during rain flow as water is slowed and infiltrated as they are depressional wetlands. Wetlands would provide for nutrient cycling and provide as source of organic carbon export to downstream waters. The wetlands provide a source of organic material biomass, and seeds to downstream waters. They are similar in vegetation to adjacent wetlands and creek.

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: Kelly Creek is mapped as a small perennial stream which flows to Johnson Creek year round.
 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: Ditch 1 drains wetland 1 and provides a direct connection to the offsite ditch which empties into Kelly Creek downstream. The ditch would drain the wetland seasonally as rain water and site hydrology allows.

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

- Tributary waters: linear feet 10-width (ft). **(Kelly Creek, 0.02 ac)**
 Other non-wetland waters: **Ditch 1 - 193-square feet (0.004 ac)**
Identify type(s) of waters: **Ditch excavated from wetland.**

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

- 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: **Wetland 4 is directly adjacent to Kelly Creek and seasonally flooded by the creek.**
 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: **Wetland 1 is connected to Kelly Creek through offsite ditch.**

Provide acreage estimates for jurisdictional wetlands in the review area: **Wetland 1 – 4.95 ac, Wetland 4 – 0.12 ac)**

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: **Wetland 2 – 0.10 ac, Wetland 3 – 0.26 ac, Wetland 5 – 0.07 ac)**

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).

⁸See Footnote # 3.

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

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.
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): .

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): linear feet, 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: .
- 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 NHD data. Corps EGIS 3-17-2019
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .

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.

- State/Local wetland inventory map(s):
 - FEMA/FIRM maps:
 - 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 - Photographs: Aerial (Name & Date): Egis accessed 3-16-2020.
or Other (Name & Date): Delineation report.
 - Previous determination(s). File no. and date of response letter:
 - Applicable/supporting case law:
 - Applicable/supporting scientific literature:
 - Other information (please specify): *Jurisdictional Wetland Delineation for 7928 SE 19th Drive, Pleasant Valley, T1S, R3E, Section 20, Tax Lot 1200, Gresham, Multnomah County, Oregon.* Prepared by Schott and Associates, Inc. April 2019.
- Wikipedia - Johnson Creek** [https://en.wikipedia.org/wiki/Johnson_Creek_\(Willamette_River\)](https://en.wikipedia.org/wiki/Johnson_Creek_(Willamette_River))

B. ADDITIONAL COMMENTS TO SUPPORT JD:

The study area consists of a 38.90-acre site located at 7928 SE 190th Drive in the Pleasant Valley area of Gresham, Multnomah County, Oregon (T1S, R3E, Section 20, tax lot 1200). The study site featured residential development and associated outbuildings in the northwest corner, but otherwise consisted of undeveloped hillside pastureland; Kelly Creek extended along the eastern portion of the northern site boundary. Site topography sloped upward toward the southeast, ranging from a 4% gradient at the lower slope of the hill to a 15% gradient at the upper slope; a shallow ravine contained the creek along the northern boundary. The pasture is mowed and hayed on a regular basis and has been extensively tiled; many drain tiles were observed to be broken during fieldwork. A short segment of ditch was recently excavated near the western boundary (Ditch 1), draining west into a ditch associated with SE 190th Drive and the associated roadside ditch extended along the western site boundary. (*Delineation, 2019*)

Field work was conducted in April 2018. Thirty-five formal sample plots were established within the study site to locate wetland boundaries. During the first site visit, numerous broken tiles were observed throughout the site; it was assumed that the broken tiles were affecting site drainage and the extent of the wetlands. The client repaired the broken tiles to continue to farm (hay) on the site until approved for development. The tiles were repaired in summer of 2018 and the site revisited in March 2019. Sample plots from 2018 were re-visited and another ten formal sample plots were established for a total of forty-five. No change in wetland area was detected between initial fieldwork in April 2018 and follow-up fieldwork in March 2019 after drain tiles were repaired. (*Delineation, 2019*)

Water from the western edge of the site (including waters from Ditch 1, Wetland 1, and Wetland 5) drains into an offsite ditch which empties into downstream Kelly Creek. This offsite ditch serves as a direct connection between two waters and contributes to the surface hydrologic connection between Wetland 1, Ditch 1, and downstream waters. This offsite ditch is not under evaluation in this JD.

Kelly Creek – RPW, 0.02 acre in review area, approx. 10 feet wide onsite. Mapped as a small, perennial, and of unknown fish-bearing status. Kelly Creek contained several inches of flowing water during field work for the delineation report. It featured a defined bed and bank and silty substrate. Riparian vegetation included predominately Himalayan blackberry along with field horsetail and western red cedar, red alder, and Douglas-fir.

Wetland 1 – Wetland 1 measures 4.95 acres and is located along the western portion of the study site, beginning on the upper hillslope and sloping north north-west. It drains into the offsite road ditch along SE 190th Drive. The wetland contains a segment of Ditch 1 in its western portion, which also drains west into the offsite roadside ditch. It is assumed the wetland is sustained by precipitation, seasonal high groundwater in the lower portion, possibly hillslope seeps in the upper portion and, at least partially, by broken and plugged drain tiles. It was assessed as a slope HGM and seasonally saturated, palustrine emergent (PEMB). Onsite vegetation consists predominately of creeping and colonial bentgrass, meadow foxtail, tall fescue, velvet grass, sweet vernal grass, and birdsfoot trefoil. Onsite soil samples met hydric soil field indicators for redox dark surface and depleted matrix. Wetland hydrology indicators observed include high-water table and saturation.

Ditch 1 – 193- square feet (2-5 feet long and approximately 50 feet long). It contained several inches of flowing water during March 2019 fieldwork. It flows into the offsite ditch, then to Kelly Creek.

Wetlands 2 - Wetland 2 measures 0.10 acre. Hydrology is assumed to be driven by a combination of precipitation and the presence of broken drain tiles. Determined to be a flats, PEMB class. Soil samples met hydric soil field indicators for redox dark surface and wetland hydrology indicators included high-water table and soil saturation. The vegetation communities were the same as in Wetland 1, largely pasture grass and scattered weedy forbs.

Wetlands 3 - Wetland 3 measures 0.26 acre. Hydrology is assumed to be driven by a combination of precipitation and the presence of broken drain tiles. Determined to be a flats, PEMB class. Soil samples met hydric soil field indicators for redox dark surface and wetland hydrology indicators included high-water table and soil saturation. The vegetation communities were the same as in Wetland 1, largely pasture grass and scattered weedy forbs.

Wetland 4 – Wetland 4 measures 0.12 acre along the southern bank of Kelly Creek. The wetland is sustained by overbank flooding from the creek, described as riverine flow through and a seasonally flooded palustrine emergent wetland. Soil samples met the hydric soil field

indicators redox dark surface and depleted below dark surface. Wetland hydrology indicators observed within the wetland included meadow foxtail, field horsetail, creeping buttercup, stinging nettle, and occasional skunk cabbage, and spreading rush. Himalayan blackberry encroached from the upland areas into the wetland.

Wetland 5 – measures 0.07 acre and is a small, faintly defined topographic depression just south of Wetland 1 near the western site boundary. Hydrology was assumed to be driven by a combination of precipitation, high groundwater, and broken drain tiles. Assessed as flats, PEMB wetland. Hydric soil field indicators included redox dark surface and wetland hydrology indicators included high water table and soil saturation. The vegetation communities were the same as in Wetland 1, largely pasture grass and scattered weedy forbs.