

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): September 16, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWP-2021-373

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Jackson City: Central Point
Center coordinates of site (lat/long in degree decimal format): Lat. 42.502300° N, Long. 122.903900° W.

Universal Transverse Mercator:

Name of nearest waterbody: Snider Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Snider Creek (171003080201)

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: September 16,

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 and are not** "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

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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: linear feet: width (ft) and/or 0.028 acre in total. Waterway 1 is 0.03 acre and Waterway 2 is 0.008 acres.

Wetlands: 0.42 acre in total. Wetland 1 is 0.23 acre and Wetland 2 is 0.19 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: See Section III F for additional details.

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: 16,000 acres

Drainage area: 8,000 acres

Average annual rainfall: 19 inches

Average annual snowfall: 5 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 2-5 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: .

Identify flow route to TNW⁵: Waterway 2 flows through Wetland 1 and enters Waterway 1. Waterway 1 flows to the north beneath Highway 234 via two subsurface culvert pipes at different locations and then drains into an unnamed

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.

waterway that flows to the west along the road. The unnamed waterway flows into Snider Creek 0.5 mile outside the Review Area. Snider Creek empties into the Rogue River two miles downstream from Touvelle State Recreation Site in Central Point, Oregon.

Tributary stream order, if known: First.

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

Tributary is: Natural
 Artificial (man-made). Explain: Waterways 1 and 2 are linear features that were excavated in wetlands.
 Manipulated (man-altered). Explain: .

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

Average width: 2 feet
Average depth: <1 feet
Average side slopes: **3:1** .

Primary tributary substrate composition (check all that apply):

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

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

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

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 3 %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: The hydrological sources for Waterways 1 and 2 are precipitation, stormwater runoff from surrounding roads and the parking lot in the Review Area, and gray water discharge from the restaurant in the Review Area. Waterways 1 and 2 also drain Wetland 1 and other aquatic features outside the Review Area. On average, the Sam's Valley region receives rainfall on 96 days per year (Oregon State University 2022). Photographs of Waterways 1 and 2 provided as part of the March 2021 wetland delineation survey show several inches of surface water in both features. Google Earth aerial images dated as May 2016 and June 2018 also show surface water and saturation. Furthermore, these features have OHWMs that are defined by a topographic break in slope, and a change in vegetative cover from open water waterward of the OHWM to 100 percent cover landward of the OHWM. All of these factors indicate that Waterways 1 and 2 have surface water flow for three months or more on an annual basis.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: The lateral limits of Waterways 1 and 2 are visually apparent and defined by the OHWM. Flow is restricted within the bed and banks. .

Subsurface flow: **No**. Explain findings: The Review Area is underlain by Brader-Debenger loam soil. This soil type is well drained which would allow water to percolate vertically in the soil profile to bedrock. Hydric inclusions of the Padigan series may be present in the Review Area. Padigan soils are deep, poorly drained clay soils, but there is no impermeable or restrictive layer that would allow for lateral subsurface flow.

Dye (or other) test performed: N/A.

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: .

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.

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

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

(iii) Chemical Characteristics:

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

Explain: Surface water in Waterways 1 and 2 appears murky in photographs included in the wetland delineation report. Identify specific pollutants, if known: Unknown.

(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: Vernal pool fairy shrimp (*Brachinecta lynchi*) is listed as Federally Endangered. Critical habitat for the shrimp is located 1.3 mile outside the Review Area. The palustrine emergent wetlands and waterways within the Review Area and aquatic features outside the Review Area (immediately to the north of Highway 234) all provide suitable habitat for the species. The seasonal surface water connection between wetlands in the site and downstream waters also provides a dispersal corridor for the shrimp.

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings: Greene's popcorn flower (*Plagiobothrys greenei*) and steelhead (Klamath Mountain Evolutionary Significant Unit [ESU], winter-run) (*Oncorhynchus mykiss*) are listed as Rank 2 "Imperiled" by the Oregon Biodiversity Center (ORBIC) because they are rare and vulnerable to extinction. An estimated 6-20 occurrences of this popcorn flower species and steelhead ESU occur in the state. Green's popcorn flower is a facultative-wetland species and occurs in wet sites immediately outside of the Review Area. This steelhead ESU has been documented in Snider Creek immediately outside the Review Area.

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: Wetland 1 is 0.23 acre and Wetland 2 is 0.19 acres

Wetland type. Explain: Palustrine emergent wetlands.

Wetland quality. Explain: The hydrological sources for Wetlands 1 and 2 are incident rainfall, stormwater runoff from the surrounding roads and the parking lot in the Review Area, and gray water discharge from the restaurant in the Review Area. Gray water discharge and stormwater flowing off impervious surfaces delivers pollutants to the wetlands. Wetlands in the Review Area function as bioswales, taking up pollutants and filtering them out of the aquatic ecosystem before surface water flows to aquatic features outside the Review Area. As such, water quality in wetlands is low.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The central portion of Wetland 1 was filled circa 2018, separating the the feature into two distinct parts. Around the same timeperiod, Waterway 1 was excavated in Wetland 1. Waterway 1 now connects these two distinct parts of the wetland. Wetland 1 directly abuts Waterway 2 and also has a channelized surface water connection to the intermittent feature. Wetland 2 also directly abuts Waterway 2. The March 2021 wetland delineation data forms indicated there was a high water table in Wetlands 1 and 2, and a photograph of Wetland 1 showed several inches of surface water. Google Earth aerial images dated as May 2016 and June 2018 also show surface water and saturation. Furthermore, these features support facultative-wetland vegetation that is indicative of intermittent flow. All of these factors indicate that Waterways 1 and 2 have surface water for three months or more on an annual basis that freely flows to Waterway 2.

Surface flow is: **Discrete**

Characteristics: The lateral limits of Wetlands 1 and 2 are visually apparent.

Subsurface flow: **No**. 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

Project wetlands are **2-5** 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 **100 - 500-year** 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: Surface water in Wetland 1 was murky. Algae was prevalent in this feature.

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:

Habitat for:

Federally Listed species. Explain findings: See Section B(iv).

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings: See Section B(iv).

Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **2**

Approximately (0.24) 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			
Wetland 2: Y			

Summarize overall biological, chemical and physical functions being performed:

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:

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: Waterways 1 and 2 have surface water flow for three months or more on an annual basis, as described above. The Corps determined these features are not considered preamble waters (e.g., ditches) because they carry relatively permanent water flow, drain wetlands, and were not constructed wholly in uplands.

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

- Tributary waters: **747** linear feet **2** 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: .
 - 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:

The central portion of Wetland 1 was filled circa 2018, separating the the feature into two disjunct parts. Around the same time period, Waterway 1 was excavated in Wetland 1. Waterway 1 now connects the two disjunct parts of the wetland. Wetland 1 directly abuts Waterway 2 and also has a channelized surface water connection to the stream. Wetland 2 also directly abuts Waterway 2. This wetland occurs at the downstream end of Waterway 2. Water from this wetland flows through a subsurface culvert pipe where it then enters an offsite waterway that runs parallel to the road for 0.5 mile before entering Snider Creek..

Provide acreage estimates for jurisdictional wetlands in the review area: **0.42** 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).

⁸See Footnote # 3.

⁹ To 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): **Pond 1 was excavated in the Review Area, although the exact date of construction is unknown. It first appears on Google Earth aerial images clearly from 2010. Recent excavation work had been conducted shortly before the May 2022 wetland delineation survey. The pond is an open waterbody contained in a concave depression and does not support vegetation. Sample plots immediately landward of the pond support upland vegetation and no hydric soil indicators were observed, both of which indicate that water does not top the banks of the pond on a regular basis. The pond is located 66 feet from Waterway 1 in Brader-Debenger loam soil as measured by Google Earth. Uplands are situated between the pond and Waterway 1 and the Review Area is outside the Zone A Flood Hazard Area as mapped by the Federal Emergency Management agency (FEMA). This soil type is well drained which would allow water to percolate vertically in the soil profile to bedrock, but contains hydric inclusions of the Padigan series. Padigan soils are deep, poorly drained clay soils, but there is no impermeable or restrictive layer that would allow for lateral subsurface flow. As such, there would be no surface or subsurface water connection between Pond 1 and Waterway 1. Pond 1 lacks an interstate commerce connection. Pond 1 is not used by interstate or foreign travelers for recreational purposes, and lacks habitat, resources, birds and wildlife of special significance which would attract interstate travelers. Pond 1 is determined to be isolated.**

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: 0.008 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:

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.

Schott & Associates. 2021. Jurisdictional Wetland Delineation for 4999 Highway 234.

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. 2022. NHD and 12-digit HUC Maps. Portland District Regulatory Web Map Application.

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name:

USGS Topoview. 2020. Boswell Mountain, 1:24k. Online: <https://ngmdb.usgs.gov/topoview/viewer/>.

USDA Natural Resources Conservation Service Soil Survey. Citation:Schott & Associates. 2021. Jurisdictional Wetland Delineation for 4999 Highway 234.

National wetlands inventory map(s). Cite name:Schott & Associates. 2021. Jurisdictional Wetland Delineation for 4999 Highway 234.

State/Local wetland inventory map(s): .

FEMA/FIRM maps::FEMA Flood Map Service Center. 2022. Online: <https://msc.fema.gov/>.

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date):

Google Earth Pro (Software Version 7.3.3.7786). 2000-2021.

or Other (Name & Date): Schott & Associates. 2021. Jurisdictional Wetland Delineation for 4999 Highway 234.

Previous determination(s). File no. and date of response letter: .

Applicable/supporting case law: .

Applicable/supporting scientific literature: .

Other information (please specify): ORBIC. 2022. Portland District Regulatory Web Map Application.

Oregon State University. 2022. PRISM Climate Group Data Explorer. Online: <https://www.prism.oregonstate.edu/explorer/>.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Waterways 1 and 2 were not excluded as ditches because they were constructed in wetlands and have RPW flow. Coordination for isolated waters with Corps' Headquarters and the Environmental Protection Agency ended on September 13, 2022.