



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): [August 13, 2020](#)
 ORM Number: [NWP-2016-557-2](#)
 Associated JDs: [NWP-2016-557-1](#)
 Review Area Location¹: State/Territory: [Oregon](#) City: [Portland](#) County/Parish/Borough: [Multnomah](#)
 Center Coordinates of Review Area: Latitude [45.554577](#) Longitude [-122.733809](#)

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: [N/A](#)
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.34	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland A shows evidence of flooding over the sidewalk along St. Helens highway into the street and then into a piped stormwater system that discharges into the Willamette River. While the Willamette River is an a(1) water, non-channelized, diffuse stormwater and overland sheet flow cannot sustain a regular or predictable surface water connection between upstream and downstream waters and therefore cannot maintain jurisdiction between such waters. Wetland A does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year.</p> <p>The requestor utilized the U.S. Army Corps of Engineers 1987 wetland delineation manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region to delineate the boundaries of wetlands within the review area.</p>
Wetland B	0.018	acre(s)	(b)(1) Non-adjacent wetland.	<p>Sheetflow collects in Wetland B and largely infiltrates in place. Wetland B does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year.</p>
Wetland C	0.12	acre(s)	(b)(1) Non-adjacent wetland.	<p>Runoff from Wetland C discharges off-site to the north via diffuse overland flow. Diffuse stormwater and overland sheet flow cannot sustain a regular or predictable surface water connection between upstream and downstream waters and therefore cannot maintain jurisdiction between such waters. Wetland C does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year.</p>
Wetland D	0.019	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland D also shows evidence of flooding over the sidewalk along St. Helens highway into the street and then and into a piped stormwater system that discharges into the Willamette River. While the Willamette River is an a(1) water, non-channelized, diffuse stormwater and overland sheet flow cannot sustain a regular or predictable surface water connection between</p>

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
				upstream and downstream waters and therefore cannot maintain jurisdiction between such waters. Wetland D does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year.
Waterway 1	40	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Waterway 1 enters the site close to the center of the southwest property boundary but infiltrates into the soil prior to reaching a downstream a(1)-a(3) water. The drainage is ephemeral, and lacked flow in April 2017 despite heavy rainfall during the late winter and spring seasons.
Waterway 2	200	linear feet	(b)(4) Diffuse stormwater run-off over upland or directional sheet flow over upland.	Waterway 2 is split into two sections above and below a waterfall. The northerly section above the waterfall is a perennial stream with an ordinary high water mark, but below the waterfall the main channel splits into several smaller, shallow braided channels on the terrace below the falls. It is concentrated in the northern part along the toe of slope but with sheet flow influencing a broader area. Diffuse stormwater and overland sheet flow cannot sustain a regular or predictable surface water connection between upstream and downstream waters and therefore cannot maintain jurisdiction between such waters.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [Forest Park Entrance and Nature Center Wetland Delineation, Winterbrook Planning, May 31, 2017](#)

This information is sufficient for purposes of this AJD.

Rationale: [The Wetland Delineation Report included site photos, vegetation and soil surveys, and provided sufficient documentation to assess the review area under the Navigable Waters Protection Rule.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial: Google Earth 1970, 1990, 2000, 2004, 2008, 2011, 2014, 2016, 2018](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [NWP-2016-557-1, 20 February 2020](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [Title\(s\) and/or date\(s\).](#)

Other data sources used to aid in this determination:



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Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Portland District eGIS Information Portal, http://egis.nwp.usace.army.mil/
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: The review area is located at the intersection of NW Yeon Street and NW St. Helens Road, adjacent to 4316 NW St. Helens Highway. The study area includes tax lots 100 (2.32 acres), 200 (0.60 acre), and 300 (0.97 acre) in Township 1 north, Range 1 east, Section 19CA. Between 1999 and 2011, large volumes of PCB-contaminated soils were removed from review area and replaced with clean fill material.

St. Helens Road runs along the toe of the slope below the review area and acts as a barrier between runoff from the review area and the Willamette River. Water drains from the review area as diffuse sheetflow over the sidewalk along the road and into the road and associated stormwater pipes. There are no channelized surface water connections between waters in the review area and the Willamette River, only diffuse overland flow that does not maintain a jurisdictional connection. There are no a(2) tributaries in the review area, and therefore wetlands in the review area are not adjacent wetlands. The review area contains two drainages, Waterway 1 and Waterway 2. Waterway 1 is an ephemeral surface water drainage. Waterway 2 loses channelized flow and becomes diffuse overland flow before reaching a downstream a(1)-a(3) water. As such, neither drainage is a Water of the U.S. and neither provides a surface water connection between wetlands in the review area and an a(1) water. The wetlands in the review area are not inundated by flooding from the Willamette River in a typical year.

A previous AJD for this review area was completed 20 February 2020. Waterway 2 was determined to be a relatively permanent water that flows directly into a Traditional Navigable Waterway (TNW) and to be a Water of the U.S. under the previous rule (Rapanos). Wetlands A, C and D were determined to be wetlands directly abutting RPWs that flow directly or indirectly into a TNW and therefore Waters of the U.S. under the previous rule. Wetland B and Waterway 1 were determined to have a significant nexus with the Willamette River and therefore to be jurisdictional under the previous Waters of the US (WOUS) rule.

Under the current Navigable Waters Protection Rule, none of these aquatic features are Waters of the U.S. because diffuse overland sheetflow and non-channelized flow severs jurisdiction between wetlands and a(1)-a(3) waters. Sheetflow over the sidewalk does not constitute adjacency to an a(1) through a(3) water.