



**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): 9/21/2020

ORM Number: NWP-1996-1752-4

Associated JDs: N/A

Review Area Location¹: State/Territory: Oregon City: Portland County/Parish/Borough: Multnomah

Center Coordinates of Review Area: Latitude 45.5881 Longitude -122.6505

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
Wetland C	3.07	acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) Wetland C is a palustrine forested permanently flooded wetland. Wetland C continues east, outside of the Review Area.

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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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
		water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year.	<p>Water in Wetland C drains to the north. On the north side of the property, outside of the Review Area, there is a channel and drainage ditch which conveys water to the west where it enters the ditch along NE 13th Avenue. The flow within the drainage ditch is intermittent in a typical year. The water in the ditch flows to the west under NE 13th Avenue, then to the south where it is pumped via a Multnomah County Drainage District (MCDD) operated pump station into the Peninsula Drainage Canal and the Columbia Slough. The NE 13th Avenue ditch does contribute surface water to the Columbia Slough. The Columbia Slough is an (a)(1) water and is listed on the Navigable Riverways Within the State of Oregon dated October 1993. Based on topographic map the ditch was constructed in a tributary. The ditch would be an (a)(2) water for purposes of this review but is outside of the project area. Based on the 1905 topographic maps the ditch is constructed in a tributary and meets the definition of an (a)(2) water.</p> <p>The wetland directly abuts this channel and drainage ditch. Wetland C abuts and (a)(2) tributary and meets the definition of adjacent.</p>

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland B	0.45 acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland B is a palustrine emergent seasonally saturated wetland.</p> <p>Wetland B does not abut an (a)(1)-(3) water, and it is physically isolated from any (a)(1)-(3) water. It is not inundated by flooding from any (a)(1)-(3) water. Wetland B does not meet the definition of adjacent wetland under the Navigable Waters Protection Rule.</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	
Wetland D	0.12	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland D is a palustrine emergent seasonally flooded/saturated wetland. It is a remnant linear wetland that is perpendicular to the southern boundary of the Review Area. The west to east oriented section of Wetland D was inundated to approximately three inches in its western portion and saturated in the eastern portion.</p> <p>The northern portion of this wetland was filled under previous federal permits.</p> <p>Wetland D does not abut an (a)(1)-(3) water, and it is physically isolated from any (a)(1)-(3) water. It is not inundated by flooding from any (a)(1)-(3) water. Wetland D does not meet the definition of adjacent wetland under the Navigable Waters Protection Rule.</p>
Wetland A	0.76	Acre(s)	(b)(1) Non-adjacent wetland.	<p>The study area and slopes slightly to the southwest, where it drains into the roadside ditch next to NE 13th Ave. The southern boundary of the wetland abuts an approximately 10-foot high berm. This is a palustrine scrub-shrub wetland.</p> <p>The water from this site drains into a roadside ditch prior to entering MCDD canals.</p> <p>Based on historical topos and aerials the roadside ditch did not relocate a tributary nor was it constructed in a tributary. The ditch would not be considered an (a)(1) through (a)(3) water. Artificial ditches and stormwater systems currently drain the area. Per the Navigable Waters Protection Rule a ditch cannot render an otherwise isolated wetland an “adjacent wetland.” Wetland A does not meet the definition of adjacent wetland under the Navigable Waters Protection Rule.</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 Delineation for Property Adjacent to NE 13th Avenue and NE Fazio Way, Portland, Oregon. Prepared by Pacific Habitat Services, Inc. dated July 1, 2019.](#)

This information is sufficient for purposes of this AJD.



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Rationale: *N/A*

- Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: *Aerial: July 1, 2019*
- Corps site visit(s) conducted on: *Date(s)*.
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s)*.
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *In delineation report*
- USFWS NWI maps: *Title(s) and/or date(s)*.
- USGS topographic maps: *In delineation report*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	1905, 1940,1961,1987 topographic map
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other information (specify)	Google Earth historical aerials from 1990, 2000, 2001, 2002, 2005, 2009, 8-27-2020
Other information (specify)	Dogami Lidar – 8-19-2020
Other information (specify)	Portland Maps Sewer and Stormwater Assets Website 7-30-2020, including both sewer assets maps and historical aerial maps. 2009 and 2012 aerial maps.
Other information (specify)	Historical File information from the 2014 submittal for a Corps permit. There was no delineation completed for the site but there was information pertaining to the site in the file.

B. Typical year assessment(s): The Corps ran a typical year analysis for the Review Area vicinity for dates listed below utilizing the Corps’ “Antecedent Precipitation Tool (APT)” (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

05/08/2017 (Delineation Field Date) – “Wetter than normal conditions.” According to the delineation, the site conditions were wetter than average, but because of controlled water levels within the basin, wetland boundaries are likely not impacted. On the study’s western boundary there is a roadside ditch adjacent to NE 13th Avenue, with a bottom elevation of 3-feet City of Portland Datum, which eventually drains to the Peninsula Drainage Canal. During the delineation, this ditch had approximately 6-inches of water.

08/01/2009 (Aerial Date) – “normal conditions.” Summer 2009 aerial noted water in northern canal as seen from aerial. Ditches to the north and west of the site contained water noting normal site conditions.

12/01/2012 (Aerial Date) – “wetter than normal conditions.” Winter 2012 aerial noted water in northern canal as seen from aerial. Ditches to the north and west of the site contained water noting site conditions during wetter than normal conditions.

Summary: The Review Area is within the Multnomah County Drainage District (MCDD) boundaries. Water elevations are controlled by MCDD for flood water management. Historical aerials noted water in the



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northern canal in both winter periods and summer periods when vegetation was sparse enough to note the water reflection. Therefore, the Corps can conclude that the hydrologic conditions onsite can be considered wetter than average during a typical year for purposes of this assessment

- C. Additional comments to support AJD:** A wetland delineation was conducted by the consultant who prepared the Wetland Delineation Report on May 5 and 8, 2017. The methodology used to delineate the wetland boundaries was the Corps of Engineers Wetlands Delineation Manual (1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region Version 2.0.

The USGS topographic map from 1897 shows Switzler Lake at the location of the current site and ditches. The 1940 topographic maps show the area as filled but with a canal in place on the northern edge of the site where a tributary and/or lake was previously located. The northern canal is visibly deeper on bare earth topo maps and is mapped in City of Portland maps as a natural channel.