



**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): 10/6/2020
 ORM Number: NWP-2016-165
 Associated JDs: Preliminary Jurisdictional Determination, NWP-2016-165, June 2, 2016
 Review Area Location¹: State/Territory: Oregon City: Bandon County/Parish/Borough: Coos County
 Center Coordinates of Review Area: Latitude 43.109461 Longitude -124.41425

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
East Fork Gross Creek (within Wetland B)	0.0175 acre(s)	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This portion of East Fork Gross Creek is contained within the boundaries of Wetland B and is located along the western edge of the study area. East Fork Gross Creek possesses a bed, banks, and ordinary high water mark (OHWM) at this location and is recognized as a perennial tributary to Gross Creek. Per the wetland delineation and Corps site assessment dated June 2, 2016, surface water flow within the creek extends northwest. Surface water flows enter a 48 inch diameter concrete pipe culvert within the study area. The average channel width

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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
				<p>and OHWM of the creek varies from two to four feet. The consulting firm which conducted the wetland delineation identified this surface water feature as a lower perennial riverine feature. Based on the Corps evaluation using the Antecedent Precipitation Tool (APT) and aerial imagery, the creek exhibits observable perennial surface water flow within the review area in a typical year.</p> <p>East Fork Gross Creek maintains a hydrologic surface water connection with Gross Creek approximately 0.14 miles northwest and outside of the study area. East Fork Gross Creek routed underground through a culvert northwest under U.S. Highway 101 and commercial businesses for this 0.14 mile reach. East Fork Gross Creek reappears as an open surface water tributary feature north of 13th Street SW, west of U.S. Highway 101. East Fork Gross Creek then routes northwest to Gross Creek where it maintains a hydrologic surface water connection with Gross Creek approximately 0.10 miles northwest of 13th Street SW. Surface water flow in Gross Creek extends approximately 0.60 miles from the confluence of East Fork and West Fork Gross Creek to the Coquille River. Gross Creek maintains a hydrologic surface water connection with the Coquille River at approximate river mile 0.5. The Coquille River is recognized by the U.S. Army Corps of Engineers, Portland District, as a navigable water to river mile 36.3 pursuant to the Corps 1993 list of Navigable Riverways within the State of Oregon. Because East Fork Gross Creek contributes surface water flow directly or indirectly to an (a)(1) water in a typical year East Fork Gross Creek meets the criteria to be recognized as an (a)(2) water of the U.S. pursuant to the Navigable Waters Protection Rule (NWPR).</p>
East Fork Gross Creek (within Wetland D)	0.008	acre(s)	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	<p>This portion of East Fork Gross Creek is contained within the boundaries of Wetland D and is located along the western edge of the study area. East Fork Gross Creek possesses a bed, banks, and OHWM at this location and is recognized as a perennial tributary to Gross Creek. Per the wetland delineation, surface water flow within the creek extends northwest into the Wetland B portion of East Fork Gross Creek. Within the Wetland B portion of East Fork Gross Creek surface water flows enter a 48 inch diameter concrete pipe culvert within the</p>



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				<p>study area. The average channel width and OHWM of the creek varies from two to four feet. The consulting firm which conducted the wetland delineation identified this surface water feature as a lower perennial riverine feature. Based on the Corps evaluation using the APT and aerial imagery, the creek exhibits observable perennial surface water flow within the review area in a typical year.</p> <p>East Fork Gross Creek maintains a hydrologic surface water connection with Gross Creek approximately 0.14 miles northwest and outside of the study area. East Fork Gross Creek routed underground through a culvert northwest under U.S. Highway 101 and commercial businesses for this 0.14 mile reach. East Fork Gross Creek reappears as an open surface water tributary feature north of 13th Street SW, west of U.S. Highway 101. East Fork Gross Creek then routes northwest to Gross Creek where it maintains a hydrologic surface water connection with Gross Creek approximately 0.10 miles northwest of 13th Street SW. Surface water flow in Gross Creek extends approximately 0.60 miles from the confluence of East Fork and West Fork Gross Creek to the Coquille River. Gross Creek maintains a hydrologic surface water connection with the Coquille River at approximate river mile 0.5. The Coquille River is recognized by the U.S. Army Corps of Engineers, Portland District, as a navigable water to river mile 36.3 pursuant to the Corps 1993 list of Navigable Riverways within the State of Oregon. Because East Fork Gross Creek contributes surface water flow directly or indirectly to an (a)(1) water in a typical year East Fork Gross Creek meets the criteria to be recognized as an (a)(2) water of the U.S. pursuant to the NWPR.</p>

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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland B	0.13	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland B is a palustrine scrub-shrub wetland located along the western edge of the study area. Wetland B abuts East Fork Gross Creek, an (a)(2)



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Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
				water of the U.S. within the study area. East Fork Gross Creek is recognized as a perennial tributary which possesses a hydrologic surface water connection to Gross Creek. Wetland B meets the criteria to be recognized as an (a)(4) water of the U.S. pursuant to the NWPR.
Wetland D	0.26	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland D is a palustrine scrub-shrub wetland located along the western edge of the study area. Wetland D abuts East Fork Gross Creek, an (a)(2) water of the U.S. within the study area. East Fork Gross Creek is recognized as a perennial tributary which possesses a hydrologic surface water connection to Gross Creek. Wetland D meets the criteria to be recognized as an (a)(4) water of the U.S. pursuant to the NWPR.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.21	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A is a north-south oriented palustrine scrub-shrub depressional wetland located in the northeast portion of the study area. Wetland A is a physically remote isolated wetland which is bounded to the north by 15th Street SE and bounded to the south by 16th Street SE. Wetland A is not located adjacent to an (a)(1)-(a)(3) water, and is not flooded in a typical year by (a)(1)-(a)(3) water. Wetland A meets the criteria to be recognized an excluded water pursuant to (b)(1) of the NWPR.
East Fork Gross Creek (within Wetland B and within a concrete culvert)	0.0025	acre(s)	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	This portion of East Fork Gross Creek is located within a subsurface 48 inch diameter concrete culvert. The culvert provides the hydrologic surface water connection between the portion of East Fork Gross Creek found within the study area and the portion of East Fork Gross Creek found downstream, northwest, and outside of the study area. Flow within the culvert is recognized as perennial. Because surface water flow in this culvert is located underground this feature meets the criteria to be recognized as an excluded water pursuant to (b)(1) of the NWPR.

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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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 MMCG, GOI, Bandon, LLC. and wetland delineation reissuance for DSL WD-2016-02225/NWP-2016-165 as received by the U.S. Army Corps of Engineers Regulatory Branch, North Bend Field Office on September 28, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [N/A](#)

Photographs: [Aerial and Other: Aerial and ground level photographs as submitted with the wetland delineations.](#)

Corps site visit(s) conducted on: [Corps site visit on June 2, 2016.](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [Preliminary Jurisdictional Determination, NWP-2016-165, June 2, 2016](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [N/A](#)

USFWS NWI maps: [N/A](#)

USGS topographic maps: [N/A](#)

Other data sources used to aid in this determination:

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	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Google Earth aerial imagery review on September 29, 2020.

B. Typical year assessment(s): The Corps utilized the APT to conduct a typical year analysis of the study area via a single point method for three distinct time periods discussed below. The APT is an automation tool that evaluates three climatological parameters at a given location to assist in documenting the various determinations required by policy for the execution of the Corps Regulatory Program. The APT is one tool that the Corps may use to determine and document typical year conditions. 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. A single point method using the latitude and longitude coordinates identified in Section (I) above was utilized because the single point method adequately represents the data sources available via the APT to conduct an appropriate analysis of climatic conditions on-site. The APT is publicly available at this web site: <https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>.

1) 29 March 2016. The APT was run for the date the bulk of the 2016 wetland delineation data was captured by the consulting firm representing the requestor (29 March 2016). The APT demonstrated the site conditions on this date represent a time of year referenced as the wet season, that the general region and site were in an incipient drought, and that site conditions were normal in climatic conditions. The



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Corps can draw the conclusion from the use of the APT, wetland delineation data, aerial imagery, and field observations that site conditions on this day represent a time period when site conditions were seasonally wetter than normal climatic conditions but relatively consistent with normal climatic conditions. The wetland delineation photos of East Fork Gross Creek demonstrates the creek possesses a defined streambed, streambanks, and OHWM as well as observable surface water flow.

2) 2 June 2016. The APT was run for the date of the Corps conducted a site visit with the consulting firm representing the requestor. The APT demonstrated the site conditions on this date represent a time of year referenced as the dry season, that the general region and site were experiencing moderate drought conditions, and that drier than normal climatic conditions existed. The Corps can draw the conclusion from the use of the APT, wetland delineation data, aerial imagery, and field observations that site conditions on this day represent a time period when site conditions were seasonally drier than normal climatic conditions. East Fork Gross Creek possessed a streambed, streambanks, OHWM and observable surface water flow during the site visit.

3) 18 August 2020. The APT was run for the date the bulk of the 2020 wetland delineation data was captured by the consulting firm representing the requestor (18 August 2020). The Corps utilized this date because it also analyzes the climatic conditions when the consulting firm captured some wetland delineation data on-site (4 August 2020). The APT demonstrated the site conditions on this date represent a time of year referenced as the dry season, that the general region and site were in a moderate drought, and that site conditions were normal in climatic conditions. The Corps can draw the conclusion from the use of the APT, wetland delineation data, aerial imagery, and field observations that site conditions on this day represent a time period when site conditions were seasonally drier than normal climatic conditions but relatively consistent with normal climatic conditions. The wetland delineation photos of East Fork Gross Creek demonstrates the creek possesses a defined streambed, streambanks, and OHWM as well as observable surface water flow.

Summary: When evaluating the “normal” and “drier than normal” conditions via wetland delineation data and photographs, aerial imagery, and via a field assessment conducted on behalf of the Corps, the evidence demonstrates East Fork Gross Creek possesses observable perennial surface water flow on-site within the study area.

C. Additional comments to support AJD: The study area is geomorphically located on a landform crest whereby surface water drains north. The site is located at approximately 81 feet above sea level. The project is not located in a floodplain per the Federal Emergency Management Agency Floodrate Insurance Map.

The requestor and consulting firm collected wetland delineation data for the northern portion of the study area in 2016 and re-assessed this area in 2020. The southern portion of the study area was delineated in 2020. The Corps previously conducted a site visit with the requestor and consulting firm on June 2, 2016.

The requestor and consulting firm which conducted the wetland delineation utilized the methods described in the Corps 1987 wetland delineation manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region to determine the boundaries of Wetland A, B and D. The requestor and consulting firm which conducted the wetland delineation utilized field indicators to determine the boundaries of the ordinary high water mark and flow regime of East Fork



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Gross Creek.