



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 22, 2021

ORM Number: NWP-2021-048

Associated JDs: N/A

Review Area Location¹:

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

Center Coordinates of Review Area: Latitude 44.90643 Longitude -122.952833

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):

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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.

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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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(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland A	0.0381 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	See Section III(C) below.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ditch 1	70 feet	(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).
Ditch 2	106 feet	(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 is not an a(1) or a(2) water, and was not constructed in an a(4) water. See Section III(c) below. Ditch 2 is an excluded water feature pursuant to the NWPR.
Ditch 3	1260 feet	(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 3 is not an a(1) or a(2) water, and was not constructed in an a(4) water. See Section III(c) below. Ditch 3 is an excluded water feature pursuant to the NWPR.
Ditch 4	1035 feet	(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 4 is not an a(1) or a(2) water, and was not constructed in an a(4) water. See Section III(c) below. Ditch 4 is an excluded water feature pursuant to the NWPR.
Ditch 5	380 feet	(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 5 is not an a(1) or a(2) water, and was not constructed in an a(4) water. See Section III(c) below. Ditch 5 is an excluded water feature pursuant to the NWPR.

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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: *Gaffin Road Transportation Facility Salem, Oregon Wetland and Water Delineation Report - AKS Engineering and Forestry, LLC; January 15, 2021*

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 the Review Area under the Navigable Waters Protection Rule.*

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

Photographs: *Google Earth Pro Aerial imagery: 1994, 2008, 2013, 2019.*

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: *https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx, accessed February 16, 2021.*

USFWS NWI maps: *https://www.fws.gov/wetlands/data/Mapper.html, February 16, 2021*

USGS topographic maps: *Salem East, OR 1:24K, 2017; Slayton, OR 1:62.5k, 1925; Slayton, OR 1:62.5k, 1941; Slayton, OR 1:62.5k, 1957*

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, https://gis.dogami.oregon.gov/maps/lidarviewer/ , accessed February 16, 2021
Other Sources	N/A.

B. Typical year assessment(s): The Corps ran a typical year analysis for December 31, 2004, 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) utilizing the Corps' "Antecedent Precipitation Tool (APT)" (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

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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 image surface water is visible in the tributary to Fruitland Creek located outside of the Review Area to the west, indicating at least intermittent flow. Wetland A abuts this tributary.

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 image surface water is visible in the tributary to Fruitland Creek located outside of the Review Area to the west, indicating at least intermittent flow. Wetland A abuts this tributary.

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 image surface water is visible in the tributary to Fruitland Creek located outside of the Review Area to the west, indicating at least intermittent flow. Wetland A abuts this tributary.

12/31/2004 (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 image surface water is visible in the tributary to Fruitland Creek located outside of the Review Area to the west, indicating at least intermittent flow. Wetland A abuts this tributary.

- C. Additional comments to support AJD:** The Review Area is 29.17 acres located south of Gaffin Road Southeast and north of State Highway 22 in Salem, Marion County, Oregon. Historic aerial photos from 1936 and 1944 show a surface water swale or tributary feature within the Review Area that corresponds to mapped hydric soil (Concord silt loam) on U.S. Department of Agriculture Natural Resources Conservation Service (NRC) soil maps. Surface water drainage from this feature was relocated into a tributary to Fruitland Creek that is still present outside of the Review Area to the west of the Review Area. The relocation took place between 1944 and 1967. Historical topographic maps from 1925 and 1941 show this surface water feature within the Review Area in addition to the present-day tributary off-site; however, the 1957 topographic map shows the swale or tributary had been relocated into the tributary located outside of the Review Area.

This existing surface water feature is an intermittent tributary to Fruitland Creek that appears on USGS topographic maps and the local wetland inventory and is associated with mapped hydric soils (Dayton silt loam) in NRCS soil survey maps. Aerial imagery and typical year analysis were used to determine that this tributary is intermittent (see section III.B. above). This tributary maintains a hydrologic surface connection to Fruitland Creek, which maintains a hydrologic surface connection to the Pudding River. The Pudding River maintains a hydrologic surface connection with the Molalla River. The Molalla River maintains a hydrologic surface connection with the Willamette River near river mile (RM) (36). The U.S. Army Corps of Engineers (Corps), Portland District recognizes the Willamette River as a

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navigable water to RM 183.2 pursuant to the Corps 1993 list of Navigable Riverways within the State of Oregon. The Corps has determined this tributary is an a(2) water under the NWPR. Wetland A is 1,659 square feet within the Review area and abuts this tributary, therefore Wetland A is adjacent to an a(2) water and is itself an a(4) water pursuant to the NWPR.

There are five ditches within the Review Area that are all excluded b(5) waters under the NWPR. The water feature visible in 1936 and 1944 historic aerial photos was relocated by ditches entirely outside of the Review Area. Ditching to the south of the Review Area relocated this feature to the present-day location of the intermittent tributary to Fruitland Creek that abuts Wetland A. The relocation of the intermittent tributary to Fruitland Creek changed the hydrology of the site and currently there are no wetlands occupying the soils mapped as hydric within the Review Area. The 1936 and 1944 historic aeriels show that this surface water feature was a broad, shallow swale that lacked a clear bed and banks or ordinary high water mark. This indicates that this feature carried only ephemeral flow and was therefore not an a(2) water. Historic aeriels also indicate that any historic wetlands which may have been located in this swale in the past would not have been adjacent to any a(1)-a(3) waters at the time the ditches within the Review Area were constructed.

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