

From: Joe DesJardin <JDesJardin@proterraco.com>
Sent: Wednesday, October 4, 2023 10:29 AM
To: Brooks Swenson
Subject: FW: Request for Jurisdictional Determination - Overlook at Homestead

Wetlands are non-jurisdiction



Joseph W. DesJardin, PE
Director of Entitlements

m: 307 899 2020 **o:** 719.476.0800
w: proterracolorado.com



From: SPA-RD-CO <SPA-RD-CO@usace.army.mil>
Sent: Tuesday, September 26, 2023 3:34 PM
To: Myers, Stephen <Stephen.Myers@kimley-horn.com>; SPA-RD-CO <SPA-RD-CO@usace.army.mil>
Cc: Delgado, Daniel I CIV USARMY CESPA (USA) <Daniel.I.Delgado@usace.army.mil>; Joe DesJardin <JDesJardin@proterraco.com>; Kofford, Kevin <Kevin.Kofford@kimley-horn.com>; Kelly Morgan <kelly.morgan@state.co.us>
Subject: RE: Request for Jurisdictional Determination - Overlook at Homestead

CAUTION EXTERNAL: This sender is located outside of your organization.

Stephen

On August 29, 2023, the U.S. Environmental Protection Agency (EPA) and Department of the Army (the agencies) issued a final rule to amend the final "Revised Definition of 'Waters of the United States'" rule, published in the Federal Register on January 18, 2023. This final rule conforms the definition of "waters of the United States" to the U.S. Supreme Court's May 25, 2023, decision in the case of Sackett v. Environmental Protection Agency. Parts of the January 2023 Rule are invalid under the Supreme Court's interpretation of the Clean Water Act in the Sackett decision. Therefore, the agencies have amended key aspects of the regulatory text to conform it to the Court's decision.

The conforming rule, "Revised Definition of 'Waters of the United States'; Conforming," was published in the Federal Register and became effective on September 8, 2023. You can find more information regarding the Revised rule on EPA's website.

We received your request for an approved jurisdiction determination for the subject project. Based on the aquatic resource delineation report you provided, it appears that the aquatic resources on the subject property are not waters of the United States under the revised definition since the resources are not a relatively permanent waterway or do not have continuous flow to a navigable water, territorial see, interstate water, or impoundment of any of these waters. Tributaries that do not contain relatively permanent flow and wetlands that do not have continuous flow to a navigable water, territorial see, interstate water, impoundment of those waters, or relatively permanent tributaries are not subject to the Clean Water Act permitting process. Please note that jurisdiction determinations are not required to process a permit application or to commence work within areas that are not waters of the United States. As such, these determinations are made as a courtesy to the public. While we try our hardest to complete these requests in a timely fashion, we must prioritize permit decisions first. Therefore, we request that you assess your need for a jurisdiction determination as it may take many months for us to complete your request. Please let me know if you wish that we continue to process this approved jurisdiction determination request. If I receive a response that you wish that we continue to process your request, I will assign a project manager and a project number to your request. If we do not receive a response, we will assume that you wish to withdraw your request.

If you have any questions, please do not hesitate to contact me.

Kara Hellige
Chief, Southern Colorado Branch
US Army Corps of Engineers, Albuquerque District
970-259-1604 ext 3 (office)
970-218-7466 (cell)

Please visit our website at: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>

From: Myers, Stephen <Stephen.Myers@kimley-horn.com>
Sent: Friday, September 22, 2023 2:04 PM
To: SPA-RD-CO <SPA-RD-CO@usace.army.mil>
Cc: Delgado, Daniel I CIV USARMY CESA (USA) <Daniel.I.Delgado@usace.army.mil>; Joe DesJardin <jdesjardin@proterraco.com>; Kofford, Kevin <Kevin.Kofford@kimley-horn.com>
Subject: [Non-DoD Source] Request for Jurisdictional Determination - Overlook at Homestead

To whom it may concern,

Kimley-Horn, on behalf of PT Overlook, LLC, would like to submit this Request for Jurisdictional Determination form and supporting documentation for the Overlook at Homestead Project located east of Elbert Road and north of Sweet Road in El Paso County, Colorado. If you have any questions or should need additional information, please feel free to contact me at 719-581-7962 or stephen.myers@kimley-horn.com.

Thank you for your time and consideration.

Sincerely,

Stephen.

Stephen Myers, PWS | Environmental

Kimley-Horn | 2 North Nevada Avenue, Suite 900 | Colorado Springs, CO 80903

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