



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
SOUTHERN COLORADO REGULATORY BRANCH
201 WEST 8TH STREET, SUITE 350
PUEBLO, COLORADO 81003

July 20, 2022

Regulatory Division

SUBJECT: Jurisdictional Determination- Action No.SPA-2022-00202

Bristlecone Ecology, LLC
Attn: Dan Maynard
2023 W. Scott Place
Denver, Colorado 80211
dmaynard@bristleconeecology.com

Dear Mr. Maynard:

This letter responds to your request for a jurisdictional determination (JD) for several aquatic resources associated with the *Eagleview Residential Development*. The approximately 121-acre project site is located near an unnamed tributary to Black Squirrel Creek, centered at latitude 38.981190°, longitude -104.638240°, Colorado Springs, El Paso County, Colorado. We have assigned Action No. SPA-2022-00202 to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we concur with your aquatic resource delineation for the site, as depicted on the enclosed drawing labeled, *SPA-2022-00202, Figure 1*, prepared by Bristlecone Ecology, LLC (enclosure 1). We have determined that the site does not contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The approximately 1.58-acres of wetlands and 2,218 linear feet of stream identified as *Wetlands W-1, W-2, W-3 and Tributaries 1, 2, and 3*, on the above drawing are intrastate isolated aquatic resources with no apparent interstate or foreign commerce connection. As such, these aquatic resources are not regulated by the U.S. Army Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act.

We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 2). A copy of this JD is also available at <http://www.spa.usace.army.mil/req/JD>. This approved JD is valid for five years unless new information warrants revision of the determination before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA) (enclosure 3). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPDPDS-O, Attn: Tom Cavanaugh, Administrative

Appeal Review Officer, P.O. Box 36023, 450 Golden Gate Ave, San Francisco, CA 94102 within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

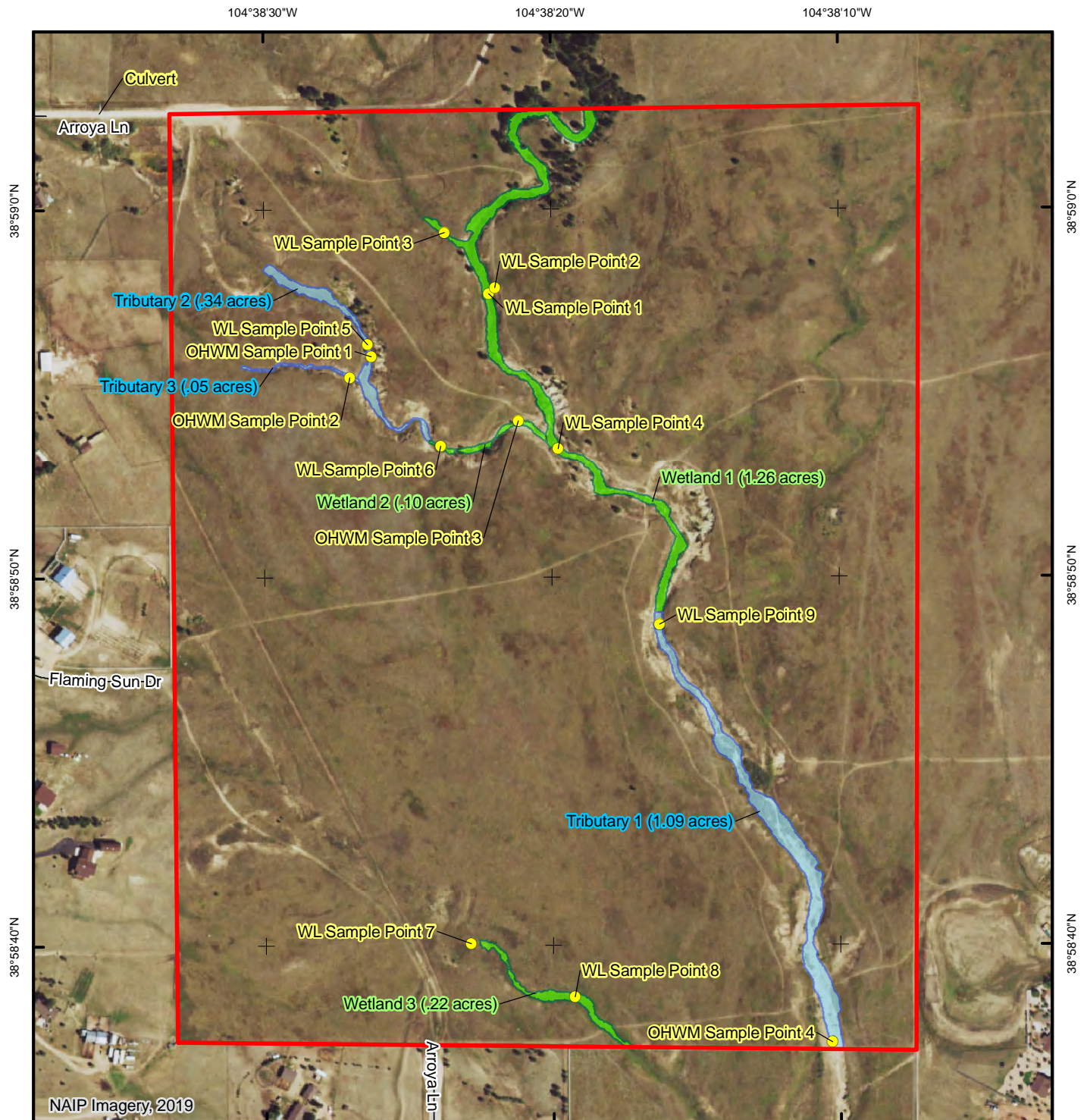
If you have any questions, please contact Senior Project Manager Kyle Zibung by email at kyle.d.zibung@usace.army.mil, or telephone at (651) 290-5877. For program information or to complete our Customer Survey, visit our website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>.

Sincerely,

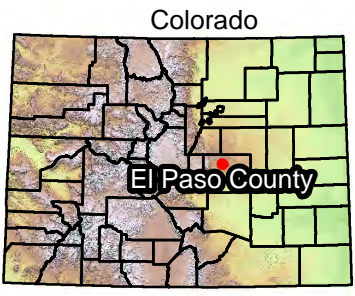
Kara Hellige
Chief, Southern Colorado Branch

Enclosures

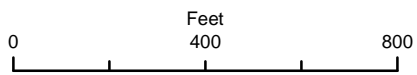
cc:
Joe DesJardin, Agent for PT Eagleview, LLC (jdesjardin@proterrace.com)



NAIP Imagery, 2019



- Project Area
- Ordinary High Water Mark
- Wetland
- Sample Point



Eagleview Subdivision

Wetlands



NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Dan Maynard	File No.: SPA-2022-00202	Date: July 20, 2022
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
→	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/cecw/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer (address on reverse). This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Kyle Zibung
U.S. Army Corps of Engineers
201 West 8th Street, Suite 350
Pueblo, Colorado 81003

Phone: 651-290-5877
Email: kyle.d.zibung@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
P.O. Box 36023, 450 Golden Gate Ave
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX 415-503-6646
Email: Thomas.J.Cavanaugh@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

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): July 20, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: SPA-2022-00202-KDZ, Eagleview Residential Subdivision AJD

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Colorado County/parish/borough: El Paso City: Falcon

Center coordinates of site (lat/long in degree decimal format): Lat. 38.981190° N, Long. -104.638240° W. Universal

Transverse Mercator: 13

Name of nearest waterbody: Unnamed Tributary to Black Squirrel Creek

Name of watershed or Hydrologic Unit Code (HUC): 11020004-Chico

- 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: June 27, 2022
 Field Determination. Date(s): June 8, 2022

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.

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.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area for this determination is comprised of three individual Wetlands (identified as W-1, W-2, W-3) totaling 1.58 acres and three reaches of ephemeral waterway (identified as Tributary 1, 2, 3) totaling 0.42 miles located on the approximately 121-acre tract. The National Wetland Inventory (NWI) and National Hydrography Dataset (NHD) shows four mapped wetland drainages and one mapped stream present in the review area. Based on a review of the NHD, the nearest mapped potential relatively permanent water is an unnamed tributary to Black Squirrel Creek and extends to approximately 1/4 mile south of the review area near Stapleton Road. On June 8, 2022, Corps staff completed a field visit to review the April 29, 2002, Bristlecone Ecology Wetland Delineation Report (Delineation Report) and assessed whether a surface connection was present between the delineated aquatic resources and the mapped potential relatively permanent water. During this field visit, Corps staff determined that the aquatic resource boundaries contained within the Delineation Report were accurate, however, no surface connection was observed between the delineated aquatic resources and any downstream water south of the review area. Specifically, Corps staff reviewed the unnamed mapped waterway located approximately 1/4 mile south of the review area near Stapleton Road which is the confluence of all delineated aquatic resources within the review area. Corps staff noted a remnant dry channel north of Stapleton Road near a stormwater pond, however, the channel ended immediately south of Stapleton Road and all surface flow becomes overland runoff leading towards an existing pond/berm. No defined channel or waterway was noted south of the existing pond/berm that could provide a surface connection to a downstream relatively permanent water. Due to their small size and/or disturbed characteristics, Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3, provide limited habitat functions to surrounding areas and exhibit tenuous ecological connections to nearby surface waters. The Corps has determined that Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3 are isolated features with no surface or shallow subsurface hydrologic connection or ecological connection to a RPW or TNW. Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3 do not border, neighbor, nor are contiguous with another**

¹ Supporting documentation is presented in Section III.F.

water of the U.S. Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3, are not separated from other WOUS by man-made dikes, barriers, or berms. Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3 do not support a link to interstate or foreign commerce; they are not known to be used by interstate or foreign travelers for recreation or other purposes; They do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetlands W-1, W-2, W-3 and Tributaries 1, 2, 3 are not regulated by the Corps under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A

C. SIGNIFICANT NEXUS DETERMINATION: N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A

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): N/A

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:
- 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): **2,218** linear feet **7** width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: **1.58** 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): 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: April 29, 2022, Bristlecone Ecology Wetland Delineation Report
- 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:
- 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: 1:24K Falcon NW
- USDA Natural Resources Conservation Service Soil Survey. Citation: El Paso County Soil Survey
- National wetlands inventory map(s). Cite name: USFWS National Wetland Inventory
- State/Local wetland inventory map(s):

- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth: 2020, 2018, 2017, 2015, 2013, 2010 2008, 2006, 2005, 2000, 1994
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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: