

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): February 24, 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWP-2021-384

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Jackson City: Medford
Center coordinates of site (lat/long in degree decimal format): Lat. 42.336034° **N**, Long. -122.816245° **W**.

Universal Transverse Mercator:

Name of nearest waterbody: Lazy Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Larson Creek - Bear Creek (171003080110)

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: XX

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 and are not** "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 Waterway 1 (Lazy Creek) is 0.31 acre. Waterway 2 is 0.13 ac.

Waterway 4 is 0.04 ac. The total amount of non-wetland waters of the U.S. in the Review Area is 0.48 acre.

Wetlands: Wetland 4 is 0.11 acre. Wetland 6 is 0.20 acre. Wetland 8 is 0.02 acre. The total amount of wetlands is 0.33 acre.

c. Limits (boundaries) of jurisdiction based on: **Established by OHWM.**

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: **Waterway 3 and Wetlands 1, 2, 3, 5, and 7 are non-jurisdictional waters. See Section F for additional details.**

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: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

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

(i) General Area Conditions:

Watershed size: 55square miles
Drainage area: 15 square miles
Average annual rainfall: 19 inches
Average annual snowfall: 6 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary (Waterway 2) flows through 5 tributaries before entering TNW. Waterway 4 flows through 5 tributaries

before entering TNW. The information below applies to both waterways.

Project waters are 10-15 river miles from TNW.

Project waters are 2-5 river miles from RPW.

Project waters are 5-10 aerial (straight) miles from TNW.

Project waters are 1-2 aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

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

Identify flow route to TNW⁵: Waterway 2 is contained in a subsurface pipe. At the location where Waterway 2 exits the pipe, there is an incised channel that supports a palustrine scrub-shrub (PSS) wetland (Wetland 6). Surface water from Waterway 2 and Wetland 6 flows directly into the Medford Irrigation Canal (MIC) via an outfall. Waterway 4 also flows directly into the MIC.

The MIC ultimately drains into the Rogue River which is TNW. From its' source, the MIC flows past the L & S rock pit in Eagle Point, Oregon and enters the Review Area. Downstream from the Review Area, the canal flows through a subsurface pipe beneath Interstate-5 near Colver Road Park in Phoenix, Oregon. The MIC then enters the Phoenix Canal. The Medford Irrigation District (MID) Water Supply Explorer tool shows that the Phoenix Canal terminates near Old Military Road and Star Lane in Central Point, Oregon. Esri topographic maps obtained from the Corps' Portland District Regulatory Web Map Application, and the USGS National Hydrography Dataset (NHD) (obtained from the Oregon Explorer) show a continuation of the canal as an unnamed blue line stream. These maps depict a subsurface connection between the end of the canal and Dean Creek. Dean Creek flows to the north where it enters Jackson Creek, Bear Creek, and ultimately the Rogue River.

Tributary stream order, if known: Unknown.

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

Tributary is: Natural: Waterway 4 is a natural tributary.
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain: Waterway 2 is an intermittent stream that was piped and

buried within the five years prior to the wetland delineation survey. Survey data prior to piping the stream is not available and the size of the pipe is unknown.

Tributary properties with respect to top of bank (estimate):

Average width: Unknown. Waterway 4's active channel is 3 feet wide and the lateral extents are defined by the ordinary high water marks (OHWMs). For Waterway 2, these measurements are unknown because water is contained in a pipe. Where Waterway 2 transitions to Wetland 6, there is PSS vegetation, hydric soils, and wetland hydrology above and below the OHWMs. As such, this feature was mapped as a wetland and not an open water feature.

Average depth: 3 feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: The downstream end of Waterway 2 transitions to Wetland

6 and supports roughly 75 percent cover of PSS vegetation. Waterway 4 has a riparian corridor consisting of roughly 75 percent cover of shrubs and mature trees.

Other. Explain:.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Stable with little potential for erosion

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

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 10%

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Waterway 2 was piped and buried underground during the five years prior to the delineation survey. Waterway 2 is shown as an intermittent stream in the NHD and National Wetlands Inventory (NWI) . USGS topographic maps show Waterway 2 as a dotted blue line which represents a seasonal flow regime. Waterway 4 is shown as a dotted blue line on USGS topographic maps which represents a seasonal flow regime. The delineator observed surface water in the channel of Waterway 4 and OHWM field indicators during the wetland delineation survey which was conducted on various days in May 2022. In addition,

The Medford, Oregon region receives rainfall on an average of 96 days per year (Oregon State University 2022).

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics: The lateral limits of Waterway 4 are visually apparent and defined by the OHWM. Flow is restricted within the bed and banks. Surface flow within Waterway 2 is confined in the piped section.

Subsurface flow: **No**. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply): See below for Waterway 4 (only)

Bed and banks

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.

- OHWM⁶ (check all indicators that apply):
- | | |
|---|--|
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input checked="" type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input checked="" type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> 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):

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

(iii) Chemical Characteristics:

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

Explain: Water quality in the Review Area is affected by management practices of the surrounding agricultural land.

However, details regarding management are unknown.

Identify specific pollutants, if known: Unknown.

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): Waterway 4 has a riparian corridor that is between 20 and 50 feet wide.
- Wetland fringe. Characteristics: See the descriptions above in this section regarding the transition from the piped section of Waterway 2 to Wetland 6.
- Habitat for:
- Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings: The diversity of aquatic and terrestrial life in Waterway 4 is affected by

the surrounding landscape being manipulated for agricultural purposes over the last 50 years or more. Open land in the Review Area would serve as refugia for nesting birds, mammals (e.g., foxes and coyotes), rodents, reptiles, amphibians, and insects. However, it is unknown whether or not there are management practices that deter or exclude wildlife from utilizing the Review Area. Due to the presence of shrubs where Waterway 2 transitions to Wetland 6, this area would provide habitat for nesting birds, songbirds, and other arboreal wildlife. Due to the seasonal presence of surface water, Waterway 4 would also provide a reliable water source for other terrestrial wildlife.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics: Wetland 6 is described below in Sections D2 and D4 because it directly abuts the MIC, which is a perennial waterway. This section describes the characteristics of Wetland 4 and Wetland 8.

Wetland 4 flows outside the Review Area through a culvert pipe under Foothill Road. Google Earth aerial imagery shows a well saturated area and an incised channel containing surface water where Wetland 4 continues offsite to the northwest. The NWI has mapped a continuous linear feature from Wetland 4 to Lone Pine Creek with riverine sections with intermittent flow, and palustrine emergent and forested sections. While the areas outside the Review Area were not surveyed in the field, review of online mapping information, including the NHD indicates that there is a continuous stream channel from Wetland 4 all the way to Lone Pine Creek. In addition, USGS topographic maps from 2022 shows that Wetland 4 flows directly to unnamed, blue line stream that is mapped with sections of seasonal and permanent flow extending all the way to Lone Pine Creek. From there, water flows into Bear Creek near Table Rock Road and Airport Road in Medford, Oregon. Bear Creek flows into the Rogue River which is a TNW.

Properties:

Wetland size: Wetland 4 is 0.11 acre

Wetland type. Explain: PEM.

Wetland quality. Explain: The hydrological sources for Wetland 4 are precipitation and runoff from the surrounding agricultural lands. Wetland quality in the Review Area is affected by farming practices in the Review Area. However, details regarding

⁶A 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.

⁷Ibid.

management are unknown. Due to the presence of hydrophytic vegetation, Wetland 4 has the ability to filter pollutants out of surface water and the groundwater table.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow (Wetland 4)**. Explain: See Section B2(a) above for a description of the flow relationship from Wetland 4 to the Rogue River.

Surface flow is: **Discrete**.

Characteristics: Flow is discrete because the lateral limits of Wetland 4 are visually apparent and can be defined from the adjacent uplands with the wetland delineation methods outlined in the Corps' 1987 manual.

Subsurface flow: **No**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: See Section B2(a).

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW. Project waters are **10-15** river 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: The chemical characteristics of Wetland 4 are affected by the surrounding landscape being manipulated for agricultural purposes over the last 50 years or more. However, specific farming practices are unknown.

Due to the high cover of hydrophytic vegetation, Wetland 4 reduces toxic chemicals in surface water and the groundwater table.

Identify specific pollutants, if known: Unknown.

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

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The diversity of aquatic and terrestrial life in Wetland 4 is affected by the surrounding landscape being manipulated for agricultural purposes over the last 50 years or more. Open land in the Review Area would serve as refugia for nesting birds, mammals (e.g., foxes and coyotes), rodents, reptiles, amphibians, and insects. However, it is unknown whether or not there are management practices that deter or exclude wildlife from utilizing the Review Area. Due to the presence of surface water, Wetland 4 would also provide a water source for other terrestrial wildlife.

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

All wetland(s) being considered in the cumulative analysis: **1**

Approximately (0.11) 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 4 (N)	0.11		

Summarize overall biological, chemical and physical functions being performed: See descriptions above in Section B2, and below in Section C3.

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:
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:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Wetland 4 has a direct, hydrologic connection to Lone Pine Creek, Bear Creek, and the Rogue River via surface water and subsurface pipes. This allows pollutants from stormwater runoff and agricultural land management practices to be carried from Wetland 4 to the Rogue River. Wetland 4 removes nutrients (and pollutants) in downstream waters as a result of uptake by hydrophytic vegetation. Wetland 4 directly contributes water to the Rogue River which is critical habitat for Southern California/Northern California coho salmon, which is a species protected by the ESA. As a result, Wetland 4 influences the lifecycle and suitability of habitat the species. The Corps determined that Wetland 4 has a significant biological, chemical, and physical connection to a downstream TNW.

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: 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: Waterway 1 (Lazy Creek) is shown as a solid blue line (perennial) stream on USGS topographic maps, NHD, and NWI. Surface water is apparent in the waterway during dry season Google Earth aerial imagery from 1994-2020. The delineator observed surface water in the channel and OHWM field indicators during the wetland delineation survey which

was conducted on various days in March 2021. Lazy Creek flows into Bear Creek, which then empties into the Rogue River which is a TNW.

The Medford Irrigation District controls water levels in the MIC. During the dry season, the canal is filled with irrigation water that is diverted from Fish Lake, Fourmile Lake, North Fork Little Butte Creek, and South Fork Little Butte Creek upstream of the Review Area. Water is also supplemented from Emigrant Lake at times. The description of the flow path from the MIC to the Rogue River is described above in Section B1. Irrigation ditches that receive water from a water of the U.S. and reconnect downstream to a water of the U.S. may be jurisdictional, even if the ditch was constructed in dryland. In addition, the Corps may consider ditches jurisdictional if they are RPWs. The conclusion of this determination is that the MIC meets the definition of a tributary outlined in 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 and is a water of the U.S.

- 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: Waterways 2 and 4 are RPWs with surface water flow for at least three consecutive months annually. See Section B1 for a description of the flow regime.

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

Tributary waters: linear feet width (ft).

Other non-wetland waters: **1.650** acres.

Identify type(s) of waters: **Waterways 1, 2, and 4, and the Medford Irrigation Canal are RPWs.**

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:

Wetland 6 directly abuts the MIC. The delineator observed surface water flowing from the wetland into the canal during the May 2022 wetland delineation survey See Section B1 for additional details regarding Wetland 6.

- 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: **Wetland 6 is directly abutting a RPW and is 0.20** acre.

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.

Wetland 4 is adjacent to Lone Pine Creek. Wetland 8 is adjacent to the MIC. See Section 3C above for the significant nexus determination.

Provide acreage estimates for jurisdictional wetlands in the review area: **Wetland 4 is 0.11 acre and Wetland 6 is 0.20** 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.

⁸See Footnote # 3.

Provide estimates for jurisdictional wetlands in the review area: _____ 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: _____

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

- Tributary waters: _____ linear feet _____ width (ft).
- Other non-wetland waters: _____ acres.
- Wetlands: _____ acres.

Identify type(s) of waters: _____

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: _____

Wetland 1 is a PEM wetland that occurs within a slightly incised channel. The hydrological sources for Wetland 1 are incidental precipitation and irrigation runoff from the surrounding agricultural lands. The wetland's downstream end terminates at a subsurface pipe which is at the edge of the property (Tax Lot 501) that is currently managed as agricultural land with row crops. The channel (Waterway 3) flows out of Tax Lot 500 on to the neighboring property (Tax Lot 1400, which is within the boundaries of the Review Area). Historically, this property was also actively managed as an orchard or tree farm until 2010 which is evident in historic aerial imagery available on Google Earth. After 2010, the property was taken out of cultivation and irrigation practices ceased. The removal of this hydrological input has caused the downstream end of the channel to become drier than its' historical state. The channel incision is evident in Oregon Department of Geology and Mineral Industries LiDar imagery, but the Corps determined it does not exhibit signatures of inundation in the early spring months in historic aerial imagery between 2010 and 2021 available on Google Earth. In addition, the wetland delineator collected eight sample points in the downstream end of the channel during their site visits in the wet season in March 2021, February 2022, and March 2022. All of these sample plots lacked hydrology indicators at the time of the survey with the exception of two points that qualified as a wetland (Wetland 7).

Wetland 7 is a PEM wetland. The hydrological sources for Wetland 1 are incidental precipitation and irrigation runoff from the surrounding agricultural lands. Areas of the channel between Waterway 3 and Wetland 7, and downslope of Wetland 7 are mapped as uplands. Wetland 7 is approximately 290 feet from the MIC. While this area has somewhat poorly drained Coker Clay soil, surface water would still percolate vertically to the groundwater table. Since a hardpan layer is absent, water would not move horizontally through the soil as subsurface flow for a distance of 290 feet.

The lack of surface or subsurface water connection between the MIC and Wetland 1, Waterway 3, and Wetland 7 would also prevent the migration of chemicals into the canal from the upslope aquatic features by any means aside from through the groundwater table. Wetlands 1 and 7, and Waterway 3 are ephemeral features that are only inundated during and

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

¹⁰ 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.

immediately following precipitation events. In addition, the ephemeral features do not provide a reliable water source. The Corps determined that Wetlands 1 and 7, and Waterway 3 are isolated waters.

Wetland 2 is a PEM wetland located approximately 450 feet upslope of Waterway 1 (Lazy Creek). The hydrological sources for Wetland 2 are incidental precipitation and runoff from the surrounding agricultural lands. The area between Wetland 2 and Waterway 1 is upland habitat that is underlain by Carney Clay soil, which is moderately well drained. Surface water would percolate vertically to the groundwater table and would not move horizontally through the soil as subsurface flow for a distance of 450 feet. As such, there is no hydrologic connection between the two features and chemicals would not migrate from the wetland to the waterway. In addition, structures and a driveway are located in between Wetland 2 and this would impede subsurface water movement. Wetland 2 is located outside the Zone A floodplain mapped by the Federal Emergency Management Agency (FEMA) along Waterway 1, and there would be no water movement from Lazy Creek to the wetland in high precipitation events. Wildlife would not utilize Wetland 2 due to its' small size (less than 0.01 acre). In addition, it does not exhibit signatures of inundation in historic aerial imagery between 1994 and 2021 available on Google Earth, and the Corps determined the wetland is an ephemeral feature that ponds only during and immediately following precipitation events. Wetland 2 also does not provide a reliable water source for wildlife due to its' hydroperiod. The Corps determined that Wetland 2 is an isolated water.

Wetland 3 is a PEM wetland located approximately 1,240 feet upslope of the MIC which is the closest waterway to the feature. It is located directly above the underground pipe that contains Waterway 2. The area in between the canal and Wetland 3 is upland habitat and is also underlain by Carney Clay soil. As mentioned above, this soil type would not allow for horizontal subsurface flow. Wildlife would not utilize Wetland 3 due to its' small size (less than 0.01 acre). In addition, it does not exhibit signatures of inundation in historic aerial imagery between 1994 and 2021 available on Google Earth, and the Corps determined the wetland is an ephemeral feature that ponds only during and immediately following precipitation events. The Corps determined that Wetland 3 is an isolated water.

Wetland 5 is a PEM wetland that directly abuts Pond 1. It is downslope from the MIC and a mounded area is located between Wetland 5 and the canal. The hydrological sources for the pond are incidental precipitation, runoff from the surrounding area, and water in the MIC which is conveyed to the pond via a pipe. The delineator identified two water control structures; one which conveys water from the MIC to the pond, and the other which allows water to be drained from the pond via a pipe that empties to the agricultural field to the east. The discharge location is in uplands, downslope from Waterway 4. There is no hydrologic or chemical connection between Wetland 5 and Waterway 4. Since both water control structures can be closed, the water level in the pond has not exceeded the top of bank. Both the pond and MIC are periodically cleared of vegetation, which would disturb and harm wildlife utilizing those features. While the pond and MIC provide water sources for wildlife, there are numerous other perennial wetlands and waterways in the vicinity of the Review Area that are unaltered and accessible. Wetland 5 does not provide substantial habitat and lifecycle support functions (feeding, nesting, spawning, or rearing young) for species that are present in the area. The Corps determined that Wetland 5 is an isolated water.

Wetland 8 is a PEM wetland. Wetland 8 is situated 50 to 100 feet from the MIC. It is separated from the MIC by mounded area at the canal's top of bank. After reviewing historic aerial imagery in Google Earth, there is no evidence to indicate the mound was created by discharging fill along the top of bank. The wetland slopes away from the canal toward an access road, and there is no hydrologic or chemical connection between Wetland 8 and the MIC. The vegetation had been disturbed by a vehicle or equipment at the time of the delineation survey. Wildlife would not rely on Wetland 3 for habitat or breeding due to its' small size (0.02 acre), close proximity to the access road, and seasonal hydroperiod. The Corps determined that Wetland 8 is an isolated water.

Other: (explain, if not covered above): Pond 1 was excavated in uplands in the 1990s which is evident in historical aerial imagery from 1994-2020 available in Google Earth. The pond is used for irrigation and its' water levels are controlled. The hydrological sources for the pond are incidental precipitation, runoff from the surrounding area, and water in the MIC. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 states that jurisdictional lakes do not include artificial ponds excavated in dryland that are solely used for the purpose of irrigation.

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: 2.18 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 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): 75 linear feet, 3 width (ft).
- Lakes/ponds: 2.18 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 0.08 acre.

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: Schott & Associates. 2021. Jurisdictional Wetland Delineation.
- 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 Topoview. Medford, 2020,1:24k. (<https://ngmdb.usgs.gov/topoview/viewer/>)
Portland District Regulatory Web Map Application & Oregon Rapid Wetland Assessment Protocol Viewer
(https://tools.oregonexplorer.info/OE_HtmlViewer/Index.html?viewer=orwap_sfam).
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps: Portland District Regulatory Web Map Application
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: Schott & Associates. 2021. Jurisdictional Wetland Delineation.
- National wetlands inventory map(s). Cite name: Schott & Associates. 2021. Jurisdictional Wetland Delineation.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps FEMA Floodplain Maps (<https://msc.fema.gov/>).
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro (Software Version 7.3.3.7786). 1994-2021.
or Other (Name & Date): Schott & Associates. 2021. Jurisdictional Wetland Delineation. Ground level photographs.
- .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): LiDar Imagery. Portland District Regulatory Web Map Application.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Coordination with Corps' Headquarters was completed on February 8, 2023.
Coordination with the EPA was completed on February 21, 2023.