

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): March 4, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, City of St. Helens, NWP-2019-286

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Columbia County City: St. Helens
Center coordinates of site (lat/long in degree decimal format): Lat. 45.849237° **N**, Long. 122.807312° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Multnomah Channel

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Multnomah Channel

Name of watershed or Hydrologic Unit Code (HUC): 1709001203; Multnomah Channel (HUC 10)

☒ 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: December 19, 2019

☒ Field Determination. Date(s): October 18, 2019

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** "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 (Wetland X, Wetland Y)

☒ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs (Milton Creek)

☐ 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 (Wetland R, TA, T, Ditch 1 and Ditch 2)

☐ 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: Milton Creek linear feet: 2,690 width (ft) and/or acres.

Wetlands: Wetlands R, TA, T, X, Y, Ditch 1, Ditch 2 Total: 9.99 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): Unknown.

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: Wetlands B, C, D, E, F, G, S, Q, U, V, W, Ditch 3, Ditch 4, and Stormwater Pond. See Section IV.B. for summary table.

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

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Multnomah Channel**. Note: the Multnomah Channel is outside the Review Area and not subject to this Approved Jurisdictional Determination

Summarize rationale supporting determination: The Multnomah Channel is a navigable water of the U.S. under 33 CFR 329 and is included on the Portland District's list of Navigable Riverways Within The State Of Oregon.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

Wetland X: Wetland X is 1.48 acres within the Review Area, but the wetland continues to the north outside the Review Area. Wetland X was not inspected in the field (office determination). The Wetland Delineation Report describes a 48-inch culvert that discharges into the northwest portion of the wetland, but does not comment regarding an outlet. Wetland X meets the definition of adjacent (i.e., bordering, contiguous or neighboring) because it is reasonably close to a jurisdictional water. Wetland X is approximately 50 feet from the Multnomah Channel and is within the 100 year flood elevation of the Multnomah Channel. Because Wetland X is adjacent to a TNW, a case-specific demonstration of an ecological interconnection is not required.

Wetland Y: Wetland Y is 0.12 acres. Wetland Y meets the definition of adjacent (i.e., bordering, contiguous or neighboring) because it is reasonably close to a jurisdictional water. Wetland Y is approximately 100 feet from the Multnomah Channel and is within the 100 year flood elevation of the Multnomah Channel. Because Wetland Y is adjacent to a TNW a case-specific demonstration of an ecological interconnection is not required.

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

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW:** The non-TNW that flows directly into a TNW described in this section is an underground stormwater pipe that discharges to the Multnomah Channel. The location and route of the underground stormwater pipe is illustrated on Figure 3 and Figure 6 in the Stormwater Pollution Control Plan City of St. Helens Mill dated December 28, 2017.

(i) General Area Conditions:

Watershed size: 200 acres

Drainage area: 200 acres

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Average annual rainfall: 36 inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) Relationship with TNW:

- ☒ Tributary flows directly into TNW.
☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **1 (or less)** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **1 (or less)** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: NA..

Identify flow route to TNW⁵: The underground stormwater pipe is approximately 2,000 long.
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

- Tributary is:** ☐ Natural
☒ Artificial (man-made). Explain: The tributary for this evaluation that serves as a connection to a TNW is an underground stormwater pipe.
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate): NA. The tributary is a stormwater pipe.

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| ☐ Silts | ☐ Sands | ☐ Concrete |
| ☐ Cobbles | ☐ Gravel | ☐ Muck |
| ☐ Bedrock | ☐ Vegetation. Type/% cover: | |
| ☐ Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

- ☐ Dye (or other) test performed: .

Tributary has (check all that apply): NA. The tributary for this evaluation that serves as a connection to a TNW is an underground stormwater pipe.

- | | |
|---|---|
| ☐ Bed and banks | |
| ☐ OHWM ⁶ (check all indicators that apply): | |
| ☐ clear, natural line impressed on the bank | ☐ the presence of litter and debris |
| ☐ changes in the character of soil | ☐ destruction of terrestrial vegetation |
| ☐ shelving | ☐ the presence of wrack line |
| ☐ vegetation matted down, bent, or absent | ☐ sediment sorting |
| ☐ leaf litter disturbed or washed away | ☐ scour |
| ☐ sediment deposition | ☐ multiple observed or predicted flow events |
| ☐ water staining | ☐ abrupt change in plant community |

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

- ☐ other (list):
☐ Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| ☒ High Tide Line indicated by: | ☐ Mean High Water Mark indicated by: |
| ☐ oil or scum line along shore objects | ☐ survey to available datum; |
| ☐ fine shell or debris deposits (foreshore) | ☐ physical markings; |
| ☐ physical markings/characteristics | ☐ vegetation lines/changes in vegetation types. |
| ☐ tidal gauges | |
| ☐ other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Receives water from wetlands and runoff from surrounding area.

Identify specific pollutants, if known: The discharge from the stormwater pipe is subject to a National Pollution Discharge Elimination System (NPDES) permit.

(iv) Biological Characteristics. Channel supports (check all that apply): NA. The tributary for this evaluation that serves as a connection to a TNW is an underground stormwater pipe.

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
- ☐ Federally Listed species. Explain findings: .
- ☐ Fish/spawn areas. Explain findings: .
- ☐ Other environmentally-sensitive species. Explain findings: .
- ☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW (Wetlands R, TA, T, Ditch 1 and Ditch 2)

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 8.39 acres

Wetland type. Explain: Riverine HGM.

Wetland quality. Explain: Moderate.

Project wetlands cross or serve as state boundaries. Explain: NA.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: .

Surface flow is: **Confined**

Characteristics: Wetlands R, TA, T and Ditch 1 and Ditch 2 convey flow directly into the stormwater pipe.

Subsurface flow: **Pick List**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting: Wetlands R, TA, T and Ditch 1 and Ditch 2 convey flow directly into the stormwater pipe.

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **1 (or less)** river miles from TNW.

Project wetlands are **1 (or less)** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

⁷Ibid.

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width): For Wetlands R, TA and T the vegetated upland buffers vary from 10-30 wide depending on location.

☒ Vegetation type/percent cover. Explain: Wetlands are 100% vegetated with emergent, shrub and forest communities. Ditches 1 and Ditch 2 have a vegetated fringe and are included in the wetland area calculation.

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **5** (This section includes Ditch 1 and Ditch 2)

Approximately (8.39) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland R (N)	5.31		
Wetland TA (N)	2.10		
Wetland T (N)	0.83		
Ditch 1 (N)	0.12		
Ditch 2 (N)	0.03		

Summarize overall biological, chemical and physical functions being performed: See Section C below.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: N/A.
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

Wetlands R, TA, T and Ditch 1 and Ditch 2 flow into a non-RPW (i.e., underground stormwater pipe) that flows approximately 2,000 feet and directly into a TNW (Multnomah Channel). The site has been altered due to industrial use. The paper mill at the site began operations in 1926 and the site has been subject to further development since that time. The wastewater treatment

lagoon located to the north and outside the Review Area was constructed in the 1970's and further altered how water from the site is conveyed to the Multnomah Channel. The underground stormwater pipe provides the connection, but the stormwater pipe is not evaluated as a water of the United States "tributary" in this determination. The underground stormwater pipe is not a channelized stream, based on a review of historic topographic maps. The location of the underground pipe and its discharge location to the Multnomah Channel is illustrated on Figure 3 and Figure 6 of the Stormwater Pollution Control Plan dated December 28, 2017.

Wetlands R and TA were mapped as separate wetlands due to an existing gravel road that bifurcates the wetlands. The Wetland Report states the gravel road is at grade so it does not form a complete barrier to wetland hydrology. The lowest grade level of the road is in the central portion of the wetlands and wetland vegetation (*Phalaris arundinacea*) grows within and across the road. Wetlands R and TA contain forest, shrub and emergent wetland communities. Water from Wetlands R and TA flows south under a road through a 48-inch culvert into Wetland T.

Wetland T contains forested and emergent wetland communities. Water in Wetland T flows south through the wetland in an approximately 5-foot wide channel. At the southern end of Wetland T water flows into a 24-inch culvert, which flows into the underground stormwater pipe system, which discharges to the Multnomah Channel.

Ditch 1 is an open segment of ditch that flows south under a road through a 48-inch culvert into Ditch 2. Ditch 2 is an open segment of ditch that flows south into the underground stormwater pipe system, which then discharges to the Multnomah Channel.

Wetlands R, TA, T, Ditch 1 and Ditch 2 receive overland flow from the surrounding area including from the residential area located to the north and outside of the Review Area. The volume and duration of flow from these aquatic resources, via the stormwater pipe is unknown, but water was observed flowing rapidly through Ditch 1 on the day of the Corps site visit. Thus, the wetlands and Ditch 1 and Ditch 2 contribute physical flow to the TNW.

A wetland functional assessment was not submitted with the jurisdictional determination request. However, based on the wetland type and position in the landscape, the wetlands and ditches 1 and 2 (ditches include a vegetated fringe) provide functions that effect the TNW. The wetlands provide hydrologic functions to include water storage and delay, sediment trapping, and retention of pollutants. Due to the elevation of the outlets, the wetlands and Ditch 1 and Ditch 2 pond and retain water and trap sediments prior to the water entering the TNW. The surrounding land use of the park to the east, the residential area to the north and the industrial area on-site provide runoff into the wetlands and ditches and provide a source of pollutants. The vegetated wetlands and ditches provide functions to trap and sequester pollutants in the runoff prior to the water entering the TNW. Due to the length of the stormwater pipe system from the TNW to the wetlands and ditches, it is unlikely the wetlands and ditches provide direct habitat functions (nesting, spawning, rearing) for species present in the TNW. However, the wetlands and ditches provide food web support by transferring nutrients and organic carbon to the TNW. The wetlands would also provide habitat support to the TNW by water cooling (shade) within the wetlands.

Wetlands R, TA, T and Ditch 1 and Ditch 2 have more than an insubstantial effect on the chemical, physical and/or biological integrity of a TNW and thus have a significant nexus with a TNW.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: N/A.

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

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
☐ TNWs: linear feet width (ft), Or, acres.
☒ Wetlands adjacent to TNWs: Wetland X and Wetland Y, Total: 1.60 acres.
2. **RPWs that flow directly or indirectly into TNWs.**
☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Milton Creek - Milton Creek has a drainage area of approximately 21,500 acres. The western boundary of the Review Area is the tax parcel line. The parcel line is generally located in the center of the creek, as a result approximately half of the creek width is located within the Review Area. The entire width of the creek in this vicinity is approximately 25 feet. Milton Creek within the Review Area is the lower portion of the watershed. From the Review Area, Milton Creek flow approximately 3,500 before discharging into the Multnomah Channel.
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

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: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- ☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: Wetlands R, TA, T, Ditch 1, Ditch 2; 8.39 acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
- ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):¹⁰

- ☐ 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: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior 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.

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 (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: Wetlands B, C, D, E, F, G, S, Q, U, V, W, Ditch 3, Ditch 4, Stormwater Pond.

Wetlands B, Wetland C, Ditch 3 and Ditch 4: Based on available information, these aquatic resources are connected to each other, but are isolated waters and do not have a surface water connection to a water of the United States. Ditch 3 is a ditch/wetland area in the central part of the Review Area. The ditch flows into a catch basin which appears to then flow through a culvert south under a parking area (this conveyance is not mapped in the Stormwater Plan for the site) into Wetland B. Water from Wetland B flows through a culvert under a road and into Wetland C. Water flows from Wetland C into Ditch 4, which flows to the south. An additional wetland identified as Wetland A is located south of Ditch 3 (Wetland A is outside the Review Area and not subject to this Approved Jurisdictional Determination). The Wetland Report states that Ditch 3 continues into an area vegetated with Himalayan blackberry and a defined ditch or drainage is no longer visible. The Wetland Report states the ditch appears to flatten out and may go subsurface and states that a surface connection downslope to Wetland A was not apparent. A surface connection was also not observed during the Corps site visit.

Wetlands D, E, F, and G: These wetlands are located in the northern portion of the review area. The wetlands are generally defined by bed rock that is near the ground surface. These wetlands do not have defined inlets or outlets. These wetlands do not have indicators of surface flow connections (e.g., sheet flow) to other wetlands.

Wetland S: This is a small wetland located approximately 50 feet from Milton Creek. The wetland is located in a rock outcrop formation above the creek. The wetland does not have a defined outlet to the creek and the wetland is outside the 100-year floodplain of the creek. Upland vegetation is growing in the area between the wetland and the creek. Due to the bedrock substrate, there is no evidence of a shallow subsurface hydrological connection between Wetland S and the creek. As a result, Wetland S does not meet the definition of adjacent to Milton Creek.

Wetland Q: This is a small crescent shaped wetland located in the northeast portion of the Review Area in the mowed portion of the park. The wetland does not have a surface water connection to Wetland R to the north or to any upland ditches along Kaster Road.

Wetland V and Stormwater Pond: This wetland and aquatic resource are located in the central portion of the Review Area. The Wetland Report describes Wetland V as potentially a bioswale associated with the neighboring building and parking area. The Wetland Report states an inlet or outlet was not observed in Wetland V. The aquatic resource labeled Stormwater pond is located west of Wetland V and is a linear depressional area. A surface inlet or outlet from the Stormwater Pond was not observed during the Corps site visit.

Wetland U: This is a small segment of open ditch/wetland in the northwest portion of the Review Area. The Stormwater Plan indicate this area drains to the north into Wetland W. The inlet to Wetland U at the south is a 48-inch culvert with a steel floodgate. The outlet is a 48-inch culvert which conveys flow under a road and into Wetland W.

Wetland W: This is a 2.84-acre wetland located in the northwest portion of the Review Area. The Wetland Report states Wetland W has a culvert inlet that receives water from the residential development located offsite to the north. Water flows southwest through the wetland to a man-made berm that forms the southern boundary of the wetland. The berm has several small culverts, but the Wetland Report states that it is unknown if the wetland flows into the adjacent City sewage lagoon or elsewhere. Wetland W is located in Quadrant 1 of the Stormwater Plan for the site, but the Stormwater Plan does not describe if Wetland W contributes flow into the City sewage lagoon. Based on the pipes though the berm at the southern boundary of Wetland W it appears an unknown amount of water flows (i.e., non-RPW flow) from Wetland W into the City sewage lagoon.

The City of St. Helens website states the wastewater treatment process at its facility consists of two lagoons. When waste enters the plant, it is screened and enters a smaller 3 acre lagoon for primary treatment. After that, it is disinfected and flows into a larger 40 acre lagoon. Here, it mixes with the waste from the Boise Paper Mill. After the secondary treatment, it is discharged into the Columbia River. The typical wastewater flows to the river are between 6 and 10 million gallons per day (<https://www.ci-st-helens.or.us/wwt>). The city sewage lagoon is located outside the Review Area. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act are not waters of the United States. Thus, Wetland W contributes its flow to a non-water of the United States. A non-water of the United States can serve as the surface water connection

to a TNW, but in this case a significant nexus would be required. Wetland U and Wetland W would provide similar wetland functions as described for Wetlands R, TA and T above. However, the processing of the water from Wetland U and Wetland W in the sewage lagoon precludes the chemical and biological wetland functions provided by Wetland U and Wetland W from reaching a TNW. Wetland U and Wetland W do not have more than an insubstantial effect on the chemical, physical and/or biological integrity of a TNW and thus do not have a significant nexus with a TNW.

Wetlands B, C, D, E, F, G, S, Q, U, V, W, Ditch 3, Ditch 4, and the Stormwater Pond are isolated waters that lack an interstate or foreign commerce connection. The majority of the Review Area is not accessible to the public and the waters are not used in or for aquaculture, agriculture or silviculture. The site is an industrial property with a paper mill, but there is no indication that water from the aquatic resources within the Review Area is withdrawn for industrial use. The wetlands within the public park portion of the site (Wetland Q, Wetland R) could be used for recreation, but there is no indication a fee is charged for use of the wetlands that would result in commerce resulting from interstate or foreign travelers for recreational purposes.

☐ 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): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 3.99 acres (Wetlands B, C, D, E, F, G, S, Q, U, V, and W).

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): Ditch 3, Ditch 4 and Stormwater Pond. Total: 0.11 acres linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: Wetlands B, C, D, E, F, G, S, Q, U, V, and W. Total: 4.10 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: Drawings RIVISION Date 11/12/2019.
☒ 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: Navigable Riverways Within The State of Oregon list.
☐ 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: .
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☐ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☒ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): .
☐ 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): Stormwter Pollution Control Plan City of St. Helens Mill dated December 28, 2017.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Table 1				
Aquatic Resource in Review Area	Size In Acres In Review Area*	Waters of the U.S.	Significance Nexus	Determination
Milton Creek	Acres Not Assessed Approx. length 2,690 ft	Yes	NA (RPW)	Field
Wetland B	0.02 (982.69 sq. ft.)	No	No (Isolated)	Field
Wetland C	0.01 (539.89 sq. ft.)	No	No (Isolated)	Field
Wetland D	0.05 (2,349.12 sq. ft.)	No	No (Isolated)	Field
Wetland E	0.01 (614.93 sq. ft.)	No	No (Isolated)	Field
Wetland F	0.72	No	No (Isolated)	Field
Wetland G	0.19	No	No (Isolated)	Field
Wetland R	5.31	Yes	Yes (Direct flow to TNW)	Field
Wetland TA	2.10	Yes	Yes (Direct flow to TNW)	Field
Wetland T	0.83	Yes	Yes (Direct flow to TNW)	Field
Wetland S	0.05 (2,128.06 sq. ft.)	No	No (Isolated)	Field
Wetland Q	0.05 (2,287.69 sq. ft.)	No	No (Isolated)	Field
Wetland U	0.006 (248 sq. ft.)	No	No (Isolated)	Field
Wetland V	0.04 (1,886.93 sq. ft.)	No	No (Isolated)	Field
Wetland W	2.84	No	No (Isolated)	Field
Wetland X	1.48	Yes	NA (Adj. to TNW)	Office
Wetland Y	0.12	Yes	NA (Adj. to TNW)	Field
Ditch 1	0.12	Yes	Yes (Direct flow to TNW)	Field
Ditch 2	0.03 (1,261 sq. ft.)	Yes	Yes (Direct flow to TNW)	Field
Ditch 3	0.05 (1,977 sq. ft.)	No	No (Isolated)	Field
Ditch 4	Approx. length 60 ft. Approx. area 0.003 (120 sq. ft.)	No	No (Isolated)	Field
Stormwater Pond	0.06 (2,816.14 sq. ft.)	No	No (Isolated)	Field
*Aquatic resources that were only listed on drawing in square feet were converted to acres.				