

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): 6/2/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Richard Gilbert, NWP-2008-197

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Clackamas City: Happy Valley
Center coordinates of site (lat/long in degree decimal format): Lat. 45.4312° **N**, Long. -122.5062° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Rock Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 17090011-06-07, Willamette River-Clackamas River-Rock Creek

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: April 22, 2008

Field Determination. Date(s): April 18, 2008

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 no** "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 acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

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: **The 150-foot long, ephemeral swale (non-RPW) and its two adjacent palustrine, emergent wetlands (totaling 0.011 acre) are within the approximately 11.69-acre project area (tax lots # 500, 505, 590, and 595). The roughly square-shaped project area has a steep (5%) slope toward the southeast. The ephemeral swale is fed from an underground, 4-inch pipe beneath a gravel, pasture road that is fed by a shallow (less than six inches deep) man-made**

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.

upland drainage. The total drainage area feeding into the swale is approximately five acres. The ephemeral swale has a weak, one to three-foot wide bed and bank in its upper section that transitions into a shallow, grassy swale for the last 35 feet in the southwest portion of the site. USACE Regulatory staff conducted a stream duration assessment of the swale and determined that it is ephemeral based on a score of 10.5 for a wet channel. The swale enters a catch basin outside of the southern property line. The approximately 400-foot long relevant reach of the swale is from the beginning of the man-made upland drainage to the catch basin. The basin has a stormwater pipe that continues southeast, under the adjacent residential housing development and joins the storm water sewer system for a tract of land (tax lot # 601) approximately 800 feet southeast of the ephemeral swale. The storm water sewer system has downstream connectivity to Waters of the US (Rock Creek, a perennial RPW). Both onsite and off site information was gathered from site visits by the Environmental Science & Assessment, LLC and the USACE. Information from in office, online, applicant supplied, USACE permit records, and publically available sources were also reviewed. Rock Creek is approximately 3,200 feet southwest of the swale and is approximately 250 feet lower in elevation. Although the onsite aquatic resources have a connection to a downstream RPW, there is only a limited capacity for the ephemeral swale and the two wetlands to filter sediments, pollutants, provide habitat, or regulate flows downstream due to their small size, degraded nature, limited drainage area, and minimal flow regime. It was determined that there is not a significant nexus between onsite aquatic resources and the relevant reach of the ephemeral swale to the chemical, physical, or biological integrity of the TNW (Clackamas River). Additionally, there is no jurisdiction based on interstate or foreign commerce use of onsite aquatic resources.

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:

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

Watershed size: 5 acres
Drainage area: Pick List
Average annual rainfall: 38.02 inches
Average annual snowfall: 2.0 inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through 3 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 1 (or less) river miles from RPW.
Project waters are 5-10 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: No.

Identify flow route to TNW⁵: Water flows from the site's ephemeral swale into a catch basin at the southern property line. The catch basin directs flow into the stormwater sewer system for the adjacent residential subdivisions. The stormwater sewer system drains into Rock Creek (a perennial RPW). Rock Creek flows into the Clackamas River at river mile 6.4. The Clackamas River is a TNW from river mile 0.0 to 0.4.
Tributary stream order, if known: N/A.

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: The ephemeral swale has been piped in the upper section.

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

Average width: 2 (1-3) feet
Average depth: 0.5 feet
Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: .

Other. Explain: Mapped as Clackamas silt loam (13c), a somewhat poorly drained soil that is non-Hydric (NRCS). Test pits indicated silt loam soils with rock fragments.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Shallow, ephemeral stream with low flow.
Presence of run/riffle/pool complexes. Explain: None.
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): 5 %

(c) Flow:

Tributary provides for: Ephemeral flow

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

Describe flow regime: Flow is typically a response to precipitation events, but is augmented with minor flow contributions from recently (2004) exposed up gradient seeps.

Other information on duration and volume: Based on an analysis of the stream with Oregon Stream Duration Model, the stream scored a 10.5 for a wet channel. This score indicates that the stream has only an ephemeral flow, and confirms field observations and information provided by the applicant.

Surface flow is: Confined. Characteristics: Flow is confined by a 4-inch pipe that feeds into a shallow bed and bank reach, but then transitions to a shallow grassy swale before leaving the property.

Subsurface flow: Pick List. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks

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.

- OHWM⁶ (check all indicators that apply):
 - clear, natural line impressed on the bank
 - changes in the character of soil
 - shelving
 - vegetation matted down, bent, or absent
 - leaf litter disturbed or washed away
 - sediment deposition
 - water staining
 - other (list):
 - the presence of litter and debris
 - destruction of terrestrial vegetation
 - the presence of wrack line
 - sediment sorting
 - scour
 - multiple observed or predicted flow events
 - abrupt change in plant community

Discontinuous OHWM.⁷ Explain: The lower portion of the ephemeral stream does not have a bed and bank structure.

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

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

(iii) Chemical Characteristics:

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

Explain: Water appeared clear.

Identify specific pollutants, if known: No specific pollutants are known, but the site has historically been used for agricultural purposes.

(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: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: The ephemeral nature of the stream limits the quality and quantity of the aquatic wildlife habitat available. Additionally, the degraded nature of the site due to historical agricultural uses limits the biodiversity of aquatic plants.

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 A (248 square feet) = 0.006 acre
 Wetland B (205 square feet) = 0.005 acre
 Total: 0.011 acres

Wetland type. Explain: Both wetlands are palustrine and emergent (PEM).

Wetland quality. Explain: The wetlands are low quality, man-made, and have low plant diversity.

Project wetlands cross or serve as state boundaries. Explain: No .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Surface flow connections with the non-TNW are limited to heavy precipitation events that allow overland sheet flow between the wetlands and the ephemeral swale. There may be minor subsurface flow through the penetration of groundwater between the wetlands and the swale.

Surface flow is: **Overland sheetflow**

Characteristics: Precipitation .

Subsurface flow: **Unknown**. Explain findings: Seeps feed into the wetlands and minimally contribute to flow of the ephemeral swale.

Dye (or other) test performed: .

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.

(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: Upland pastures and grassy areas or a gravel access road separate wetlands from the ephemeral swale.

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetlands are only seasonally inundated and are mainly influenced by runoff from the adjacent slopes, gravel access road, or exposed seeps.

Identify specific pollutants, if known: Unknown.

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

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: Wetland A has a sloped portion that is dominated by bentgrass (*Agrostis* sp.) with scattered soft rush (*Juncus effusus*), willow herb (*Epilobium ciliatum*), and hawkbit (*Leontodon* sp.). The open water portion is partially vegetated with cattails (*Typha* sp.). Wetland B is 100% vegetated with bentgrass, with minimal soft rush.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

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 (0.011) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Wetland A: No

Size (in acres)

0.006

Directly abuts? (Y/N)

Wetland B: No

Size (in acres)

0.005

Summarize overall biological, chemical and physical functions being performed: The wetlands provide minimal habitat for aquatic or semi-aquatic wildlife due to their small size and limited complexity. The wetlands may provide minimal filtration of groundwater. Water may infiltrate the ground through the wetlands and subsequently could contribute to the flow of the ephemeral swale through seeps. Due to the small size of the wetlands and limited acreage of the drainage area, there is limited ability for the wetlands to regulate flow duration or frequency of the ephemeral swale.

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: The relevant reach is approximately 400 feet long and is composed of the ephemeral swale, a 4-inch pipe beneath a gravel access road, and man-made upland drainage within the 11.69-acre site. The drainage area of the relevant reach is ~5 acres. Based on an analysis of the 150-foot long, one to three-foot wide swale with the Oregon Stream Duration Model, the swale scored a 10.5 for a wet channel. This score indicates that the swale is ephemeral. The upper portion has a bed and bank, but the lower portion is an undefined grassy swale. The swale has a 5% slope and conveys water into a catch basin for the stormwater sewer system that discharges into Rock Creek (perennial RPW). The ephemeral swale and its adjacent wetlands have limited connectivity to Rock Creek, low capacity, and a degraded drainage area. No other wetlands are located within the relevant reach. The two wetlands and swale provide minimal sediment or pollutant filtering, limited wildlife habitat, low biodiversity, and little flow regulation due to their small size, ephemeral flows, low quality, and small drainage area. Based on these characteristics, the onsite aquatic resources do not provide more than speculative or insubstantial effects on the biological, chemical, or physical integrity of the TNW (Clackamas River).
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:

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:

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.**

⁸See Footnote # 3.

- 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: _____.

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

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: _____.
- Other factors. Explain: _____.

Identify water body and summarize rationale supporting determination: _____.

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

- Tributary waters: _____ linear feet _____ width (ft).
- Other non-wetland waters: _____ acres.
Identify type(s) of waters: _____.
- Wetlands: _____ acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: _____.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): **150** linear feet, **3** width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: **0.011** 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: Permit Application and Wetland Delineation Report (December 2007) supplied by ESA, LLC (April 2008) for Richard Gilbert; Wetland Delineation for tax lot # 601 prepared by Pacific Habitat Services for Sunnyside Construction and Development, Inc. (NWP-2006-399).
- 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: Oregon Stream ID Form (4/18/2008).
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: Online - <http://nhd.usgs.gov/data.html>.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Cite scale & quad name: USGS 7.5-minute Topographic Map, Gladstone, OR quad; Portland District eGIS portal; www.terraserver.com.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Clackamas County Area, Oregon, A. J. Gerig (1985), <http://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>.
- National wetlands inventory map(s). Cite name: <http://www.fws.gov/nwi/>, Gladstone, OR.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Portland District eGIS Portal; <http://maps.google.com/>; <http://www.terraserver.com/>.
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): The tax lot (#601) downstream of the intermittent swale had isolated wetlands evaluated under NWP-2006-399, based on a lack of hydrologic connections to Waters of the US; WETS Table for Oregon City, Clackamas County (<ftp://ftp.wcc.nrcs.usda.gov/support/climate/wetlands/or/41005.txt>).

B. ADDITIONAL COMMENTS TO SUPPORT JD: .