U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 2/8/2021
ORM Number: NWP-2021-067
Associated JDs: N/A
Review Area Location[1]: State/Territory: Oregon City: Bridal Veil County/Parish/Borough: Multnomah
Center Coordinates of Review Area: Latitude 45.574147° N Longitude 122.145037° W

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
NWP-2021-067 Site 1 – Mosquito Creek	1,500	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Mosquito Creek is approximately 1,500 linear feet long within the Review Area and possesses an average width of one to three feet and depth of a few inches to six inches. Mosquito Creek maintains a downstream hydrologic surface water connection with an unnamed perennial tributary to the Columbia River located west of the Review Area. Surface water flow within Mosquito Creek is recognized as ephemeral. Mosquito Creek meets the criteria to be recognized as a (b)(3) excluded water feature pursuant to the Navigable Waters Protection Rule because it is an ephemeral feature.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Photos of the site location and LiDAR imagery provided to the U.S. Army Corps of Engineers (Corps) of the Review Area.

This information is sufficient for purposes of this AJD.

Rationale: Corps observations of the data provided by the requestor in addition to the resources below indicate surface water flow within Mosquito Creek are directly driven by rainfall and snow melt (when there is snow pack located seasonally above the site). Surface water flow within Mosquito Creek is absent aside from rainfall and snow melt hydrologic inputs.

☐ Data sheets prepared by the Corps: N/A

☒ Photographs: Other: ODOT Mudslide photos with debris dated 1 February 2021.

☐ Corps site visit(s) conducted on: N/A

☐ Previous Jurisdictional Determinations (AJDs or PJDs): N/A

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☐ USDA NRCS Soil Survey: Title(s) and/or date(s).

☒ USFWS NWI maps: NWP-2021-067, Mosquito Creek, accessed by Corps staff on 3 February 2021.

☒ USGS topographic maps: NWP-2021-067, Mosquito Creek, accessed by Corps staff on 3 February 2021.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	NWP-2021-067, Mosquito Creek, accessed by Corps staff on 3 February 2021.
USDA Sources	N/A.

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Data Source (select)	Name and/or date and other relevant information
NOAA Sources	N/A.
Corps Navigable Waters Study	Corps Portland District 1993 list of Navigable Riverways within the State of Oregon.
LiDAR data/maps	The requestor provided a LiDAR map with the previous alignment and current alignment of Mosquito Creek after a 2020 mud slide event within the Review Area.
Other Sources	N/A.

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: Mosquito Creek originates along the side of Devils Rest Mountain between two other perennial tributaries to the Columbia River. These perennial tributaries capture most of the surface water flow within the general site location and originate from springs. Mosquito Creek accumulates water within a small area between the the two creeks and has had flows observed during heavy rainfall events, during some snow melt occasions, and when soils are heavily saturated with rainfall.

Recently portions of the hillside around Mosquito Creek became heavily saturated, broke away from the mountain and slid downslope (northeast). This mudslide area was part of a region damaged by the Eagle Creek fire in 2017 and some of the vegetation has not recovered and stabilized the site. The sloughing of the mountain at this location has happened multiple times in recent years. Most recently the mountain had a mud slide event in this region in 1969 due to heavy rainfall and saturated soils. The 29 January 2021 mudslide changed the course and location of Mosquito Creek. While the course and location of the tributary have changed due to recent events, the main source of hydrology remains rainfall or snowmelt. The ephemeral nature of the tributary has not changed as a result of the recent events.