

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): June 16, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, The Jewel, Dream House Developments, LLC, NWP-2021-171

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Lane City: Eugene
Center coordinates of site (lat/long in degree decimal format): Lat. 44.028864° **N**, Long. 123.15761° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Willow Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 170900030106

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: May 19, 2022

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: Drainage 1 and Drainage 3

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs: Wetland Pond and Drainage 3 Slope Wetland

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

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: 326 linear feet: width (ft) and/or 0.05 acres.

Wetlands: 0.16 acres.

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: **Drainage 2 was assessed and determined to be a non-regulated, erosional feature. Slope Wetland was evaluated for potential adjacency to waters of the U.S. See Section III.F for supporting documentation.**

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

(i) General Area Conditions:

Watershed size: 17,853.87 acres

Drainage area: 0.23 square miles

Average annual rainfall: 47.4 inches

Average annual snowfall: _____ inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are 30 (or more) river miles from TNW.

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

Project waters are 2-5 aerial (straight) miles from TNW.

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

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

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵: **Drainage 1:** Through drainage 1 offsite west/northwest into City of Eugene stormwater system, then north to Amazon Creek/Diversion Channel (RPW), through Fern Ridge Lake into Long Tom River (RPW), and on to Willamette River (TNW). **Drainage 3:** Through drainage 3 offsite west to Willow Creek (RPW), then north to Amazon Creek/Diversion Channel (RPW), through Fern Ridge Lake into Long Tom River (RPW), and on to Willamette River (TNW).

Tributary stream order, if known: 1st order.

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: .

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

Average width: Drainage 1 = 2 feet, Drainage 3 = 2 feet

Average depth: Drainage 1 = 4 feet, Drainage 3 = <1 feet

Average side slopes: Drainage 1 = 2:1, Drainage 3 = **Vertical (1:1 or less)**.

Primary tributary substrate composition (check all that apply): Drainage 1

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: FACU/70%
 Other. Explain:

Primary tributary substrate composition (check all that apply): Drainage 3

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: FACU/70%
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Drainage 1 = Highly eroding; head cut is approximately 3-4 feet deep, Drainage 3 =Eroding; tributary occurs on steep gradient with a head cutting channel.

Presence of run/riffle/pool complexes. Explain: None.

Tributary geometry: Drainage 1 and Drainage 3 = **Relatively straight**

Tributary gradient (approximate average slope): Drainage 1: 15% Drainage 3: 17%

(c) Flow: Drainage 1 and Drainage 3

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **11-20**

Describe flow regime: Intermittent flow during coastal rainy season November through June.

Other information on duration and volume: Precipitation was “wetter than normal” in September, and “drier than normal” in October-November. Hydrology was considered atypical for the period of field sampling and indicators of recent hydrology were used when evaluating the presence of hydrology at each plot. Hydrology was considered atypical for the period of field sampling and indicators of recent hydrology were used when evaluating the presence of hydrology at each plot. Oxidized rhizospheres along living roots are along roots of upland species rooted at least partially into the channel substrate but weren't significant enough to qualify as C3 indicator. Seasonal flow is supported by precipitation data from WETS tables at Eugene Mahlon Sweet Field, OR station, National Weather Service data, and StreamStats reports of average flow volumes for 8-9 months of the year.

Surface flow is: **Confined**. Characteristics: Drainage 1 = Channel is severely eroded with an average 4 foot width and 2 foot depth., Drainage 3 = Channel is shallow (less than 1 foot) with an average 2 feet wide at OHWM within the review area and deepens/widens downstream offsite.

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

Dye (or other) test performed: .

Tributary has (check all that apply): Drainage 1 and Drainage 3

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

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.

⁶ A 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.

- vegetation matted down, bent, or absent
- leaf litter disturbed or washed away
- sediment deposition
- water staining
- other (list):
- Discontinuous OHWM.⁷ Explain: .
- sediment sorting
- scour
- multiple observed or predicted flow events
- abrupt change in plant community

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

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

(iii) Chemical Characteristics:

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

Explain: Drainage 3 is a headwater tributary that runs approximately 140 feet from the end of Drainage 3 Slope Wetland in the east to and off the subject property to the west.

Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): Drainage 1 supports scrub vegetation with a riparian width of 15 feet.
- Wetland fringe. Characteristics: Drainage 3 supports wetland fringe, see below for characteristics of Drainage 3 Slope Wetland,
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

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: Drainage 1 = 0.032 acre, and Drainage 3 = 0.128 acres

Wetland type. Explain: Drainage 1 = Wetland Pond and Drainage 3 = Slope

Wetland quality. Explain: Drainage 1 = Low quality with high coverage of *Phalaris arundinacea* and *Mentha pulegium*, Drainage 3 = Low quality influenced by abutting, aggressive upland species DSL ORWAP WD # 2019-632.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Drainage 1 = Wetland Pond outflows into Drainage 1 during rain events, Drainage 3 = Overflow from wetland provides seasonal flow for downstream RPW (Drainage 3).

Surface flow is: **Drainage 1 = Confined, Drainage 3 = Overland Sheet flow (abutting)**

Characteristics: Drainage 1 = Adjacent wetland flow is carried by Drainage 1, Drainage 3 = Wetland (Drainage 3 slope wetland) is the headwaters system for the seasonal RPW (Drainage 3).

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

- Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain: .
 - Ecological connection. Explain: .
 - Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

⁷ibid.

Project wetlands are **30 (or more)** river miles from TNW.
 Project waters are **2-5** 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: Water was turbid when observed 17 May due to recent heavy rain events. Drainage 3 Slope wetland is the headwaters system for Drainage 3 within the watershed.
 Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): scrub shrub.
- Vegetation type/percent cover. Explain: Wetland Pond *Salix lasiandra*, *Mentha pulegium* (10%), *Phalaris arundinacea* (10%), and *Agrosits sp.* (80%) where dominate vegetation types observed. Drainage 3 Slope Wetland 70% coverage with considerable dominance of *Crataegus monogyna*, *Juncus patens*, *Rubus armeniacus* and *Rosa eglantheria*.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: Wetland areas provide cover and rearing habitat for amphibians and other terrestrial species, but do not support fish populations.

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

All wetland(s) being considered in the cumulative analysis: **1**
 Approximately (0.722) 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 Pond: Y	0.032	Drainage 3 Slope Wetland: Y	0.128
Slope Wetland: N	0.562		

Summarize overall biological, chemical and physical functions being performed:
 Slope wetland and Wetland Pond both provide water retention and help slow the downstream release of water from the Northern drainage within the review area. Excess nutrients are captured within these areas due to the increased resident times. Slope Wetland is located the highest in the reach and is the headwater for the physical drainageway.

Drainage 3 Slope wetland serves as the headwater for the drainage in the South section of the review area and provides functions such as nutrient filtering and velocity control for downstream flows.

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:

Slope Wetland: Slope Wetland is a palustrine emergent wetland and is 0.526 acre. Hydrology to Slope Wetland is supported by precipitation, ground water, and runoff from surrounding slope. Slope Wetland outflows occur in extreme precipitation events and are generally conveyed by Drainage 2, swale, northwest for approximately 500 feet, towards Wetland Pond/Drainage 1. There is evidence of ponding at photo point 6, approximately 250 feet downslope from Slope Wetland, which supports that flows are neither frequent nor large enough to form a continuous channel or flow path connection downstream to Wetland pond. Slope wetland was saturated and not providing any observable surface outflows on May 17, 2022. Slope wetland is not located within a flood plain. The relevant reach does not support aquatic rearing habitat for species within the TNW, since flow from the review area enters a City of Eugene storm water system approximately 40 miles upstream of the confluence with the TNW, and several in-water barriers are present along the flow path. Slope Wetland would contribute downstream flows but only under the most extreme precipitation events. Slope Wetland has a speculative and insubstantial nexus downstream to the Willamette River.

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:
 - 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: Drainage 1 = Seasonal flows are supported by WETS data tables, StreamStats reports indicating stream volume outflows for 9 months of the year, and observed surface flow during October 2019 (dry) and May 2022 (wet) site visits, Drainage 3 = There is a presence of a continuous bed and bank with little rooted vegetation occurring within bed of channel. The upper reach of the tributary is head cutting into the abutting wetland and precipitation records and models from StreamStats supports that flow occurs 8-9 months of the calendar year.

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

- Tributary waters: **Drainage 1 = 184, Drainage 3 = 140** linear feet **Drainage 1 = 2 feet** width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

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: .

⁸See Footnote # 3.

- 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 Pond and Drainage 3 Slope Wetland

Provide acreage estimates for jurisdictional wetlands in the review area: **0.16** acres.

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: acres.

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).

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: Slope Wetland is geographically located at the top of the drainage way, and during heavy storm events, contributes water via sheet flow down Drainage 2 swale towards Wetland Pond. Slope Wetland is approximately 500 linear feet up gradient from Wetland Pond. There is evidence of ponding within Drainage 2 approximately 250 feet downslope of Slope Wetland indicating that there is insufficient flow volumes or frequency to support a seasonal or ephemeral surface water connection to Wetland Pond. Slope Wetland was saturated at the surface when observed on May 17, 2022 and no out flows were observed down gradient to Drainage 2.
- Other: (explain, if not covered above): Drainage 2 was determined to be an erosional feature and is not considered a water of the U.S.

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

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.

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: Slopes Wetland 0.562 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: Delineation Report Dated November 26, 2019..
- 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 accessed May 19, 2022.
 - 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: Web Soil Survey accessed May 19, 2022.
- National wetlands inventory map(s). Cite name: National Wetland Mapper accessed May 19, 2022.
- State/Local wetland inventory map(s): City of Eugene "West Eugene Wetlands" inventory accessed May 19, 2022.
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Aerial photos from delineation report dated November 26, 2019.
 - or Other (Name & Date): Site photos from delineation report dated November 26, 2019.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): StreamStats April 28, 2022, May 3, 2022; Antecedent Precipitation Tool May 16, 2022; DSL ORWAP WD # 2019-632 July 16, 2020.

B. ADDITIONAL COMMENTS TO SUPPORT JD: On June 3, 2022, we coordinated this JD with EPA Region 10 and Corps HQ. On June 14, 2022, Corps HQ responded with no comments and on June 16, 2022 EPA notified that the determination review was not going to be elevated to EPA HQ.