US ARMY CORPS OF ENGINEERS (USACE)
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
2023 RULE

OMB Control Number: 0710-0024
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AGENCY DISCLOSURE NOTICE

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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 4/21/2023
ORM Project Name: Harper Houf Peterson Righellis Inc., SW Denney Road (JD Only)
ORM Identification Number: NWP-2022-539
☐ Other sites (e.g., offsite mitigation sites, disposal sites or other review areas, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form(s).
Associated JD Names and Numbers: N/A
Review Area Location: State/Territory: Oregon City: Beaverton
County/Parish/Borough: Washington
Center Coordinates of Review Area: Latitude: 45.469357°N, Longitude: -122.780432°W
Limits of review area: See Attached Map

II. SUMMARY[2]

Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding tables in Section III., summarize data sources in Section IV., and attach completed Appendices A and/or B when specified.

☐ The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area). Rationale: Provide Rationale for Dry Land Determination

☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete the table in Section III.A.).

☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section III.B. and complete and attach appendices as appropriate).

☒ Potentially jurisdictional waters and/or features were assessed within the review area and determined to be non-jurisdictional (complete appropriate tables in Section III.C. and complete and attach appendices as appropriate).

[1] The final rule "Revised Definition of 'Waters of the United States'" (2023 Rule) was published in the *Federal Register* on 18 January 2023 and the effective date is 20 March 2023. See https://www.federalregister.gov/documents/2023/01/18/2022-28595/revised-definition-of-waters-of-the-united-states.
[2] Map(s)/figure(s) or descriptions of the review area and any jurisdictional waters are attached to the AJD provided to the requestor.

III. FINDINGS IN THE REVIEW AREA

A. Jurisdictional under the Rivers and Harbors Act of 1899[3] (Section 10)[4]

Section 10 Waters			
Section 10 water name	Section 10 size in review area		Type of Section 10 water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

B. Jurisdictional under the Clean Water Act

Paragraph (a)(1) waters:[5] Waters which are: (i) Currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (Traditional Navigable Waters); (ii) The territorial seas; or (iii) Interstate waters, including interstate wetlands			
(a)(1) water name	(a)(1) size in review area		Type of paragraph (a)(1) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

Paragraph (a)(2) waters: Impoundments of waters otherwise defined as waters of the United States under this definition, other than impoundments of waters identified under paragraph (a)(5)			
(a)(2) water name	(a)(2) size in review area		Type of paragraph (a)(2) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

[3] If the navigable water of the United States is not subject to the ebb and flow of the tide and not included on the district's list of Rivers and Harbors Act (RHA) Section 10 navigable waters of the United States list do NOT use this form to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedure outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the Rivers and Harbors Act.

[4] USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this AJD form, jurisdiction under RHA will be referred to as Section 10.

[5] A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of RHA 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.

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Paragraph (a)(3) waters: Tributaries of waters identified in paragraph (a)(1) or (2): (i) That are relatively permanent, standing or continuously flowing bodies of water; or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(3) water name	(a)(3) size in review area		Type of paragraph (a)(3) water
N/A	N/A	N/A	N/A.
Rationale for determination: N/A			

Paragraph (a)(4) waters: Wetlands adjacent to the following waters: (i) Waters identified in paragraph (a)(1); or (ii) Relatively permanent, standing or continuously flowing bodies of water identified in paragraph (a)(2) or (a)(3)(i) and with a continuous surface connection to those waters; or (iii) Waters identified in paragraph (a)(2) or (3) when the wetlands either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1)			
(a)(4) water name	(a)(4) size in review area		Adjacency criteria
N/A	N/A	N/A	N/A
Type of paragraph (a)(4) water	N/A		
Rationale for determination: N/A			

Paragraph (a)(5) waters: Intrastate lakes and ponds, streams, or wetlands not identified in paragraphs (a)(1) through (4): (i) That are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3)(i); or (ii) That either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).[6]			
(a)(5) water name	(a)(5) size in review area		Type of paragraph (a)(5) water
N/A	N/A.	N/A	N/A
Rationale for determination: N/A			

[6] In implementing the significant nexus standard, the agencies generally intend to analyze waters under paragraph (a)(5) individually to determine if they significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.

C. Waters or features that are not jurisdictional under the Clean Water Act

Waters analyzed under paragraph (a)(3)(ii), (a)(4)(iii), or (a)(5)(ii) and determined non-jurisdictional: Tributaries of waters identified in paragraph (a)(1) or (2); and/or wetlands adjacent to waters identified in paragraph (a)(2) or (3); and/or intrastate lakes and ponds, streams, or wetlands not identified as (a)(1) through (4) waters; that either alone or in combination with similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of waters identified in paragraph (a)(1).			
Water name	Water size in review area		Type of water for which significant nexus was not met:
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

(b)(1) – (b)(8) Excluded Features[7]			
Excluded feature name	Excluded feature size in review area		Exclusion[8]
Ditch A	1,374	Linear feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water
Ditch B	1,356	Linear Feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water
Ditch C	1,062	Linear Feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water
Ditch D	560	Linear Feet	(b)(3) Ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water
Rationale for determination: Ditch A, B, C and D are all roadside ditches off of SW Denney Road in Beaverton, Washington County, OR. In December 2022, a leak was discovered in a pipe underground. Flow was observed during the applicant's Wetland and Waters of the U.S. and State Delineation Report, Denney Road Roadway Improvements, Beaverton, Oregon, October 2022 (Wetland Delineation). According to the applicant, on March 29, 2023, the leak was repaired and a photo was provided to Corps with no observed flow. As seen in historical topographical maps from the United States Geological Survey (USGS) TopoView dating back to 1916, SW Denney Road has been present. There was no presence of a relocated intermittent or perennial tributary in the historical topographic maps. As shown in Northwestern Division National Regulatory Viewer, using the DOGAMI LiDAR layer, all four ditches do not flow into any tributaries, Fanno Creek or other aquatic resources. This demonstrates Ditch A, B, C and D do not carry a relatively permanent flow of water or surface connection to tributaries. According to the United States Department of			

[7] Transient features on the landscape that are difficult to document due to their non-permanent nature, such as rills and gullies, may not be specifically identified on the AJD form unless a requestor specifically asks a USACE district to do so. USACE districts may, in case-by-case instances, elect to document any such feature on a case-by-case basis, such as when the feature is relevant to analysis of the jurisdictional status of another water.

[8] Note the full text of the exclusions for (b)(1)-(6) and (b)(8) are included in the dropdown list, while the text for the (b)(7) exclusion is truncated due to space limitations. The full text of the (b)(7) exclusion is as follows: (b)(7) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States

(b)(1) – (b)(8) Excluded Features[7]		
Excluded feature name	Excluded feature size in review area	Exclusion[8]
Agriculture Natural Resources Conservation Service Soil Survey, the project area is primarily Aloha silt loam and is somewhat poorly drained. As the soil is somewhat poorly drained, water would have difficulty seeping through and any contaminants would be confined to the ditch. This demonstrates Ditch A, B, and D are excavated wholly in dry land. However, in Ditch C, Huberly silt loam is present. As seen in historical topographical maps from the USGS TopoView dating back to 1916, there is no presence of wetlands or streams where Ditch C is located. In the applicant's Wetland Delineation, it states the applicant dug a sample plot (SP-U) within the Huberly silt loam map unit adjacent to Ditch C and determined to be upland due to a lack of hydric soils. The applicant further explains angular gravel throughout the soil pits adjacent to Ditch C indicated that ditch was likely excavated in fill material placed during construction of SW Denney Road. Based on the USGS TopoView and the applicant's Wetland Delineation, Ditch C was also excavated wholly in in dry land. As seen in the United States Fish and Wildlife Service National Wetlands Inventory (NWI) Mapper, no NWI resources are present in the review area. As seen in the United States Geological Survey National Map – Advanced Viewer, no national hydrography data resources are present in the review area. As seen in the Oregon Rapid Wetland Assessment Protocol & Stream Function Assessment Method Map Viewer, there are no local wetlands in the review area. These three sources show Ditch A, B, C, and D draining only in dry land. To conclude, Ditch A, B, C, and D are not Waters of the United States and fall under excluded features according to 33 CFR 328.3(b)(3) because Ditch A, B, C, D are roadside ditches that are excavated wholly in and draining only dry land, and do not carry a relatively permanent flow of water.		

IV. SUPPORTING INFORMATION

A. Paragraph (a)(1) water that is outside the review area:

a. Provide the name of the paragraph (a)(1) water: N/A
b. Type of paragraph (a)(1) water: N/A.
c. Provide the rationale for jurisdiction of the paragraph (a)(1) water: N/A

B. Significant nexus analyses

☐ Appendix A is attached and includes the significant nexus analysis for any waters in the review area that were evaluated under paragraph (a)(3)(ii) and/or paragraph (a)(4)(iii).
☐ Appendix B is attached and includes the significant nexus analyses for any waters in the review area that were evaluated under paragraph (a)(5)(ii).
☒ There are no waters in the review area that require evaluation under the significant nexus standard. Therefore, neither Appendix A nor Appendix B are included with this form

C. Data, models, and other relevant methods Select/enter all resources that were used to support this determination and include data/maps and/or references/citations in the administrative record, as appropriate.

☒ Aquatic resources delineation submitted by, or on behalf of, the requestor: Wetland and Waters of the U.S. and State Delineation Report, Denney Road Roadway Improvements, Beaverton, Oregon, October 2022

The aquatic resources delineation submitted by or on behalf of the requestor is sufficient for purposes of this AJD Yes
Rationale: N/A

☐ Aquatic resources delineation prepared by the USACE: Title(s) and Date(s)

☐ Wetland field data sheets prepared by the USACE: Title(s) and Date(s)
☐ OHWM data sheets prepared by the USACE: Title(s) and Date(s)
☐ USACE site visit: Date(s) of site visit(s): Date(s) of Site Visit(s), Title(s) and Date(s) of Site Visit Summary Document(s)
☐ Previous Jurisdictional Determinations (AJDs or PJDs) addressing the same (or portions of the same) review area: ORM Number(s) and Date(s)
☒ Photographs: Wetland and Waters of the U.S. and State Delineation Report, Denney Road Roadway Improvements, Beaverton, Oregon, October 2022 and picture sent of leak repair with no relatively permanent flow in ditch on March 29, 2023
☒ Aerial Imagery: Google Earth, Google Earth Aerial View of of SW Denney Road, March 29, 2023
☒ LiDAR: Northwestern Division Regulatory Viewer, March 31, 2023
☒ USDA NRCS Soil Survey: United States Department of Agriculture Natural Resources Conservation Service Web Soil Survey, March 29, 2023
☒ USFWS NWI maps: United States Fish and Wildlife Service National Wetlands Inventory Mapper, March 31, 2023
☒ USGS topographic maps: United States Geological Survey TopoView, December 19, 2022 and March 29, 2023
☒ USGS NHD data/maps: United States Geological Survey National Map – Advanced Viewer, April 18, 2023
☐ USGS Dynamic Surface Water Extent: Title(s) and Date(s)
☐ Section 10 navigability resource used: Title(s) and Date(s)

Other data sources or models used to aid in this determination:

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	
USEPA Sources	N/A
USDA Sources[9]	N/A
NOAA Sources	N/A
USACE Sources	Northwestern Division Regulatory Viewer, March 31, 2023
State/Local/Tribal Sources	Oregon Rapid Wetland Assessment Protocol & Stream Function Assessment Method, April 18, 2023
Other Sources	N/A

D. Additional comments to support AJD: N/A

[9] Including Certified Wetland Determination from the NRCS.