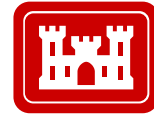




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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 10-17-2018

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWP-2018-105-1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Multnomah City: Portland

Center coordinates of site (lat/long in degree decimal format): Lat. 45.4572, Long. -122.7203.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled .

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: 9-20-2018.

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s): .

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: BES Capitol Highway Improvements, Portland, Oregon - Wetland Delineation Report written in 2018.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: BES Capitol Highway Improvements, Portland, Oregon - Wetland Delineation Report written in 2018.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: .

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: EGIS accessed 9-19-2018.

USGS 8, 10 and/or 12 digit HUC maps. HUC number: 170900100502.

USGS maps. Scale & quad name and date: 1:24K Lake Oswego 2017.

USDA NRCS Soil Survey. Citation: .

USFWS National Wetlands Inventory maps. Citation: EGIS accessed 9-19-2018.

State/Local wetland inventory maps. Citation: .

FEMA/FIRM maps. Citation: EGIS accessed 9-19-2018.

Photographs: Aerial. Citation: . or Other. Citation: BES Capitol Highway Improvements, Portland, Oregon - Wetland Delineation Report written in 2018.

LiDAR data/maps. Citation: .

Previous JDs. File no. and date of JD letter: .

Applicable/supporting case law: .

- Applicable/supporting scientific literature:
- Other information (please specify): Portland Sewer Pipes
<https://www.portlandmaps.com/advanced/?action=gallery>, accessed 9-19-2018.

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.
 - **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, 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 (TNWs))
 - **Complete Table 1 - Required**
 - This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.
- (a)(2): All interstate waters, including interstate wetlands.
 - **Complete Table 2 - Required**
- (a)(3): The territorial seas.
 - **Complete Table 3 - Required**
- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
 - **Complete Table 4 - Required**
- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 5 - Required**
- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
 - **Complete Table 6 - Required**
 - Bordering/Contiguous.
Neighboring:
 - (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
 - (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
 - (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.
- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: See Tables 5, 6 and 10.

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
NWP-2018-105-1 Vermont Creek	Perennial	Tualatin River	No	Vermont Creek (a5) flows to Fanno Creek (a5) to Tualatin River (a3) to Willamette (a3).
NWP-2018-105-1 Stream A	Intermittent	Tualatin River	No	Stream A (a5) flows to Vermont Creek (a5) flows to Fanno Creek (a5) to Tualatin River (a3) to Willamette (a3). Stream A has an ordinary high water mark (OHWM).
NWP-2015-105-1 Woods Creek	Perennial	Tualatin River	No	Woods Creek (a5) flows to Fanno Creek (a5) to Tualatin River (a3) to Willamette (a3).
NWP-2015-105-1 Stream B	Perennial	Tualatin River	No	Stream B (a5) flows to Woods Creek (a5) flows to Fanno Creek (a5) to Tualatin River (a3) to Willamette (a3). Stream B has an OHWM.
NWP-2015-105-1 Intermittent Stream Channel	Intermittent	Tualatin River	No	The intermittent stream flows to Stream B. Stream B (a5) flows to Woods Creek (a5) flows to Fanno Creek (a5) to Tualatin River (a3) to Willamette (a3). The intermittent channel has an OHWM.

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
NWP-2018-105-1 Wetland A	NWP-2018-105-1 Stream A	Wetland A is a Palustrine Forested and slope headwater (PFO/SH) characterized wetland, with limits determined using the 1987 Corps of Engineers Wetland Delineation Manual (herein referred to as "87 Manual"). Wetland A is adjacent to Stream A. The wetland lies within 100 feet of the OHWM of Stream A.
NWP-2018-105-1 Wetland C	NWP-2015-105-1 Stream B	Wetland C is a PFO/SH characterized wetland, with limits determined using the 87 Manual. Wetland C is directly adjacent to Stream B. The wetland lies within 100 feet of the OHWM of Stream B.

NWP-2018-105-1 Wetland D	NWP-2015-105-1 Stream B	Wetland D is a PFO and Slope Valley (SV) classified wetland, with limits determined using the 87 Manual. Wetland D is directly adjacent to Stream B. The wetland lies within 100 feet of the OWHM of Stream B.
NWP-2018-105-1 Wetland E	NWP-2015-105-1 Stream B	Wetland E is a Palustrine Emergent (PEM), riverine flow-through (RFT) wetland, with the limits delineated using the 87 Manual. Wetland E is directly adjacent to Stream B. The wetland lies within 100 feet of the OHWM of Stream B.

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
NWP-2018-105-1 Ditch 1	Ditch 1 (b)(4)(vi) is the result of erosion from the creation of SW Multnomah Blvd., surface water directed by the surrounding fill slopes and piles from the apartment complex to the east.
NWP-2018-105-1 Wetland B	Wetland B (b)(4)(v) was created from upland grading and poor surface drainage from the construction of the adjacent lot.
NWP-2018-105-1 Ditch 2	Ditch 2 (b)(6) is part of the mapped City of Portland Sewer Assets system.
NWP-2018-105-1 Ditch 3	Ditch 3 (b)(6) is part of the mapped City of Portland Sewer Assets system.
NWP-2018-105-1 Ditch 4	Ditch 4 (b)(6) is part of the mapped City of Portland Sewer Assets system.
NWP-2018-105-1 Ditch 5	Ditch 5 (b)(6) is part of the mapped City of Portland Sewer Assets system. Water runs across the unpaved portion of SW 42 nd Avenue south of SW Alice Street.

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

Waters_Name	State	Cowardin Code	Meas Type	Amount	Units	Waters_Type	Latitude	Longitude
NWP-2015-105-1 Intermittent Stream Channel	OR	R4-RIVERINE, INTERMIT	LINEAR	15	FEET	A5	45.45663	122.72087
NWP-2015-105-1 Stream B	OR	R3-RIVERINE, UPPER PERENNIAL	LINEAR	400	FEET	A5	45.457	122.72086
NWP-2015-105-1 Woods Creek	OR	R3-RIVERINE, UPPER PERENNIAL	LINEAR	1000	FEET	A5	45.45716	122.72309
NWP-2018-105-1 Ditch 1	OR	R6-RIVERINE, EPHEMERAL	LINEAR	160	FEET	EXCLDB4VI	45.46741	122.72141
NWP-2018-105-1 Ditch 2	OR	R6-RIVERINE, EPHEMERAL	LINEAR	30	FEET	EXCLDB6	45.46178	122.71899
NWP-2018-105-1 Ditch 3	OR	R6-RIVERINE, EPHEMERAL	LINEAR	500	FEET	EXCLDB6	45.46092	122.71931
NWP-2018-105-1 Ditch 4	OR	R6-RIVERINE, EPHEMERAL	LINEAR	150	FEET	EXCLDB6	45.4605	122.71907
NWP-2018-105-1 Ditch 5	OR	R6-RIVERINE, EPHEMERAL	LINEAR	100	FEET	EXCLDB6	45.45769	122.72006
NWP-2018-105-1 Stream A	OR	R4-RIVERINE, INTERMIT	LINEAR	740	FEET	A5	45.46766	122.72026
NWP-2018-105-1 Vermont Creek	OR	R3-RIVERINE, UPPER PERENNIAL	LINEAR	1000	FEET	A5	45.4674	-122.722
NWP-2018-105-1 Wetland A	OR	PFO-PALUSTRINE, FORESTED	AREA	0.002	ACRES	A6N1WB	45.46773	122.72082
NWP-2018-105-1 Wetland B	OR	PEM-PALUSTRINE, EMERGENT	AREA	0.017	ACRES	EXCLDB4V	45.46739	122.72105
NWP-2018-105-1 Wetland C	OR	PFO-PALUSTRINE, FORESTED	AREA	0.13	ACRES	A6N1WB	45.45683	122.72046
NWP-2018-105-1 Wetland D	OR	PFO-PALUSTRINE, FORESTED	AREA	0.03	ACRES	A6N1WB	45.45688	-122.7207
NWP-2018-105-1 Wetland E	OR	PEM-PALUSTRINE, EMERGENT	AREA	0.002	ACRES	A6N1WB	45.46114	122.71795