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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): October 29, 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAE-2019-00923

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Connecticut County/parish/borough: Hartford City: South Windsor

Center coordinates of site (lat/long in degree decimal format): Lat. 41.808634, Long. -72.607720.

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): N/A.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: June 18, 2019.

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:

• "Irrigation Pond Map, 360 Ellington Road, South Windsor, Connecticut" prepared by All Points Technology Corporation and dated "July 2019"

• "Property Survey Sheet V-1 prepared for "DRMR Realty, LLC" by" Design Professionals, Inc." dated 4/19/2019 .

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:

• Federal wetland delineation dataforms prepared by Eric Davison, July 16, 2019 and wetland delineation Inspection Report by JMM Wetland Consulting Services dated December 20, 2017 referring to wetland documentation and site visit completed on November 28, 2017.

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: USGS NHD from The National Map accessed June 16, 2019 and USGS Historical Topographic Map accessed June 11, 2019 .

USGS 8, 10 and/or 12 digit HUC maps. HUC number: 01080207 .

USGS maps. Scale & quad name and date: Manchester CT 7.5 Minute 1:24000 accessed on June 11, 2019.

USDA NRCS Soil Survey. Citation: USDA Soil Survey Maps for Hartford County.

USFWS National Wetlands Inventory maps. Citation: Connecticut NWI Update, 2010 NAIP imagery delineated at 1:8000 with maximum zoom scale of 1:12000, accessed April 17, 2019 .

- State/Local wetland inventory maps. Citation: Wetland Soils Map from Connecticut Council of Government, CT DEEP CT ECO Maps accessed on June 11, 2019.
- FEMA/FIRM maps. Citation: NFHL FIRM 09009C0438H accessed June 6, 2019.
- Photographs: Aerial. Citation: See Below
 - Federal Wetland Delineation Site Photos by JMM Wetland Consulting Services taken on November 28, 2017
 - CTECO 7 UCONN aerial photographs, 1934, 1952, 1970, 1986 & 2016
 - All Points Technology taken on July 16, 2019. or Other. Citation: .
- LiDAR data/maps. Citation: CRCOG, 2016 USGS LiDAR Bare Earth DEM, March 11, 2016 through April 16, 2016, Base Specification 1.2, OL2, 19.6 cm VVA, NAD83 and NAVD88.
- Previous JDs. File no. and date of JD letter: .
- Applicable/supporting case law: 2015 Clean Water Rule 33 CFR Part 328 and associated technical documentation including preamble.
- Applicable/supporting scientific literature: .
- Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet 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

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.

- (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:

The "review area" is identified as an approximately 21-acre parcel comprised of an active agricultural field, over-head power line right of way and undeveloped forested/shrub lands in South Windsor, Connecticut. Town of South Windsor assessor records as Block 13, Lot 23. The review area is situated south of Chapel Road, west of State Route 30 and east of John Fitch Boulevard. The parcel is currently used as an agricultural field.

The only aquatic feature on the parcel is the approximately 0.62 acre pond with fringe wetland identified by the applicant as an "irrigation pond". The feature has a Cowardin Classification of PUBHx, which reflects its manmade status. The Review Area, and the parcels that abut it, have a history of modification from historical agriculture, sand and clay mining and industrial development.

During desk review of the AJD request, we viewed historical aerial imagery of the site back to 1934. The earliest photos depict that the parcel was partially utilized for agricultural purposes. The area of interest with the current aquatic feature does not appear to have been used for farm-related uses until approximately the mid-1960's. Historic aerials depict that pond construction had commence by 1962 and was completed by 1968. Farm barns were present before, and throughout that timeframe and aerial photographs depict ongoing disturbance from mining or borrowing activity through the early 1960's. However, photographs alone were not sufficient to determine if the water feature had been constructed outside of wetland. Consequently, staff requested supporting documentation and soil delineation to confirm that the feature was not constructed in wetland.

Jurisdictional Waters of the U.S.

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. |
|---------------------------|--------------------|--|-------------------------|---|
| N/A | N/A | N/A | N/A | N/A |

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. |
|---------------------------|---|---|
| N/A | N/A | N/A |
| | | |
| | | |
| | | |

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

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 | |

Table 10. Non-Waters/Excluded Waters and Features

| Paragraph (b) Excluded Feature/Water Name | Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion. |
|---|--|
| Irrigation Pond | <p>The subject feature is described in submittals as a 0.62-acre irrigation pond with no defined inlet or outlet and completely isolated hydraulically from any other surrounding wetland or watercourse feature. The pond possesses an ordinary high-water mark but also has a small amount of fringing emergent and woody wetland vegetation. Vegetation around the edge of the pond consisted of <i>Phalaris arundinacea</i>, <i>Salix sp.</i>, <i>Juncus sp.</i>, <i>Swida amomum</i> and saplings of <i>Quercus palustris</i> and <i>Ulmus Americana</i>. This perimeter quickly transitions to turf grass. The feature transitions vary rapidly from water to upland with minimal presence of hydrophytic vegetation.</p> <p>The Soil Survey identifies two soil components associated with the area of the pond. The eastern portion of the feature is situated in "udorthents" which are described as well-drained soils altered by cut, fill or grade activity. The western portion of it is situated in Windsor Fine Sandy Loam, best described as excessively drained soils in sandy outwash of a plain or terrace. Based on this description and the presence of the pond, the feature appears to be groundwater driven as a result of historical excavation. This supposition was confirmed by on-site soil analysis.</p> |

| | |
|--|---|
| | <p>Historical aerial photos and topographic maps indicate that the feature was excavated out of dry land sometime between 1962 and 1968. Prior to that time (1934 through 1952) sand deposits were present at the location and systematically mined for asphalt product.</p> <p>Review of 2016 LIDAR elevation data confirms that there is no surface hydrological connection between the pond and the nearest observed waterway, which is the Podunk River approximately 1,600 linear feet to the northwest beyond State Route 5 and a railroad corridor. However, review of the USGS StreamStats watershed delineation program does suggest that historically a tributary feature may have existed at the site and that it possessed a direct hydrological connection to the river. This tributary no longer exists or has been redirected. The elevation function of the application indicates that elevation at the pond site is approximately 68 feet NGVD and depicts a standard terrace profile.</p> <p>A statement from the farm owner confirmed the historical information analysis. The farmer states that the pond was constructed in the early 1960's at the location of a former 1950's sand borrow site and it is groundwater driven. During the 1980's development of the abutting parcel, stormwater runoff from impervious areas associated with property of "Admiral Moving Company" was shunted into the pond and it is also providing stormwater function.</p> <p>Our analysis confirms the submitted documentation that the feature was constructed out of dry land, first incidentally as a result of sand mining, and then purposely expanded for the purpose of agricultural irrigation. . Consequently, the feature identified as "Irrigation Pond" meets the criteria for exclusion per (b)(4)(ii).</p> |
| | |

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 |