

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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 21 March 2022.

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Seattle District, Oakpoint Land Covington, LLC (Lakepoint Urban Village), NWS-2016-951.

Name of water being evaluated on this JD form: Gravel Pit

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Washington County: King City: Covington

Center coordinates of site (lat/long in degree decimal format): Lat: 47.371124 N, Long: -122.085416 W

Universal Transverse Mercator: 10T 569048mE 5246812mN.

Name of nearest waterbody: Jenkins Creek.

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A.

Name of watershed or Hydrologic Unit Code (HUC): 171100130302.

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. List other JDs: _____

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 28 February 2022.

Field Determination. Date(s): _____.

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 and 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 gravel pit is part of a reclamation plan and is therefore considered active and is a preamble non-water of the U.S. See Section I.V.B for additional information.**

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.

SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: NOT APPLICABLE
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS: NOT APPLICABLE
- C. SIGNIFICANT NEXUS DETERMINATION: NOT APPLICABLE
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE: NOT APPLICABLE

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):⁴

- 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:

- 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: _____.
- Other: (explain, if not covered above): **The gravel pit is a preamble non-water of the U.S.**

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.

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: Set of four project drawings dated 12 October 2021, USFWS National Wetland Inventory Map, NRCS Soil Survey Map, Wetland Delineation Map, Wetland Delineation Report dated 12 October 2021.
- 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: _____.
- Corps navigable waters’ study: _____.

⁴ 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.

- U.S. Geological Survey Hydrologic Atlas: _____.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Seattle, WA 1962 (HTMC, 1975 ed.) Scale 1:250000, Black Diamond, WA 1949 (HTMC, 1995 ed.) Scale 1:24000, Black Diamond, WA 1949 (HTMC, 1976 ed.) Scale 1:24000
- USDA Natural Resources Conservation Service Soil Survey. Citation: _____.
- National wetlands inventory map(s). Cite name: NWI, Map for subject property accessed on 28 February 2022.
- State/Local wetland inventory map(s): _____
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____ (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Historic Aerial Imagery accessed via NETROnline, 28 February, 2022
or Other (Name & Date): _____.
- Previous determination(s). File no. and date of response letter: NWS-2016-951, 30 May 2017.
- Applicable/supporting case law: _____.
- Applicable/supporting scientific literature: _____.
- Other information (please specify): _____.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The subject gravel pit is a water filled depression created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel. The gravel pit is part of a reclamation plan and is considered active and not abandoned. Therefore, the gravel pit is a preamble non-water of the U.S.

The gravel pit is approximately 67 acres in size and was first permitted in 1974 by the Department of Natural Resources (DNR Reclamation Permit Number 70-011068). Historic wetland maps indicate that the gravel pit was constructed in, or prior to, 1949 (USGS map Black Diamond, WA 1949 (HTMC, 1976 ed.) Scale 1:24000. The Clean Water Act was enacted in 1972, and wetlands were not added to the definition of Waters of the U.S. until 1975. Given that the gravel pit was excavated prior to the enactment of the Clean Water Act and addition of wetlands to the definition of Waters of the U.S., no Waters of the U.S. were present at the site when the construction activity commenced.

The National Wetland Inventory (NWI) depicts two wetland areas within the gravel pit operation. One of these features is described as a permanently flooded freshwater pond, and the other is listed as a seasonally flooded freshwater pond. NWI indicates that both are "excavated" features that are situated "within a basin or channel that ha[s] been dug, gouged, blasted or suctioned through artificial means by man." The Wetland Delineation Report for Lakepointe Property, prepared by Wetland Resources Inc and dated October 12, 2021, concluded that the areas mapped as wetlands within the gravel mine do not meet the definition of a wetland due to depth of the water, steep grade of the pond edges, and absence of wetland vegetation or hydric soils.

Note that two aquatic features, including Jenkins Creek and Wetland A, were identified in the northeast portion of the subject property; however, these features are outside of the review area and are not subject to this AJD.

An AJD finalized by the Corps on 30 May 2017 concluded that the subject gravel pit is a preamble non-water of the U.S. The applicant's existing AJD will expire on 30 May 2022 and completion of the reclamation plan has not yet been achieved. This AJD is in response to the applicant's request to facilitate completion of the reclamation plan.