



**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): 12/04/2020
 ORM Number: NWP-2004-883-3
 Associated JDs: NWP-2004-883-3 Lot 20 AJD under Rapanos dated March 6, 2020
 Review Area Location¹: State/Territory: Oregon City: Winchester County/Parish/Borough: Douglas
 Center Coordinates of Review Area: Latitude 43.298686 Longitude -123.354197: This AJD applies to portions of Lot 20 at 398 Del Rio Road, Roseburg, Oregon. The Review Area is shown on the AJD drawings.

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
Lot 20 Wetland	1.51 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	<p>The Lot 20 Wetland within the Review Area is a part of, and contiguous with, a wetland that was constructed as a mitigation site. The mitigation wetland abuts a ditch, which is a relocated tributary and an (a)(2) water. The ditch contributes surface flow via a culvert to an un-named tributary which then flows through an impoundment and to the North Umpqua River. The North Umpqua River is a tributary of the Umpqua River. The Umpqua River is an (a)(1) water and is listed as a navigable water to River Mile 122.2 in the Navigable Riverways Within the State of Oregon dated October 1993. See Section III.B. for additional documentation regarding flow for the ditch and un-named tributary to the North Umpqua River.</p> <p>The mitigation wetland was constructed in 2007 to meet the requirements of Department of the Army permit No. NWP-2004-883 issued on February 17, 2006 and modified on August 7, 2006. The mitigation wetland, which includes that portion labeled Lot 20 Wetland subject to this AJD, is described as a 7.96-acre wetland in the mitigation monitoring report dated September 2013. The Corps' mitigation monitoring closeout letter dated October 21, 2016, also confirmed the mitigation wetland is 7.96 acres.</p> <p>Wetlands constructed for compensatory mitigation do not meet one of the 12 exclusions for non-jurisdictional waters under the Navigable Waters Protection Rule.</p> <p>During the Corps' July 29, 2020, site visit, Corps staff observed that the mitigation wetland, which includes that portion labeled Lot 20 Wetland subject to this AJD, is a contiguous wetland and abuts a ditch that is a relocated tributary and an (a)(2) water. Thus, the mitigation wetland, which includes that portion labeled Lot 20 Wetland subject to this AJD, meets the definition of an (a)(4) adjacent wetland.</p>

D. Excluded Waters or Features



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
N/A.	N/A.	N/A.	N/A.	

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: [Winchester Freight Rail Yard and Industrial Redevelopment On-Site Wetland Mitigation Delineation Report, Winchester, Oregon 7.26S, R. 6W, Section 24 Douglas County, Tax Lots 300 \(partial\) & 500 \(Partial\) dated August 2010 and prepared by SWCA Environmental Consultants.](#)

This information is *not* sufficient for purposes of this AJD.

Rationale: [The delineation does not include the historical context of the site of the ditch located outside of the review boundary.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth obtained July 2020-August 2020 and Site Visit Photographs from July 29, 2020 and January 15, 2020](#)
- Corps site visit(s) conducted on: [January 15, 2020 and July 29, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [NWP-2004-883-3 Lot 20 AJD dated March 6, 2020](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [USGS Topo View obtained July 24, 2020](#)

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	USACE Historical Aerials
State/Local/Tribal Sources	N/A.
Other Sources	Revised Onsite Compensatory Mitigation Plan for the Winchester Log Pond & Mille Site Industrial Redevelopment, Winchester, Douglas County, Oregon Dated July 2005 and prepared by Terra Science, Inc
Other Sources	Revised Onsite Compensatory Mitigation Plan for the Winchester Log Pond & Mille Site Industrial Redevelopment, Winchester, Douglas County, Oregon Dated July 2006 and prepared by Terra Science, Inc
Other Sources	Winchester Freight Rail Yard & Industrial Redevelopment Onsite Compensatory Wetland Mitigation As-Built Construction Report dated December 31, 2008

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Data Source (select)	Name and/or date and other relevant information
Other Sources	Winchester Freight Rail Yard & Industrial Redevelopment On-site Wetland Mitigation Annual Monitoring Report 2011 dated July 2011
Other Sources	Winchester Freight Rail Yard & Industrial Redevelopment On-site Wetland Mitigation Annual Monitoring Report 2013 dated September 2013
Other Sources	Corps On-site Mitigation Closeout Letter NWP-2004-883 dated October 21, 2016

B. Typical year assessment(s): The Corps ran a typical year analysis for the Review Area vicinity for January 15, 2020 and July 29, 2020 (dates of Corps site visits) and March 5, 2005, July 29, 2011, July 15, 2015, and May 10, 2019 (dates of Google Earth imagery that show the presence and absence of surface water) utilizing the Corps’ “Antecedent Precipitation Tool (APT)” (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>). The Corps selected Google Earth imagery that showed the presence of surface water in order to assess whether surface water was indicative of ephemeral or intermittent flow based on climatic conditions. Aerial/satellite imagery is typically taken in the summer dry season when skies are clear of cloud cover. However, the Corps also selected Google Earth imagery that did not show the presence of surface water to evaluate the lack of surface flow based on climatic conditions.

The APT is an automation tool that rapidly evaluates climatological parameters for a given location. The APT is one tool that the Corps may use to determine and document typical year conditions.

Output from the APT, evidence of surface water on aerial imagery and observations during site visits can be used to assess whether a tributary has surface water flow in a typical year. The term tributary means a river, stream, or similar naturally occurring surface water channel that contributes surface water flow in a typical year to a water identified in paragraph 33 CFR 328.3(a)(1) either directly or through one or more waters identified in paragraphs (a)(2), (3), or (4). A tributary must be perennial or intermittent in a typical year. The term typical year means when precipitation and other climatic variables are within the normal periodic range (e.g., seasonally, annually) for the geographic area of the applicable aquatic resource based on a rolling thirty-year period. A tributary does not require surface flow in every year (e.g., drought year).

The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions. A tributary does not lose its jurisdictional status if it contributes surface water flow to a downstream jurisdictional water in a typical year through a channelized non-jurisdictional surface water feature, through a subterranean river, through a culvert, dam, tunnel, or similar artificial feature, or through a debris pile, boulder field, or similar natural feature. The term tributary includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions for a tributary.

As described in this AJD, the Lot 20 Wetland is part of the mitigation wetland that abuts a ditch, which is a relocated/channelized stream (see Section III.C. below). The ditch flows underneath a railroad via a culvert and to an un-named tributary of the North Umpqua River. The ditch was assessed to determine if it met the flow conditions for a tributary, but the ditch is located outside the Review Area for this AJD. The un-named tributary was assessed to determine whether it would contribute surface water flow to the North Umpqua River in a typical year. The APT generated the following conditions rating based on precipitation that occurred in the three months prior to each of the dates as follows:



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Ditch:

07/29/2020 (Corps Site Visit) – “Normal Conditions.” While normal conditions were present for the time of year, the site visit was conducted during the dry season. No surface water was present during the site visit. The ditch contained areas of wetland vegetation as well as areas of bare ground. The ditch exhibited a shallow bed and bank as well as litter deposits. According to the APT generated WETS table the last recorded rain event prior to the date of the site visit was June 29, 2020.

01/15/2020 (Corps Site Visit) – “Drier than Normal.” Corps staff noted pockets of surface water throughout the mitigation wetland. According to the APT generated WETS table recorded rainfall occurred from January 11 through January 15.

05/10/2019 (Google Earth Image) – “Normal Conditions.” Based on Google Earth imagery, surface water is present within the ditch where the wetland abuts the ditch as well as downstream between the railroad and the un-named tributary. This is an indicator of intermittent flow due to an elevated ground water table. According to the APT generated WETS table the last recorded rain event prior to the date of the image was April 20, 2019 indicating that surface water present in the aerial image is not due to a recent precipitation event.

07/15/2015 (Google Earth Image) – “Drier than Normal.”. Based on Google Earth imagery, surface water was not present within the ditch or surrounding areas. According to the APT generated WETS table the last recorded rain event prior to the date of the image was June 2, 2015.

07/29/2011 (Google Earth Image) – “Wetter than Normal.”. Based on Google Earth imagery, surface water was not present within the ditch or surrounding areas. According to the APT generated WETS table the last recorded rain event prior to the date of the image was July 20, 2011. The lack of surface water in this image during the summer season is consistent with observations during the 7/29/2020 site visit.

03/052005 (Google Earth Image) “Drier than Normal.” Based on Google Earth imagery, surface water was present in the surrounding area near the ditch. Water presence within the ditch cannot be confirmed due to the riparian vegetation presence. According to the APT generated WETS table the last recorded rain event prior to the date of the image was March 4, 2005

Un-named Tributary to the North:

05/10/2019 (Google Earth Image) – “Normal Conditions.” Based on Google Earth imagery surface water is present within the tributary upstream and downstream of the impoundment located offsite. According to the APT generated WETS table the last recorded rain event prior to the date of the image was April 20, 2019. The surface water present in the image indicates it is not due to a recent precipitation event.

07/15/2015 (Google Earth Image) – “Drier than Normal.” Based on Google Earth imagery, surface water was present within the channel upstream of the impoundment. Surface water cannot be clearly seen downstream of the impoundment in the image due to vegetation. According to the APT generated WETS table the last recorded rain event prior to the date of the image was June 2, 2015.

07/29/2011 (Google Earth Image) – “Wetter than Normal.” Based on Google Earth imagery, surface water was present within the tributary in the channels upstream and downstream of the impoundment. According to the APT generated WETS table the last recorded rain event prior to the date of the image was July 20,



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

2011.

03/05/2005 (Google Earth Image) "Drier than Normal." Based on Google Earth imagery, surface water was present within the tributary in the channels upstream and downstream of the impoundment. According to the APT generated WETS table the last recorded rain event prior to the date of the image was March 4, 2005.

Typical Year Assessment Summary: As described above, a tributary must have perennial or intermittent surface water flow in a typical year. The Corps has evaluated climatic information in relation to surface water observed on aerial imagery, surface water flow observed during site visits, and field indicators of surface water flow observed during site visits. The 2010 wetland delineation report described the mitigation wetland as "displaying a surface water connection via an excavated ditch/tributary that flows into the North Umpqua River." Regarding wetland hydrology in the mitigation wetland, the 2013 annual monitoring report states, "a few inches of ponded water occurs throughout the site in the winter and spring months and surface soil saturation is present year-round in many areas." In accordance with 33 CFR 328.3 (c)(5) the term intermittent means surface water flowing continuously during certain times of the year and more than in direct response to precipitation (e.g., seasonally when the groundwater table is elevated or when snowpack melts). The Corps evaluated the presence/absence of flow within the ditch based on field observations, aerial images, climatic conditions, and other available information. Based on the evidence an elevated ground water table is present in a typical year during the wet seasons (winter and spring) that provides base flow for the ditch. The Corps has determined that flow within the ditch is intermittent and contributes surface water flow downstream to an (a)(1) water in a typical year through the un-named tributary.

C. Additional comments to support AJD: The following information is a review of the present ditch located outside the Review Area that the mitigation wetland (of which Lot 20 Wetland in the Review Area is a part) abuts. The 1939 aerial image shows a tributary at the location where the present ditch crosses underneath the rail line via culvert. The location of the tributary in the 1939 image can be traced upstream from the culvert east before it makes a sharp turn to the south. The 1957 aerial image shows a large log pond that was excavated between I-5 and the rail line. The tributary has been split in two with the downstream portion of it flowing from the pond west underneath the rail line and into the offsite un-named tributary and the upstream portion of it flowing into the log pond from the south. The 1965 aerial image shows similar conditions as the 1957 aerial. Google Earth imagery dated May 6, 1994, also shows the log pond and the tributary flowing west underneath the rail line as well as an upstream portion of the tributary south of the log pond. These conditions remain consistent at the site until the Google Earth image dated June 28, 2005. The 2005 image shows that the log pond had been partially filled. In the 2005 image, the tributary is still present at its previously discussed location flowing west underneath the rail line via a culvert west of the partially filled log pond. Available Google Earth imagery shows the same conditions until the aerial image dated July 29, 2011. The 2011 image shows that additional development had occurred at the site and the portion of the tributary that flows west underneath the rail line was relocated into the present ditch location. The portion of the tributary that was south of the log pond had been altered and now flows into a series of ponds and into the constructed mitigation wetland. Google Earth imagery dated July 15, 2015, shows similar conditions for the ditch but the southern-most portion of the tributary (which flowed into the former log pond area) had been piped and is no longer visible in the aerial image. The remaining open portion of the tributary immediately south of the constructed mitigation wetland continues to flow into the constructed mitigation wetland and out to the ditch. Google Earth imagery dated May 10, 2019, is consistent with the



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

present conditions on site.

As described in this AJD, Lot 20 Wetland is part of the mitigation wetland which is an (a)(4) adjacent wetland, because it abuts a ditch that is a relocated tributary and an (a)(2) water. The ditch flows underneath a railroad via a culvert and to an un-named tributary which flows through an impoundment and to the North Umpqua River. The North Umpqua River is a tributary of Umpqua River. The Umpqua River is an (a)(1) water and is listed as a navigable water to River Mile 122.2 in the Navigable Riverways Within the State of Oregon dated October 1993.