



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): September 14, 2020

ORM Number: NWP-2019-00528

Associated JDs: Rapanos AJD was previously conducted under NWP-2019-00528

Review Area Location¹:

State/Territory: OR City: Canby County/Parish/Borough: Clackamas County

Center Coordinates of Review Area: Latitude 45.24 Longitude -122.729382

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 or describe rationale.
- 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

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² If the navigable water is not subject to the ebb and flow of the tide and 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 independent 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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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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
NWP-2019-528 NWPR Ditch 1 (includes Ditch 1A, 1B, 1C, and 1D)	0.37 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 1 flows generally from the southeastern portion of the site to the northwestern portion where it exits the site. The ditch has an ordinary high water mark and does not exhibit wetland characteristics. This ditch has ephemeral flow. A ditch would be jurisdictional if it were constructed in a tributary, relocated a tributary, or constructed in an adjacent wetland. Per topographic maps and historic aerial imagery, this ditch was not constructed in a tributary, it did not relocate a tributary, and it was not constructed in an adjacent wetland. Therefore, Ditch 1 is excluded under paragraph (b)(5), and is not a jurisdictional water of the U.S.
NWP-2019-528 NWPR Ditch 2	0.09 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 2 flows generally north along the western site boundary to the northwest corner where it exits the site. The ditch has an ordinary high water mark and areas of wetland fringe. This ditch has ephemeral flow. Per topographic maps and historic aerial imagery, this ditch was not constructed in a tributary, it did not relocate a tributary, and it was not constructed in an adjacent wetland. Therefore, Ditch 2 is excluded under paragraph (b)(5), and is not a jurisdictional water of the U.S.
NWP-2019-528 NWPR Ditch 3	0.02 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 3 is located in the northwestern portion of the site. This ditch was not constructed in a tributary, it did not relocate a tributary, and it was not constructed in an adjacent wetland. This ditch has ephemeral flow and does not connect to any other aquatic resources. Ditch 3 is excluded under paragraph (b)(5), and is not a jurisdictional water of the U.S.
NWP-2019-528 NWPR Ditch 4	0.02 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 4 is located in the northern portion of the site. This ditch was not constructed in a tributary, it did not relocate a tributary, and it was not constructed in an adjacent wetland. This ditch has ephemeral flow and does not connect to any other aquatic resources. Ditch 4 is excluded under paragraph (b)(5), and is not a jurisdictional water of the U.S.
NWP-2019-528 NWPR Ditch 5	0.02 acres	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 5 is located in the central portion of the site. This ditch was not constructed in a tributary, it did not relocate a tributary, and it was not constructed in an adjacent wetland. This ditch has ephemeral flow and does not connect to any other aquatic resources. Ditch 5 is excluded under paragraph (b)(5), and is not a jurisdictional water of the U.S.
NWP-2019-528 NWPR Drain Tile	0.03 acres	(b)(8) Artificial lake/pond constructed or excavated in upland	The Drain Tile Pond is an artificially created pond, which was created in uplands or non-jurisdictional

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Pond		or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	features as a water storage reservoir for agricultural irrigation practices on-site. This is located near, but not abutting, Ditch 1 (an ephemeral ditch). It does not impound jurisdictional waters. Therefore, this feature is not a jurisdictional water of the U.S. The Drain Tile Pond is excluded under paragraph (b)(8).
NWP-2019-528 NWPR Wetland A	1.26 acres	(b)(1) Non-adjacent wetland	<p>Wetland A is a palustrine emergent wetland located in the southeastern portion of the site. This wetland flows west into Ditch 1, where hydrology appears to go underground. Ditch 1 is an excluded water (b5).</p> <p>Wetland A does not abut a territorial sea (a)(1), a tributary (a)(2), or an impoundment of jurisdictional waters (a)(3). It is not separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. It is not inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) in a typical year.</p> <p>Wetland A does not meet the definition of an adjacent wetland. Wetland A is excluded under paragraph (b)(1), and is not a jurisdictional water of the U.S.</p>

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: *Wetland and Waters Delineation Report, dated January 2019.*
This information is sufficient for purposes of this AJD.
Rationale: *N/A*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *Aerial and other: Aerials (05/08/2019, 07/16/2018, 05/22/2017, and 07/23/2016), DOGAMI LiDAR (date unknown).*

Corps Site visit(s) conducted on: *February 26, 2020.*

Previous Jurisdictional Determinations (AJDs or PJDs): *NWP-2019-528, June 10, 2020, Rapanos.*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

SSURGO Soil Survey: *Wetland and Waters Delineation Report, dated January 2019, Figure 4.*

USFWS NWI maps: *Wetland and Waters Delineation Report, dated January 2019, Figure 5.*

USGS topographic maps: *Wetland and Waters Delineation Report, dated January 2019, Figure 1.*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
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USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The Corps ran a typical year analysis for the ditch downslope and outside of the project area utilizing the “Antecedent Precipitation Tool (APT)” for the following available aerial imagery: 05/08/2019; 07/16/2018; 05/22/2017; and 07/23/2016. The APT analysis determines if the date-specific observation falls within the normal periodic range for the geographic area based on a rolling thirty-year period. The APT generated the following conditions rating for each of the aerial images as follows:

05/08/2019 – “Drier than Normal”. The off-site pond located online with the downstream off-site ditch appears full, though water levels seem low. There does appear to be standing or flowing water exiting the pond, but continuous standing water is not present in the ditch coming into the pond. No standing water or flow is present in Ditch 2 on-site.

07/16/2018 – “Drier than Normal”. The off-site pond located online with the downstream off-site ditch appears nearly dry, and there appears to be no flowing or standing water present within the ditch flowing into or out of the pond. No standing water or flow is present in Ditch 2 on-site.

05/22/2017 – “Wetter than Normal”. The off-site pond located online with the downstream off-site ditch is full, but no discernable flows are present within the ditch flowing into or out of the pond. There is standing water in the upper portion of Ditch 2 on-site.

07/23/2016 – “Normal Conditions”. The off-site pond located online with the downstream off-site ditch is not full but some areas of standing water are present. Ditch features are not discernable in the aerials upslope of the pond, but downslope of the pond, there appears to be no flowing or standing water present within the ditch. Looking further downslope, a separate visible portion of the ditch appears to be dry as well. There is standing water in the upper portion of Ditch 2 on-site.

Summary: When evaluating the “normal” and “wetter than normal” conditions imagery, there is no evidence showing flows necessary to confirm an intermittent flow regime. The ditch downstream and outside of the project review area only has surface water flows in direct response to precipitation and is therefore determined to be ephemeral.

C. Additional comments to support AJD: 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 ditches and wetlands within the study area.

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