



DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 2946
PORTLAND, OREGON 97208-2946
January 6, 2010

REPLY TO
ATTENTION OF:
Operations Division
Regulatory Branch
Corps No.: NWP-2009-605

Lynn Averbeck
Oregon Department of Transportation
123 NW Flanders Street
Portland, Oregon 97209-4037

Dear Ms. Averbeck:

The U.S. Army Corps of Engineers (Corps) received Oregon Department of Transportation (ODOT)'s request for an approved jurisdictional determination (JD) for Wetland A on the West Linn Solar Highway Project property. The 29-acre property is located north of Interstate 205 (I-205) at I-205 Milepost (MP) 6.9 in West Linn, Clackamas County, Oregon (Section 35, Township 2 South, and Range 1 East).

Under Section 404 of the Clean Water Act (CWA), the Corps has the authority to issue permits for the placement of fill or dredged material in waters of the United States. The term "waters of the United States" includes the territorial seas, navigable waters, and tributaries to those waters. Wetlands adjacent to these waters are also "waters of the United States".

Wetland A (0.542 acre) on-site was delineated by Hunter White and Paul Agrimis of Vigil-Agrimis, Inc. On October 20, 2009, the Corps received a copy of the Wetlands/Waters Delineation Report, dated September 23, 2009, prepared by Vigil-Agrimis with a request from ODOT for an approved JD. Representatives from the Corps visited the site on November 24, 2009. The Corps determined that Wetland A has no surface water tributary system connection, nor is it adjacent to a tributary. The Corps submitted an isolated jurisdictional determination to the Environmental Protection Agency (EPA) Region 10 office and Corps Headquarters, which is required per the EPA/Corps memo *Coordination on JDs under CWA Section 404 in Light of SWANCC and Rapanos Supreme Court Decisions*, dated June 5, 2007. EPA-Region 10 concurred that Wetland A is isolated on December 3, 2009. No response was received from Corps HQ within 21 days, therefore the Portland District is able to finalize the JD. Therefore, Wetland A is isolated and not regulated by the Corps. Enclosure 1 is the approved jurisdictional determination (JD) form, which identifies the basis for not asserting jurisdiction. If you are not in agreement with the approved JD, you can make an administrative appeal under 33 CFR 331 (Enclosure 2). This approved JD is valid for a period of 5 years from the date of this letter unless new information warrants revision of the determination.

ODOT has stated that Wetland A is the only wetland that would be impacted for the proposed project and jurisdiction of Wetland A would determine the need for a Corps permit or not.

Since the remaining wetlands/waters on-site will not be impacted by the proposed project, the Corps prepared a Preliminary JD for those features. The Preliminary JD is a written indication that Wetland B, C, D, E, F, Intermittent Stream East/Roadside ditch, Intermittent Stream West in your project area "*may be*" Waters of the United States (Enclosure 3). Such waters will be treated as jurisdictional Waters of the U.S. for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the Preliminary JD, please sign it and return it to the letterhead address within two weeks. If you believe the Preliminary JD is inaccurate, you may request an Approved JD, which is an official determination regarding the presence or absence of Waters of the US.

If you have any questions regarding our regulatory authority, please contact me at the letterhead address, by telephone at (503) 808-4390 or by email at jaimie.w.davis@usace.army.mil.

Sincerely,

A handwritten signature in black ink that reads "Jaimee W. Davis". The signature is written in a cursive, flowing style.

Jaimee W. Davis
Project Manager, Regulatory Branch

Copy Furnished:

Oregon Department of Transportation – Region 1 HQ (Claire Carder)
Oregon Department of Transportation - GE (Frannie Brindle)
Oregon Department of State Lands (Nicole Peirce)
Vigil-Agrimis, Inc. (Paul Agrimis)