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

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I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 5/5/2023
ORM Project Name: NW Natural - Albany Resource Center Redevelopment (JD)
ORM Identification Number: NWP-2022-552
☐ 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: Albany
County/Parish/Borough: Linn County
Center Coordinates of Review Area: Latitude: 44.583972°N, Longitude: -123.1160905°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:
Wetland A	0.215	Acre(s)	Intrastate lake, pond, stream, or wetland that was evaluated under (a)(5)(ii) and determined not to have a significant nexus to an (a)(1) water - Appendix B is attached
Rationale for determination: Wetland A is not a paragraph (a)(1) traditional navigable or interstate water, it is not a paragraph (a)(2) impoundment, is not a paragraph (a)(3) tributary to an (a)(1) water, and is not an adjacent wetland (a)(4) because it does not have an unbroken surface or shallow subsurface connection to a jurisdictional water, is not physically separated from a jurisdictional water by a human-made dike or landform or a natural barrier, and is not is not in reasonably close proximity to a jurisdictional water. Wetland A is located approximately 925 feet to the unnamed intermittent stream if following the downstream path shown on the National Regulatory Viewer, or approximately 557 ft as the crow flies. Wetland A is not adjacent to an (a)(1) water. It is not adjacent to an (a)(2) or (a)(3)(i) water. Wetland A does not have a continuous surface or shallow subsurface connection to an (a)(1) water and therefore does not meet paragraph (a)(5)(i)). Wetland A therefore needed to be reviewed under paragraph (a)(5)(ii) to determine if it either alone, or in combination with similarly situated waters in the region, would significantly affect the chemical, physical, and/or biological integrity of paragraph (a)(1) waters. Wetland A would be most closely associated with the unnamed intermittent tributary to Oak Creek since it is the closest relatively permanent water to Wetland A. There are no ditched areas, swales, or artificial waterways (culvert) near Wetland A that could carry flow offsite.			

(b)(1) – (b)(8) Excluded Features[7]			
Excluded feature name	Excluded feature size in review area		Exclusion[8]
N/A	N/A	N/A	N/A
Rationale for determination: N/A			

IV. SUPPORTING INFORMATION

[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

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

a. Provide the name of the paragraph (a)(1) water: Willamette River
b. Type of paragraph (a)(1) water: (a)(1)(i) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide
c. Provide the rationale for jurisdiction of the paragraph (a)(1) water: The Willamette River is on the June 1994 Portland District list of Navigable Waters within the State of Oregon. It is navigable up to river mile 183.2 where the Calapooia River is a tributary to the Willamette River at approximately river mile 120.

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: Albany Resource Center Project Wetland Delineation Report prepared for NW Natural prepared by Tetra Tech, Inc. September 2021.
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: NWP-2006-104 PJD dated July 19, 2006
☒ Photographs: Submitted by requestor: Figure 6 Wetland Delineation Index Map
☒ Aerial Imagery: Reviewed electronic GIS sources that included the National Regulatory Viewer, Google Earth, and Digital Globe.
☐ LiDAR: Source(s), Title(s) and Date(s)
☐ USDA NRCS Soil Survey: Title(s) and Date(s)
☒ USFWS NWI maps: Online NWI mapped layer shown on National Regulatory Viewer.
☒ USGS topographic maps: Tangent, 1986.
☒ USGS NHD data/maps: Online NHD layer shown on National Regulatory Viewer
☐ USGS Dynamic Surface Water Extent: Title(s) and Date(s)
☒ Section 10 navigability resource used: Online Section 10 layer from National Regulatory Viewer and June 1994 Navigable Riverways within the State of Oregon list.

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

Data source or model (Select)	Name, date, and other relevant information
USGS Sources	Stream Stats
USEPA Sources	Surf your Watershed
USDA Sources[9]	NRCS Web Soil Survey
NOAA Sources	N/A
USACE Sources	National Regulatory Viewer, ORM.
State/Local/Tribal Sources	N/A
Other Sources	N/A

D. Additional comments to support AJD: N/A or Provide Additional Discussion as Appropriate.

[9] Including Certified Wetland Determination from the NRCS.

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ORM Project Name: NW Natural - Albany Resource Center Redevelopment (JD)
ORM Identification Number: NWP-2022-552

Appendix B 1 of 1: **Significant Nexus Analysis for potential paragraph (a)(5)(ii) waters:** Completion of this appendix is ***required*** for all potential paragraph (a)(5)(ii) waters.

1. Identify and describe the catchment (region): (location of downstream limit of catchment, and approximate size and extent of the catchment) (include map of catchment showing all waters within the review area[2] that are being analyzed under paragraph (a)(5)(ii), and the location of the review area):
   The catchment reviewed is 5 kilometers (km) in size (3.11 mile) and is located in the Willamette Valley, in a relatively flat topographical area near Albany. Wetland A is located approximately 2.9 miles from the nearest continuously flowing and relatively permanent water, the Calapooia River. The Calapooia River is a tributary to the nearest traditional navigable water (TNW), the Willamette River, which is approximately 6 miles from Wetland A. Wetland A is located in the Lower Oak Creek watershed, HUC12: 170900030402, which is 11,352 acres in size.

2. Identify the paragraph (a)(1) water to which the tributary that is most closely associated with the potential (a)(5)(ii) water(s) directly or indirectly flows:
   Willamette River

3. Describe the flowpath from the downstream limit of the tributary most closely associated with the potential (a)(5)(ii) water(s) to the paragraph (a)(1) water:
   There is no flow path from Wetland A to the Willamette. However, if there were, Wetland A would drain to the nearest continuously flowing water, which is the Calapooia River, approximately 2.9 miles to the northwest. The National Hydrograph Dataset shows an unnamed intermittent stream approximately 0.15 mile to the west of Wetland A that would carry flow approximately 2.5 miles to its convergence with Oak Creek, which is also shown as an intermittent stream. From the unnamed intermittent stream convergence with Oak Creek to the Calapooia River is approximately 0.5 mile. The Calapooia is a tributary to the Willamette River, which is located approximately 4 miles to the north from where Oak Creek converges with the Calapooia River.

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[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] 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. This approach reflects the agencies' consideration of public comments, as well as implementation considerations for waters assessed under paragraph (a)(5). (See 88 FR 3102). When assessing waters individually under paragraph (a)(5)(ii) of the 2023 Rule, it is not necessary to identify or consider any similarly situated waters in the region that are located outside of the review area. Supplemental information to identify and describe in the region, which are located outside of the review area, may be referenced in Section IV.C or provided in Section IV.D of the AJD form.

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4. Use the table below to list each intrastate lake or pond, stream, and/or wetland within the review area that is being analyzed under paragraph (a)(5)(ii) and to provide information supporting the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.

Lake or pond, stream, or wetland name	Resource type	Explain why the subject water does not meet the criteria for paragraphs (a)(1) through (a)(4) or paragraph (a)(5)(i). Support the rationale that this waterbody is most closely associated with the tributary reach that was selected to define the region.
Wetland A	Wetland	Wetland A is not a traditional navigable or interstate water ((a)(1)), it is not an impoundment ((a)(2)), is not a tributary to an (a)(1) water ((a)(3)), is not an adjacent wetland to an (a)(3) water because it is approximately 925 feet to the unnamed intermittent stream if following the downstream path shown on the National Regulatory Viewer, or approximately 557 ft as the crow flies ((a)(4)). Wetland A does not have a continuous flow that would provide a continuous surface or shallow subsurface connection to an (a)(1) water ((a)(5)(i)). Wetland A would be most closely associated with the unnamed intermittent tributary to Oak Creek being that it is the closest relatively permanent water to Wetland A. There are no ditched areas, swales, or artificial waterways (culvert) near Wetland A that could carry flow offsite.

5. Use the tables below to consider the factors and assess the functions provided by each potential paragraph (a)(5)(ii) water(s) listed above. Each potential paragraph (a)(5)(ii) water should generally be evaluated individually. Complete the factors table by describing the site-specific conditions that relate to the potential paragraph (a)(5)(ii) water.[3]

FACTORS
Distance from a water identified in paragraph (a)(1) (river miles and straight-line miles):
The distance of Wetland A to the Willamette River is approximately 6 river miles, or 3.5 straight line mile to the west.
Hydrologic factors, such as the frequency, duration, magnitude, timing, and rate of hydrologic connections, including shallow subsurface flow:
The source of hydrology for Wetland A is direct precipitation. There are no remnant ditches or other waterways that contribute hydrology to the site. The paved parking area to the north of the review area is slightly higher than the review area and has its own storm drainage collection system. There is a stormwater collection basin located in the center of the parking lot that drains to the north where there is a stormwater detention facility constructed northwest of the paved area. There are earthen berms on the south and east sides of the

[3] Supplemental information to consider the factors and assess the functions of waters in the region, which are located outside of the review area, may be referenced in Section IV.B. or IV.C. or provided in Section IV.D. of the AJD form.

paved parking area restricting surface runoff from entering the review area. There is a farm field located to the south of Wetland A, separated by an earthen berm, and a building on the eastern border. The west side of Wetland A is adjacent to the same farm field and a gravel driveway. The area to the west of Wetland A is flat and at about the same elevation as the review area.
Size, density, or number of waters that have been determined to be similarly situated[4]:
There are no similarly situated wetlands in the review area or adjacent to the unnamed intermittent tributary to Oak Creek.
Landscape position and geomorphology:
The review area is located within the Level III Willamette Valley Ecoregion and Level IV Prairie Terraces Ecoregion, within the Lower Oak Creek subwatershed (HUC 170900030402). Wetland A is located in relatively flat undeveloped grassy field on the south side of the existing Albany Resource Center parking area. The review area is 1.12 acres in size and historic and current land uses include agriculture, commercial businesses, and a community college. Lands within and the review area are seasonally mowed. Two hydric rated soil map units are mapped on the review area: 27-Concord silt loam, and 33-Dayton silt loam. Most of the site is mapped as 27-Concord silt loam. Along the eastern edge of the review area 33-Dayton silt loam is mapped. One non-hydric soil map unit (3-Amity silt loam) extends slightly inside the western boundary of the review area. The dominant land use adjacent to the review area is agriculture immediately to the south, Linn-Benton Community College to the north, commercial properties to the west and east, and city roadways. The existing southern paved parking area for the Albany Resource Center was constructed after a 2005 wetland delineation was performed. At the time of the 2005 delineation, the current review area was part of a large, cropped grass field that continued to the south. The length of the eastern and southern boundaries of the review area are currently demarcated by an earthen berm with the property fence line installed on the top of the berm. The review area is estimated to be about 4-5 feet lower in elevation than the top of the berm. The property south of the review area continues to be in agricultural use.
Climatological variables such as temperature, rainfall, and snowpack:
For a 10-day span preceding field work for the wetland delineation, which occurred on May 21, 2021, the climate station measured 0.05 inches of precipitation. Monthly precipitation for May 2021, through the 21st of the month was below average. Monthly precipitation in October 2020 and March and April 2021 were below average, and outside of the normal range for that period. For the Water Year to-date, October 1, 2020, through May 21, 2021, precipitation was 83 percent of average, due to near normal or about normal precipitation during the period of November 2020 through February 2021. At the time of the field work groundwater was likely below what is usually encountered at that time of year.

For each function, consider each factor to evaluate the likely strength of any effect of that function on a paragraph (a)(1) water. Consider whether the factors are likely to increase or decrease the strength of the influence of the function on the paragraph (a)(1) water.

[4] Note that, because waters assessed under paragraph (a)(5)(ii) are generally assessed individually, generally only the total size of the potential paragraph (a)(5)(ii) water will be described.

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FUNCTIONS
Contribution of flow:
Wetland A is not likely to contribute flow to the nearest waterway (unnamed intermittent tributary approximately 0.15 mile to the west of the review area) due to the flat topography and lack of surface connection. There would be no chance of hydrology from the unnamed intermittent tributary to overflow to Wetland A in a high water event, nor would Wetland A ever overtop and contribute flow to the unnamed intermittent tributary being that they are approximately 0.15 away from each other.
Trapping, transformation, filtering, and transport of materials (including nutrients, sediment, and other pollutants):
Wetland A is located approximately six miles from the nearest (a)(1) water (Willamette River) and is not part of a similarly situated complex of wetlands. There is no hydrological surface connection to other waters. Due to the distance and lack of connection to other waters, Wetland A would not provide significant functions related to trapping, transforming, filtering, or transporting materials to an (a)(1) water.
Retention and attenuation of floodwaters and runoff:
Wetland A is comprised of scattered shallow depressions (1-3 inches deep) that likely hold water from precipitation early in the growing season due to the clayey soils.
Modulation of temperature in waters identified in paragraph (a)(1):
Wetland A would not affect water temperatures in the nearest (a)(1) water.
Provision of habitat and food resources for aquatic species located in waters identified in paragraph (a)(1):
Wetland A is located adjacent to a paved parking are and a farmed field. It is not near other aquatic resources that may provide habitat and provisioning services for aquatic species. Wetland A is mowed during the growing season and contains mostly weedy species that do not support aquatic species or contribute to a suitable aquatic habitat.

6. For each potential paragraph (a)(5)(ii) water within the review area, enter the name(s) of the water(s) in the table below and select a conclusion statement from the drop-down menu that applies to that water. Consider the factors and assess the functions of the potential paragraph (a)(5)(ii) water and whether the subject water significantly affects the chemical, physical, or biological integrity of the paragraph (a)(1) water to support the conclusion in the summary table.

Conclusion Summary	
Water name: Wetland A	Conclusion: This water does not significantly affect the chemical, physical, or biological integrity of a paragraph (a)(1) water.
Rationale Summary: Wetland A is located approximately 6 miles from the Willamette River (a)(1), is not similarly situated to other wetlands in the watershed, does not have a continuous surface connection to other waters, and therefore does not significantly affect the chemical, physical, or biological integrity of the Willamette River.	