



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): 10/15/2020

ORM Number: NWP-2019-075-1

Associated JDs: NWP-2019-075

Review Area Location<sup>1</sup>:

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

Center Coordinates of Review Area: Latitude 45.253146 Longitude -122.774557

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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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Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland A	1.4 acres	(a)(4) Wetland separated from an (a)(1)-(a)(3) 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	Wetland A contributes flow to a downstream (a)(1) – (a)(3) water in a typical year, and has a direct hydrologic surface connection to Deer Creek through an artificial structure in a typical year.
Wetland B	0.25 acres	(a)(4) Wetland separated from an (a)(1)-(a)(3) 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	Wetland B contributes flow to a downstream (a)(1) – (a)(3) water in a typical year, and has a direct hydrologic surface connection to Kraus Creek through an artificial structure in a typical year.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
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.
Ditch 1	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 1 meets criteria for both (b)(1) and (b)(5) exclusions.

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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 Smith Gardens Aurora North Pond Area Marion County, Oregon; Pacific Habitat Services, Inc., April 21, 2019. Wetland Delineation Smith Gardens Aurora Expansion Area Marion County, Oregon; Pacific Habitat Services, Inc., December 27, 2018.*  
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: *Delineation report historic aerials and Google Earth 2016, 2017, 2018, 2019.*
- Corps Site visit(s) conducted on: *Date(s).*
- Previous Jurisdictional Determinations (AJDs or PJDs): *NWP-2019-075, 12/13/2019.*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>, accessed 10/9/2020.*
- USFWS NWI maps: *<https://www.fws.gov/wetlands/data/mapper.html>, accessed 10/9/2020.*
- USGS topographic maps: *1:24K Sherwood, OR; 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):** Typical year assessments were performed for the field dates of the wetland delineation reports submitted for review. Wetland A field delineation (within review area boundary 2) took place on September 6, 2018 and September 14, 2018. Antecedent Precipitation

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Tool (APT) results show that site conditions on these dates were “drier than normal,” with a Drought Index (PDSI) of “severe drought.” Wetland B, Ditch 1, and Ditch 2 field delineation (within review area boundary 1) took place on March 26, 2019. APT results show that site conditions on this date were also “drier than normal,” with a Drought Index (PDSI) of “severe drought.”

- C. Additional comments to support AJD:** The review area consists of 16.6 acres comprised of Tax Lots 700 and 1500 as well as an additional 1.97-acre portion of Tax Lot 300. These are east of Boones Ferry Road NE and south of NE Arndt Road northwest of Aurora in Maron County, Oregon. The review area contains two adjacent wetlands and two excluded roadside ditches.

Wetland A is a 1.40-acre palustrine emergent wetland which flows into a tributary of Deer Creek. The wetland includes a swale that is part of a tributary to Deer Creek, which flows into Senecal Creek, which flows into Mill Creek, which flows into the Pudding River, which flows into the Willamette River. The wetland flows into a tributary of Deer Creek under Boones Ferry Rd NE and maintains a direct hydrologic surface connection to Deer Creek and downstream waters. Wetland A was delineated during a “drier than normal” year and still contained positive indicators for wetlands. Flows were present in the swale and in Deer Creek during the delineation and surface water was flowing offsite and downstream during early September (typically the driest time of the year), strongly indicating that a downstream hydrologic surface connection is present in a typical year. Wetland A includes areas mapped by the NRCS as Concord Silt Loam, a hydric soil.

Wetland B is 0.25 acre and flows into Kraus Creek, a tributary of Deer Creek. Wetland B receives water from 3 stormwater outfalls and flows downstream through a 24-inch culvert under Boones Ferry Rd NE. Wetland B is a palustrine emergent wetland that likely formed when this tributary was impounded by a weir that is located directly upstream of the culvert. Photos from the March 26, 2019 field delineation clearly show surface water present and a direct hydrologic surface connection from Wetland B to the culvert and offsite to downstream waters. Wetland B was delineated during a “drier than normal” year and still contained positive indicators for wetlands and surface water. Wetland B includes areas mapped by the NRCS as Dayton Silt Loam, a hydric soil.

Ditch 1 and Ditch 2 are roadside ditches along Boone’s Ferry Road NE that are continuous with Wetland B, however historic aerial photos show that they are ditches constructed in uplands and were not constructed in any a(1)-a(3) waters, therefore they meet the criteria for a b(5) exclusion under NWPR and are not waters of the U.S.

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