



**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): 5/20/2021
 ORM Number: NWP-2020-434
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Oregon City: Molalla County/Parish/Borough: Clackamas
 Center Coordinates of Review Area: Latitude 45.1406 Longitude -122.5735

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
- 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
NWP-2020-434 Bear Creek	0.71 acre(s)	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Bear Creek possesses a defined ordinary high water mark which flows west offsite directly through the Review Area. Bear Creek possesses perennial surface water flow based on the typical year assessment, see Section III B. Bear Creek contributes surface water flow in a typical year, via Rock Creek and Molalla River, to Willamette River. The Willamette River is not subject to the U.S. Army Corps of Engineers (Corps) Approved Jurisdictional Determination (AJD) for this AJD but is an (a)(1) navigable water of the U.S. per the Corps Portland

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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			District's 1993 list of Navigable Riverways within the State of Oregon. Bear Creek meets the definition of (a)(2) water of the U.S. per the Navigable Waters Protection Rule (NWPR).

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
NWP-2020-434 Wetland H	2.89 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is a palustrine emergent which directly abuts Bear Creek which is documented as an (a)(2) water above. This wetland is jurisdictional pursuant to the NWPR as an abutting wetland.
NWP-2020-434 Wetland J	0.95 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This feature is a palustrine emergent which directly abuts Bear Creek which is documented as an (a)(2) water above. This wetland is jurisdictional pursuant to the NWPR as an abutting wetland.
NWP-2020-434 Wetland K	0.29 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	This feature is a palustrine emergent which directly abuts Bear Creek which is documented as an (a)(2) water above. This wetland is jurisdictional pursuant to the NWPR as an abutting wetland.
NWP-2020-434 Wetland L	5.91 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	This feature is a palustrine emergent which directly abuts Bear Creek which is documented as an (a)(2) water above. This wetland is jurisdictional pursuant to the NWPR as an abutting wetland.
NWP-2020-434 Wetland M	2.48 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	This feature is a palustrine emergent which directly abuts Bear Creek which is documented as an (a)(2) water above. This wetland is jurisdictional pursuant to the NWPR as an abutting wetland.
NWP-2020-434 Ditch 5	0.03 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	This feature is a palustrine emergent wetland portion of an excavated ditch which is contiguous with Wetland H which is documented as an (a)(4) adjacent wetland above. Based on a review of the available historic aerial imagery and the delineation completed by the requestor, this portion of the ditch was constructed within an adjacent wetland and is therefore not excluded from jurisdiction per the NWPR.
NWP-2020-434 Ditch 6a	0.01 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	This feature is a palustrine emergent wetland portion of an excavated ditch which is contiguous with Wetland H which is documented as an (a)(4) adjacent wetland and Bear Creek which is documented as an (a)(2) tributary above. Based on a review of the available historic aerial imagery and



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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			the delineation completed by the requestor, this portion of the ditch was constructed within an adjacent wetland and is therefore not excluded from jurisdiction per the NWPR.
NWP-2020-434 Ditch 7a	0.03	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water This feature is a palustrine emergent wetland portion of an excavated ditch which is contiguous with Wetland M and L, which are documented as (a)(4) adjacent wetlands above, and Bear Creek which is documented as an (a)(2) tributary above. Based on a review of the available historic aerial imagery and the delineation completed by the requestor, this portion of the ditch was constructed within an adjacent wetland and is therefore not excluded from jurisdiction per the NWPR.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
NWP-2020-434 Wetland A	3.11	acre(s)	(b)(1) Non-adjacent wetland. This feature is a palustrine emergent wetland which appears to be located where a historic log pond was created. This wetland is connected to Ditch 1, which is documented as a (b)(5) exclusion below, via culvert. This wetland does not directly abut an (a)(1)-(a)(3) water as it is surround by uplands. There is no evidence Wetland A is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland A does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland B	0.01	acre(s)	(b)(1) Non-adjacent wetland. This feature is an isolated, palustrine emergent wetland. This wetland does not directly abut an (a)(1)-(a)(3) water as it is surround by uplands. There is no evidence Wetland B is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface

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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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
				connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland B does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland C	0.01	acre(s)	(b)(1) Non-adjacent wetland.	This feature is an isolated, palustrine emergent wetland. This wetland does not directly abut an (a)(1)-(a)(3) water as it is surround by uplands. There is no evidence Wetland C is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland C does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland D	10.21	acre(s)	(b)(1) Non-adjacent wetland	This feature is a palustrine emergent wetland. This wetland is connected to Ditch 2, which is documented as a (b)(5) exclusions below. This wetland does not directly abut an (a)(1)-(a)(3) water as it is surround by uplands. There is no evidence Wetland D is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland D does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland E	1.98	acre(s)	(b)(1) Non-adjacent wetland	This feature is a palustrine emergent wetland. This wetland is connected to Ditches 1 and 2, which are documented as a (b)(5) exclusions below. This wetland does not directly abut an (a)(1)-(a)(3) water as it is surround by uplands. There is no evidence Wetland E is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland E does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland F	0.12	acre(s)	(b)(1) Non-adjacent wetland	This feature is a palustrine emergent wetland. This wetland is connected to Ditch 2, which is



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			documented as a (b)(5) exclusion below. This wetland does not directly abut an (a)(1)- (a)(3) water as it is surround by uplands. There is no evidence Wetland F is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland F does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland G	0.21	acre(s)	(b)(1) Non-adjacent wetland This feature is a palustrine emergent wetland. This wetland is connected to 6b, which is documented as a (b)(5) exclusions below. This wetland does not directly abut an (a)(1)- (a)(3) water as it is surround by uplands. There is no evidence Wetland G is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland G does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Wetland I	0.41	acre(s)	(b)(1) Non-adjacent wetland. This feature is a palustrine emergent wetland. This wetland is connected to Ditch 4, which is documented as a (b)(5) exclusions below. This wetland does not directly abut an (a)(1)- (a)(3) water as it is surround by uplands. There is no evidence Wetland I is inundated by flooding in a typical year nor separated from an (a)(1)-(a)(3) water only by a natural feature. Furthermore, this wetland is not separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetlands and the (a)(1)-(a)(3) water in a typical year. Wetland I does not meet the definition of adjacent wetland under the NWPR.
NWP-2020-434 Ditch 1	0.36	acre(s)	(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 Ditch 1 is located in the northern portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			conditions of (c)(1).	
NWP-2020-434 Ditch 2	0.40	acre(s)	(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 located in the northern and central portions of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per the NWPR.
NWP-2020-434 Ditch 3	0.17	acre(s)	(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 located in the western portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per the NWPR.
NWP-2020-434 Ditch 4	0.02	acre(s)	(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 located in the western portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per the NWPR.
NWP-2020-434 Ditch 6b	0.11	acre(s)	(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 6b is located in the western portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this portion of ditch relocated a tributary, was constructed in a tributary, or was constructed in an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per the NWPR.
NWP-2020-434 Ditch 7b	0.03	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an	Ditch 7b is located in the southern portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence this portion of ditch relocated a tributary, was constructed in a tributary, or was constructed in



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		(a)(4) water that do not satisfy the conditions of (c)(1).	an adjacent wetland. Therefore, this ditch meets the (b)(5) exclusion per 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: [Wetland Delineation for the Avison Mill Property, Clackamas County, Oregon, prepared by Pacific Habitat Services, Inc on October 9, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The delineator completed a wetland delineation which followed the Corps 1987 wetland delineation manual and Regional Supplement to the Corps Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region to determine the boundaries of the waters within the Review Area. Furthermore, sufficient maps and figures were submitted to support the delineation.](#)

- Data sheets prepared by the Corps: [N/A](#)
- Photographs: [Aerial: Historic Aerial Imagery for 1936, 1972, 1976, 1981, 1983, and 1986 from Corps Historic Imagery Archive.](#)
- Corps site visit(s) conducted on: [N/A](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [N/A](#)
- USFWS NWI maps: [N/A](#)
- USGS topographic maps: [U.S. Geologic Survey Topoview reviewed by Corps staff on May 11, 2021.](#)

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	Google Earth aerial imagery dates April 17, 2015, May 8, 2019, and August 13, 2020.

B. Typical year assessment(s):

The Corps reviewed the output from the Antecedent Precipitation Tool (APT) for the Review Area vicinity using a single point method on April 17, 2015, May 8, 2019, and August 13, 2020 (dates of Google Earth Pro aerial imagery which demonstrate the presence surface water adjacent to the Review Area) utilizing the Corps' "Antecedent Precipitation Tool (APT)" (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

[Bear Creek, Ditch 6, and Ditch 7.](#)



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April 17, 2015 (Google Earth Pro Aerial Image) - "Normal Conditions". Based on Google Earth Pro aerial imagery, surface water is present within Bear Creek just outside the Review Area. Due to riparian vegetation coverage, presence of surface water within the Review Area could not be determined via aerial imagery. Surface water was not present in Ditch 6 or 7. According to the APT generated WETS table the last recorded precipitation event prior to the date of the image was April 7, 2015 indicating that surface water present in the aerial image is not due to a recent precipitation event.

May 8, 2019 (Google Earth Pro Aerial Image) - "Normal Conditions". Based on Google Earth Pro aerial imagery, surface water is present within Bear Creek just outside the Review Area. Due to riparian vegetation coverage, presence of surface water within the Review Area could not be determined via aerial imagery. Surface water was not present in Ditch 6 or 7. According to the National Oceanic and Atmospheric Administration (NOAA) precipitation data, the last recorded rain event prior to the date of the image was April 23, 2019 indicating that surface water present in the aerial image is not due to a recent precipitation event.

August 13, 2020 (Google Earth Pro Aerial Image) - "Drier than Normal". Based on Google Earth Pro aerial imagery, surface water is present within Bear Creek just outside the Review Area. Due to riparian vegetation coverage, presence of surface water within the Review Area could not be determined via aerial imagery. Surface water was not present in Ditch 6 or 7. According to the APT generated WETS table the last recorded rain event prior to the date of the image was August 7, 2020 indicating that surface water present in the aerial image is not due to a recent precipitation event.

Based on the typical year assessment above the Corps has determined that Bear Creek possesses perennial surface water flow during a typical year and Ditches 6 and 7 do not contain perennial or intermittent flow during a typical year.

- C. Additional comments to support AJD:** The Review Area appears to have been utilized historically for a variety of land disturbing activities including logging and agriculture beginning as early as 1936. The only feature consistently present in the historic aerial imagery is Bear Creek and its abutting wetlands. There were no other tributaries present on the site in the aerial image from 1936. The additional features outside of Bear Creek and the abutting wetlands appear to have been created through repeated land disturbance beginning at some point between 1936 and 1972.