



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): February 18, 2021

ORM Number: NWP-2020-197-1

Associated JDs: NWP-2020-197, NWP-2020-293

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

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

Center Coordinates of Review Area: Latitude 44.934023 Longitude -122.96483

**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.

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<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
N/A	N/A	N/A	N/A

**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 1	0.71 acres	(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 is not an a(1) or a(2) water, and was not constructed in an a(4) water. See Section III(c) below. Ditch 1 is an excluded water feature pursuant to the Navigable Waters Protection Rule (NWPR).
Wetland B	0.34 acres	(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. See Section III(c) below. Wetland B is an excluded water feature pursuant to the NWPR.

**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: *East Park Estates North Half Wetland Delineation Report, AKS Engineering and Forestry, April 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 B under the Navigable Waters Protection Rule.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *Corps historic aerial photos: 1936, 1944, 1972, 1976*  
*Google Earth Pro Aerial imagery: 2008, 2013, 2019*

Corps Site visit(s) conducted on: *Date(s).*

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- Previous Jurisdictional Determinations (AJDs or PJDs): *NWP-2020-197 June 6, 2020, NWP-2020-293 October 14, 2020*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx, accessed February 5, 2021.*
- USFWS NWI maps: *https://www.fws.gov/wetlands/data/Mapper.html, January 12, 2021*
- 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	Salem/Keizer Local Wetland Inventory Map, 1999 DOGAMI LIDAR, <a href="https://gis.dogami.oregon.gov/maps/lidarviewer/">https://gis.dogami.oregon.gov/maps/lidarviewer/</a> , accessed January 13, 2021
Other Sources	Terra Science, Inc. 2009. Amended Wetland Delineation Report for the Pictsweet North Parcel Salem, Marion County, Oregon (December 2007, Amended November 2009).

**B. Typical year assessment(s):** The Corps ran a typical year analysis for February 29, 2008, May 5, 2013, and October 28, 2019 (dates of Google Earth Pro aerial imagery that demonstrate the presence and absence of surface water) as well as September 17, 2019 (the date wetland delineation photos were taken showing the presence of surface water) utilizing the Corps' "Antecedent Precipitation Tool (APT)" (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

02/29/2008 (Google Earth Pro Aerial Image) – Typical year analysis using the APT showed “Normal” conditions at the location of the Review Area on this date. In this aerial photo, surface water is visible upstream of a 36” culvert at the north end of Wetland B; the presence of a culvert at this location appears to restrict drainage within the Review Area. Surface water is not visible downstream of the culvert, within the Review Area, where subsurface drain tiling may be installed, except for near the outlet of the tiles where Wetland B drains under Auburn Road NE. Wetland B exhibits a uniform channel with bed and banks that is indicative of a maintained agricultural drainage feature within the Review Area.

05/05/2013 (Google Earth Pro Aerial Image) – Typical year analysis using the APT showed “Drier than Normal” conditions at the location of the Review Area on this date. In this aerial photo, surface water is visible upstream of a 36” culvert at the north end of Wetland B; the presence of a culvert at this location appears to restrict drainage within the Review Area. Surface water is not visible downstream of the culvert, within the Review Area, where subsurface drain tiling may be installed, except for near the outlet of the tiles where Wetland B drains under Auburn Road NE. Wetland B exhibits a uniform

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channel with bed and banks that is indicative of a maintained agricultural drainage feature within the Review Area.

09/17/2019 (Wetland delineation site photos) – Typical year analysis using the APT showed “Wetter than Normal” conditions at the location of the Review Area on this date. Site photos show surface water flowing off-site through the culvert under Auburn Road NE, however the APT tool indicates that conditions at the time were wetter than normal. Surface water flow at this time could be the result of recent precipitation and may not be indicative of typical conditions.

10/28/2019 (Google Earth Pro Aerial Image) – Typical year analysis using the APT showed “Normal” conditions at the location of the Review Area on this date. In this aerial photo, surface water is visible upstream of a 36” culvert at the north end of Wetland B; the presence of a culvert at this location appears to restrict drainage within the Review Area. Surface water is not visible downstream of the culvert, within the Review Area, where subsurface drain tiling may be installed, except for near the outlet of the tiles where Wetland B drains under Auburn Road NE. Wetland B exhibits a uniform channel with bed and banks that is indicative of a maintained agricultural drainage feature within the Review Area.

- C. Additional comments to support AJD:** The Review Area is 1.05 acres that corresponds to the delineated boundaries of Ditch 1 and Wetland B. The Review Area is located southwest of the intersection of Auburn Road NE and Cordon Road NE in Salem, Oregon and was formerly part of the Pictsweet mushroom farm that was decommissioned between 2004 and 2006.

Ditch 1 is approximately 0.71 acre and is a linear ditched swale with sidecast berms on both sides. Surface water in Ditch 1 flows to the north under 4 separate culverted crossings and then into a subsurface drain that resurfaces into another segment of Ditch 1 before entering a culvert under Auburn Road NE. Wetland B is a palustrine emergent wetland located in a depression associated with subsurface drain tiling constructed to carry water flowing north from Ditch 1. Wetland B is approximately 0.34 acre in size.

Historic aerial photos indicate that Ditch 1 was constructed between 1944 and 1972. The 1936 aerial photo shows that a linear water feature was present in the Review Area prior to ditch construction. This water feature was compared to Fruitland Creek, a known tributary to the east that is also visible in the 1936 aerial photo. The comparison shows that the water feature in the Review Area did not possess a defined or continuous channel when compared to the easily distinguished channel of Fruitland Creek, suggesting that this feature carried ephemeral flow and not intermittent or perennial flow. The Corps has not identified any information which indicates Ditch 1 relocated an a(2) tributary at the time of construction. Historic aerial photos from 1936 and 1944 show no other potential a(1)-a(3) waters abutting or draining the Review Area, therefore any wetlands that may have been present in

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the Review Area at the time Ditch 1 was constructed were not adjacent wetlands. Ditch 1 is therefore a b(5) exclusion under the NWPR.

The hydrology of Wetland B is the result of subsurface agricultural drainage tiling under the wetland. Surface water from Ditch 1 flows through drain tiles under Wetland 1 before resurfacing into a short downstream segment of Ditch 1 and then flowing out of the Review Area through culverts under Auburn Road NE. Wetland B does not abut an a(1)-a(3) water because Ditch 1 is a b(5) exclusion and therefore not an a(1)-a(3) water; flooding from the excluded ditch would not constitute flooding by an a(1)-a(3) water in a typical year. Wetland B is separated from downstream waters by multiple artificial features, namely Ditch 1 and the culverts under Auburn Road NE. Wetland B is therefore a b(1) exclusion under the NWPR.

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