

**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): 6 March 2020**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-OD-GE, Back Nine Development LLC., NWP-2004-883-3**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Oregon County/parish/borough: Douglas City: Winchester  
Center coordinates of site (lat/long in degree decimal format): Lat. 43.298553° N, Long. 123.354036° W.  
Universal Transverse Mercator:

Name of nearest waterbody: North Umpqua River

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

Name of watershed or Hydrologic Unit Code (HUC): 171003011105, North Umpqua River

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: 6 March 2020

Field Determination. Date(s): 15 January 2020

**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):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (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: 3,884 linear feet: width (ft) and/or 0.18 acres.

Wetlands: 12.31 acres.

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

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: .

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

<sup>3</sup> 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: The Umpqua River is a TNW from the Pacific Ocean upstream to the South Umpqua River at river mile (RM) 122.2 which has been described as the bridge located at the Interstate 5 bridge crossing in Roseburg, Oregon. The North Umpqua River flows into the South Umpqua River at approximate RM 103. An unnamed tributary flows into the North Umpqua near RM 5. This tributary collects flows from smaller tributaries originating east of Interstate 5, which then pass through the review area. The review area is composed of 9.88 acres of restored, enhanced and created palustrine wetland developed as compensatory mitigation for NWP-2004-883 a Department of Army permit on 17 February 2006 and modified on 7 August 2006.**

Summarize rationale supporting determination: The review area is 1.51 acre of wetland and 0.65 acre of wetland buffer within a 9.88 acre compensatory wetland mitigation site composed of 6.32 acres of enhanced wetland, 1.64 acres of restored wetland and 2.23 acres of wetland buffer. The 9.88 acre compensatory mitigation wetland and buffer, along with a contiguous 4.35 unallocated wetland are abutting and connected to tributaries with observable bed and banks, as seen on aerial imagery, leading to the North Umpqua River. Water leaves the review area and travels west through shallow channels, which pass through culverts and a pond, ultimately reaching the North Umpqua River. In addition to the channels, the water also reaches abutting inundated and saturated soils as well as surface features such as depressions, hummocky vegetation, and subtle drainage patterns in grassy areas. The water flows from the review area in a northwesterly direction through multiple properties until crossing under Del Rio Road at Julina Lane near Latitude/Longitude 42.298047, -123.371148.

Flows within the review area originate from long-term channels visible from 1957 to the present east of Interstate 5. Water from these channels flow under the Interstate through culverts and travels north along an unnamed channel parallel with Interstate 5 until turning west. From there, a combination of shallow channels and inundated soils follow the south side rail line development (just north of the project site) until they reach culverts underneath the rail system through which the flows discharge to the north under the rail line. The portion of the wetland in the review area is a triangular extension of a larger compensatory wetland mitigation site pointing south with an arm extending west. Water flows through a depressional area in the wetland on the north side of the triangle east into the shallow channels and into the culverts under the rail line. In addition, there are culverts at the very western corner of the wetland into which water flows from the wetland and under the rail line. Flow from all of these culverts follow observable off-site channels which consolidate then enter a pond before exiting in a channel and into North Fork Umpqua River near river mile (RM) 5. The terminal channel outlet is upstream of the USGS gauging station No. 14319500. At river mile 0, the North Fork Umpqua enters the mainstem Umpqua River just downstream of RM 103. The main stem Umpqua River is a Traditional Navigable Water to RM 122.2.

##### **2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": A series of tributaries originating east of Interstate 5 passes through the 9.88 acre constructed, enhance and restored wetland and buffer area of which Lot 20 is described as 1.51 acres of wetland and 0.65 acres of credited wetland buffer. The overall wetland abuts the tributary and under inundated conditions is a lateral extension of the stream's flows. The stream continues off-site through the flow path described in B.1.ii below to the TNW.

#### **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 waterbody<sup>4</sup> 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: 15,768 acres  
 Drainage area: Unknown  
 Average annual rainfall: 35.8 inches  
 Average annual snowfall: 0 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 2-5 river miles from TNW.  
 Project waters are 1 or less river miles from RPW.  
 Project waters are 2-5 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:

Identify flow route to TNW<sup>5</sup>: From the 12.31 acre wetland which includes the 1.51 acre wetland area identified in Lot 20, culverts under the rail system direct flows into two channels described in A.1. summary above and travel approximately 400 straight line feet downslope, joining together just before reaching an approximate 1.5 acre pond at Latitude/Longitude 43.298219, -123.362995. The channels exit the pond at Latitude/Longitude 43.297905, -123.363998. The channel then travels west to Del Rio Road, then northwest parallel with Del Rio Road on the north side of the road approximately 680 linear feet before crossing under the road north of the southern entrance to Julina Lane near Latitude/Longitude 42.298047, -123.371148. From there, the channel travels approximately 400 linear feet and into North Fork Umpqua River near river mile (RM) 5. The channel outlet is upstream of the USGS gauging station No. 14319500. At river mile 0, the North Fork Umpqua enters the mainstem Umpqua River just downstream of Umpqua River RM 103. The main stem Umpqua River is a Traditional Navigable Water to RM 122.2.

Tributary stream order, if known: First Order.

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

**Tributary is:**  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: The channel west of I-5, which flows through the compensatory mitigation wetland, has been modified over time to conform to the configuration of the Central Oregon Pacific Railroad (COPR) and the current and former landowners of the surrounding areass. The historic channel is largely intact although the routing of streams into and out of the former log pond (now filled under a previous authorization) now appear to pass through the wetland mitigation site and under the rail system. The channel within the compensatory wetland mitigation site, which includes the subject of this determination is largely intact and in its historic location but for some modification around the COPR materials yard. The least manipulated components of the entire length of the channel from the headwaters to the North Umpqua River occur off-site both east of the site on the east side of Hwy 99 and north of the site on property between the COPR system and the off-site 1.5 acre pond to the northwest of the review area (into which the stream flows).

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

Average width: 2 feet  
 Average depth: 2 feet  
 Average side slopes: **2:1**.

**Primary tributary substrate composition (check all that apply):**

- Silts
- Sands
- Concrete
- Cobbles
- Gravel
- Muck
- Bedrock
- Vegetation. Type/% cover:
- Other. Explain: The tributary substrate through the review area is a combination of wetland vegetation and muck.

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

<sup>5</sup> 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.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: There were no observations of instability on 15 January 2020. Review of the Oregon Department of Geology and Mineral Industries HazVu application indicates the area under consideration is rated low for landslide hazard.

Presence of run/riffle/pool complexes. Explain: There are no obvious run/riffle complexes.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1 %

(c) **Flow:**

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: 6-10

Describe flow regime: The channel mirrors the hydrologic year for the area with rains beginning in November, peaking in March and tapering off into early May.

Other information on duration and volume: Based on the NRCS WETS tables for the project area, there are a minimum of one precipitation event monthly for nine months of each year between 1952 and 2019. Annual average precipitation per year ranged from a low of 20.7 inches per year in 1976 to a high of 61.8 inches per year in 1996. Based on the WETS table, it is not uncommon for some amount of precipitation to occur every month.

Surface flow is: Discrete and confined. Characteristics: The channel abutting the wetland has a distinct geometry, however, as the soil is inundated to saturated, water occurs over the bank of the channel.

Subsurface flow: No.. Explain findings: Flows entering the site and leaving the site were directly observed. Flows through the wetland resulted in inundation and soil saturation .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

clear, natural line impressed on the bank

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.<sup>7</sup> Explain: .

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

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

High Tide Line indicated by:

oil or scum line along shore objects

fine shell or debris deposits (foreshore)

physical markings/characteristics

tidal gauges

other (list):

Mean High Water Mark indicated by:

survey to available datum;

physical markings;

vegetation lines/changes in vegetation types.

**(iii) Chemical Characteristics:**

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

Explain: .

Identify specific pollutants, if known: .

<sup>6</sup>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.

<sup>7</sup>Ibid.

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

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: The channel abuts wetland through the review area. Elsewhere, aerial photos and soil survey data supports the premise that the channel runs entirely through wetland.
- Habitat for:
  - Federally Listed species. Explain findings: .
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: .
  - Aquatic/wildlife diversity. Explain findings: The site is preferential habitat for Columbian white-tailed deer. The Columbia river population remains on the U.S. Fish and Wildlife Service Endangered Species List as a Threatened species. The Douglas County population, previously co-listed by the state of Oregon, was removed from the federal list in 2013 and is no longer on the state's 11 June 2018 revised list. Environmental analysis provided for the original site development and mitigation site development stated the red-root yampah, an imperiled but federally non-listed species was present. [https://www.dfw.state.or.us/wildlife/diversity/species/threatened\\_endangered\\_candidate\\_list.asp](https://www.dfw.state.or.us/wildlife/diversity/species/threatened_endangered_candidate_list.asp) .

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

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 9.88 acres

Wetland type. Explain: Palustrine scrub shrub.

Wetland quality. Explain: The 9.88 acre review area which includes Lot 20 was released from further compensatory wetland mitigation monitoring in a letter from othe Corps dated 21 October 2016 to Back Nine Development LLC.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: The stream flows approximately three months of the year based on the yearly hydrograph for the Roseburg/Winchester area. Early data received from the applicant identified both perennial and intermittent channels in the review area prior to construction of the compensatory mitigation site. Refer to items number 1, 2, 5 and 6 in Section IV A. "Other information.

Surface flow is: **Discrete and confined**

Characteristics: The 1.51 acre wetland and 0.65 acre wetland buffer totaling the 2.16 acres wetland review area is part of a 9.88 acre wetland abuts the stream channel and additional wetland.

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

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

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 **1-2** aerial (straight) miles from TNW.

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

Estimate approximate location of wetland as within the 100-500 year floodplain. The area is in Zone X outside of the mapped Special Flood Hazard Areas

(ii) **Chemical Characteristics:**

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

Identify specific pollutants, if known: .

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

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

Vegetation type/percent cover. Explain: The review area is uniformly covered with hydric species.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The site is preferential habitat for Columbian white tailed deer which was delisted in Douglas County in 2003. Elsewhere in Oregon, the species is a Threatened species. Environmental analysis provided earlier during the permitting process and mitigation site development state red-root yampah, an imperiled but unlisted species was present.

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

All wetland(s) being considered in the cumulative analysis: 3

Approximately (12.31) 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>
Y	1.51 acre (Lot 20)		
Y	7.96 acre (Rest of mitigation site)		
Y	4.35 acre (Unallocated wetland)		

Summarize overall biological, chemical and physical functions being performed: The combination of the intermittent channel and the overall wetland (consisting of the three broken out wetland areas listed above – Lot 20, rest of mitigation area, unallocated area) release water downslopes, moderating the release of more than 30 inches of precipitation annually into the North Umpqua River. The wetland and channel provide habitat for non-aquatic species by maintaining active growth into July where the grassland production has ceased. There may be additional wetlands along the channels off-site and outside the Corps’ area of review.

**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.** 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: .

**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: .
- 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: The project area is located in western Oregon and receives approximately 35 inches per year with the heaviest precipitation during the months of November through January. Additional appropriate indicators are permanent scour features and the development of riparian vegetation which can be consistently seen on aerial photos dating from 7 April 1957 from the applicant, through 10 May 2019. Precipitation data between 1951 and 2019 show the heaviest rainfall occurs from November through January. Annual rainfall totals ranged from a low of 19.9 inches in 2013 to 61.75 inches in 1996. The average across all years is 35.8 inches of precipitation per year.

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

- Tributary waters: **3,884** linear feet width (ft).
  - Other non-wetland waters: acres.
- Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> 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: The review area, including a section known as Lot 20, is part of and contiguous with a compensatory wetland mitigation site which was determined to be jurisdictional wetland in 2003. The wetland in lot 3 directly abuts approximately 4.35 acres of unfilled wetland, which abuts a channel with distinct bed and bank features, as well as destruction of terrestrial vegetation. This channel flows through culverts underneath the Central Oregon Pacific Railroad rails and flows northwest into a persistent pond before continuing on to Old Del Rio Road and into the North Umpqua between each entrance to Julina Lane.

Provide acreage estimates for jurisdictional wetlands in the review area: **12.31** acres. This amount is the 2.16 acre review area which is part of the 9.88 acre compensatory wetland mitigation site minus wetland buffer plus the 4.35 acres of unfilled, unallocated wetland north of the compensatory mitigation wetland as provided by the concept map dated April 2013 in the 8 May 2013 email from Back Nine Development to the Corps.

**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.

<sup>8</sup>See Footnote # 3.

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

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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):<sup>10</sup>**

- 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.  
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: \_\_\_\_\_.
- 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: \_\_\_\_\_ 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: see the section “Other information” below including previous wetland delineations.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.

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

<sup>10</sup> 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.

- 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: North Umpqua River 171003011105.
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Winchester, Oregon Provisional Edition 1987.
- USDA Natural Resources Conservation Service Soil Survey. Citation:  
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> for 43.296739, -123.349083  
 Curtain clay, 3 to 12 percent slopes (MUS 48C) a "somewhat poorly drained" non-hydric soils about six to 18 inches to the water table which includes minor components of hydric Bashaw soils off site. In Lot 20 and the compensatory wetland mitigation site Natroy clay, 0 to 2 percent slopes (MUS 158A), a hydric poorly drained soil with a 0 inch depth to water table represents the area under consideration except for the area that was formerly captured by the log pond. The area surrounding the former log pond is included in the MUS 158A area (though this area has been filled).
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: FEMA Firmette No. 41019C1365F effective date 17 February 2010. .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth photos dated 6 May 1994, 12 July 2001, 6 May 1994, 28 July 2011 and 15 July 2017. Portland District aerial photos of the review area dated March 1957, April 1957 and February 1965.
- or  Other (Name & Date): Photo dated 7 April 1957 provided by applicant's representative, G. Swenson/PBS Engineering and Environmental in an email dated 21 December 2018.
- Previous determination(s). File no. and date of response letter: A Preliminary Jurisdictional Determination with office and field dates of 3 January 2005 and 13 January 2005 respectively were found in the project file, however, a signed or countersigned copy was unavailable. The document references Ordinary High Water mark with clear, natural line impressed on the bank, destruction of terrestrial vegetation, shelving and drawings, photographs and descriptions provided by the applicant.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify):
- 1) EPA stormwater calculator (rainfall) <https://swcweb.epa.gov/stormwatercalculator/precipitation>
  - 2) NRCS AgACIS WETS data for reporting station Winchester <http://agacis.rcc-acis.org/?fips=41019>.
  - 3) Letter dated 21 October 2016 identifying 9.88 acres of wetlands comprised of enhanced and restored wetlands.
  - 4) Concept Map Project 15583 dated April 2013 attached to an email from Back Nine Development to the Corps received 8 May 2013 identifying 4.35 acres of wetland on land defined as 4.35 acres of "rail property" abutting the compensatory wetland mitigation site, including the area under review Lot 20
  - 5) Wetland delineation and all analysis materials including photo dated 20 June 1994 as described in the "Wetland Fill Application and Mitigation Plans for the Roseburg Forest Products Winchester Log Pond & Mill Site" dated 22 December 2004 and received 23 December 2004 from Terra Science, Inc. for Roseburg Forest Products.
  - 6) 17 February 2006 Department of Army permit for NWP-2004-883 including Enclosure 5 "Revised Onsite Compensatory Mitigation Plan for the Winchester Log Pond & Mill Site Industrial Redevelopment, Winchester, Douglas County, Oregon dated July 2005 and prepared by Terra Science, Inc.
  - 7) Oregon Department of Geology and Mineral Industries Oregon HazVu application available at <https://gis.dogami.oregon.gov/maps/hazvu/>
  - 8) Oregon Explorer Natural Resources Digital Library; Water and Air layers "Rivers and Streams", "National Hydrography Dataset", and "Streams" viewed with and without the default "Basemap" and "World Light Gray Base" which includes historical view of the log pond and stream features into and out of the pond and adjacent stream channels.
  - 9) Information on I-5 culvert size and location to include mapped location received via email by Corps by request from Oregon. Department of Transportation (DOT) dated 5 December 2019 and 19 December 2019.
  - 10) Wetland delineation "Winchester Freight Rail Yard and Industrial Redevelopment On-Site Wetland Mitigation Delineation Report, Winchester, Oregon 7.26S, R. 6W, Section 24 Douglas County, Tax Lots 300 (Partial) & 500 (Partial) dated August 2010 and prepared by SWCA Environmental Consultants

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** A site visit was conducted specifically for this approved jurisdictional determination on 15 January 2020.