



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): 10/14/2020

ORM Number: NWP-2020-00293

Associated JDs: N/A

Review Area Location¹:

State/Territory: OR City: Salem County/Parish/Borough: Marion County

Center Coordinates of Review Area: Latitude 44.929976 Longitude -122.962051

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

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 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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion⁵	Rationale for Exclusion Determination
Ditch 1	0.05 acre	(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 meets criteria for both (b)(1) and (b)(5) exclusions.
Ditch 2	0.01 acre	(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 meets criteria for both (b)(1) and (b)(5) exclusions.
Wetland B	0.01 acre	(b)(1) Non-adjacent wetland	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. Wetland B is located within a swale constructed along a former railroad easement.
Wetland G	0.35 acre	(b)(1) Non-adjacent wetland	Wetland G 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. There are no a(1) through a(3) waters within the review area, and as Wetland G is entirely within the review area it is not an adjacent wetland.
Wetland H	0.08 acre	(b)(1) Non-adjacent wetland	Wetland H 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. There are no a(1) through a(3) waters within the review area, and as Wetland H is entirely within the review area it is not an adjacent wetland.

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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: *AKS Forestry and Engineering: East Park Estates PUD-South Half Wetland Delineation Report; June 2020.*
This information is sufficient for purposes of this AJD.
Rationale: *The delineator completed a wetland delineation which followed the U.S. Army Corps of Engineers 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 the waters within the review area. The delineation included site photos, vegetation and soil surveys, and site plans provide sufficient documentation to assess Wetland A under the Navigable Waters Protection Rule.*
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *Aerial: USACE 1936, 1944, 1972, 1985; Google Earth 1994, 2000, 2008, 2018.*
- Corps Site visit(s) conducted on: *Date(s).*
- Previous Jurisdictional Determinations (AJDs or PJDs): *N/A*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, accessed 10/7/2020.*
- USFWS NWI maps: *<https://www.fws.gov/wetlands/data/mapper.html>, accessed 10/6/2020*
- USGS topographic maps: *Salem East, OR USGS 1:24K; 2017.*

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.

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

C. Additional comments to support AJD: The review area is 47.80 acres north of State Street and west of Cordon Road NE consisting of Tax Lots 100, 101, 199, 200, 300 and 400 in Salem, Marion County, Oregon. The study area was formerly occupied by a commercial mushroom production facility that was demolished between 2004 and 2006. Remnants such as gravel areas are present, but no structures remain on-site.

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The review area contains no waters of the U.S. The review area contains three non-adjacent palustrine emergent wetlands (Wetlands B, Wetland G, and Wetland H), as well as two ditches that are not a(2) or a(4) waters (Ditch 1 and Ditch 2). Wetland B is a linear swale along a former railroad easement. Historic aerial photos show that the portion of Wetland B that is within the review area developed within a ditch that was constructed in uplands along the easement boundary. Wetland B continues off-site to the north, however wetlands outside of the review area are not the subject of this determination. The review area also contains Ditch 1 and Ditch 2 located along State St. and Cordon Rd. NE, respectively. To be an (a)(2) or an (a)(4) water, a ditch must have been constructed in a wetland that was an adjacent wetland (as defined by the NWPR) at the time the ditch was constructed. Historic aerial photos indicate that there were no adjacent wetlands within the review area at the time Ditch 1 and Ditch 2 were constructed, and that these ditches did not relocate former tributaries. Per the Navigable Waters Protection Rule a ditch cannot render an otherwise isolated wetland an “adjacent wetland.”

Wetlands G and H are located in soils mapped as hydric by the NRCS, however they do not abut an a(1)-a(3) water and are not inundated by an a(1)-a(3) water in a typical year and are therefore non-adjacent. These wetlands are contained entirely within the review area. There are no channelized surface water features connecting the wetlands to downstream waters. Groundwater flow, diffuse stormwater flow, 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.

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