



**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): 10/7/2020
 ORM Number: NWP-2020-327
 Associated JDs: N/A
 Review Area Location¹: State/Territory: OR City: Newport County/Parish/Borough: Lincoln
 Center Coordinates of Review Area: Latitude Phase 1: 44.65988266; Phase 3: 44.66160385
 Longitude Phase 1: -124.04742389; Phase 3: -124.04793107

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.

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
Phase 3 Wetland B	0.11	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The palustrine scrub shrub wetland meets the definition of an adjacent wetland. It is located at the bottom of a drainage and extends offsite to the southwest. It is part of a larger wetland complex as seen in the NWI map, which abuts Big Creek, approximately 1300 feet south of the study area. Big Creek is considered an (a)(2) tributary which flows into the Pacific Ocean, an (a)(1) territorial sea.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Phase 1 Wetland A	0.02	acre(s)	(b)(1) Non-adjacent wetland.	The palustrine forested wetland does not meet the definition of an adjacent wetland. It lies in a depression with no outlets. The nearest tributary, Big Creek, is approximately 560 feet south of Wetland B outside of the study area. The wetland does not abut an (a)(1) – (a)(3) water, is not physically separated from those waters by a natural feature, and is not inundated by flooding from one of these waters in a typical year.
Phase 1 Wetland B	0.003	acre(s)	(b)(1) Non-adjacent wetland.	The palustrine scrub shrub wetland does not meet the definition of an adjacent wetland. It is located in a swale on a slope east and above of Wetland A. The nearest tributary, Big Creek, is approximately 560 feet south of Wetland B outside of the study area. The wetland does not abut an (a)(1) – (a)(3) water, is not physically separated from those waters by a natural feature, and is not inundated by flooding from one of these waters in a typical year.
Phase 1 Wetland C	0.01	acre(s)	(b)(1) Non-adjacent wetland.	The palustrine emergent wetland does not meet the definition of an adjacent wetland. It is located on a hillslope above Wetland A. The nearest tributary, Big Creek, is approximately 560 feet south of Wetland B outside of the study area. The wetland does not abut an (a)(1) – (a)(3) water, is not physically separated from those waters by a natural feature, and is not inundated by flooding from one of these waters in a typical year.

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
Phase 3 Wetland A	0.06 acre(s)	(b)(1) Non-adjacent wetland.	The palustrine scrub shrub wetland does not meet the definition of an adjacent wetland. It is located on a hillslope. It does not abut an (a)(1) – (a)(3) water, is not physically separated from those waters by a natural feature, and is not inundated by flooding from one of these waters in a typical year. The nearest tributary, Little Creek, is approximately 700 feet north of the study area.
Phase 3 Wetland C	0.02 acre(s)	(b)(1) Non-adjacent wetland.	The palustrine scrub shrub wetland does not meet the definition of an adjacent wetland. It does not abut an (a)(1) – (a)(3) water, is not physically separated from those waters by a natural feature, and is not inundated by flooding from one of these waters in a typical year. The nearest tributary, Little Creek, is approximately 700 feet north of the study area.

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 the Wyndhaven Ridge Subdivision Phase I, Newport, Oregon” prepared by Pacific Habitat Services, Inc. dated April 30, 2020 and “Wetland Delineation for the Wyndhaven Ridge Subdivision Phase III, Newport, Oregon” prepared by Pacific Habitat Services, Inc. dated October 17, 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: Select. Title(s) and/or date(s).
- 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 reports
- USFWS NWI maps: in reports
- USGS topographic maps: in reports

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	N/A.



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- B. Typical year assessment(s):** The APT for Phase I was ran for the date the consultants were onsite doing data collection March 21, 2020. The APT showed this day was normal conditions for precipitation, meaning that the data was collected in a typical year. The APT for Phase III was ran for the date the consultants were onsite doing data collection June 12, 2019 and December 1, 2017. The APT showed drier than normal conditions for June 12, 2019, and wetter than normal conditions for December 1, 2017. On these graphs, both dates are right on the edge of the “normal conditions” curve, meaning they were close to being within a typical year. Even in a wetter than normal year, the tributary waterways are not close enough to the wetlands to inundate them.
- C. Additional comments to support AJD:** The AJD includes two study areas located approximately 900 feet apart for two separate phases of the Wyndhaven Ridge subdivision. Phase I is 3.52 acres and Phase III is 9.42 acres.