



**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): 6/2/2021

ORM Number: NWP-2021-138

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: OR City: Beverly Beach County/Parish/Borough: Lincoln County

Center Coordinates of Review Area: Latitude 44.700413° Longitude -124.061157°

**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)<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
NWP-2021-138 Site SA	0.08 acre(s)	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Delineation photos of the site in February 2019 observed flows within an active channel with a defined bed and bank. The tributary originates within the review area and flows south before turning west and flowing through a culvert underneath highway 101. The tributary then directly flows across the beach and into the Pacific Ocean. The stream is approximately 2 to 3 feet in width. The duration of the flows are perennial based upon the Corps Antecedent Precipitation Tool (APT), the Oregon

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<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 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
			Streamflow duration manual, and the biological characteristics of the tributary.

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-2021-138 Site A	0.08 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This wetland directly abuts Stream A as it flows through the review area. Stream A is an a(2) water with perennial flows to the Pacific Ocean.
NWP-2021-138 Site A2	0.003 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This wetland directly abuts Stream A as it flows through the review area. Stream A is an a(2) water with perennial flows to the Pacific Ocean.
NWP-2021-138 Site B	0.02 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	This wetland directly abuts Stream A as it flows through the review area. Stream A is an a(2) water with perennial flows to the Pacific Ocean.

**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
NWP-2021-138 Site C	0.18 acre(s)	(b)(1) Non-adjacent wetland.	Wetland C is surrounded by uplands that are higher in elevation and does not meet the definition of an adjacent wetland pursuant to the NWPR. The wetland is not physically separated from an a(1)-(3) water by a natural or artificial feature and it is not inundated by flooding from an a(1)-(3) water.
NWP-2021-138 Site D	0.02 acre(s)	(b)(1) Non-adjacent wetland.	Wetland D is surrounded by uplands that are higher in elevation and does not meet the definition of an adjacent wetland pursuant to the NWPR. The wetland is not physically separated from an a(1)-(3) water by a natural or artificial feature and it is not inundated by flooding from an a(1)-(3) water.
NWP-2021-138 Site D2	0.01 acre(s)	(b)(1) Non-adjacent wetland.	Wetland D2 is surrounded by uplands that are higher in elevation and does not meet the definition of an adjacent wetland pursuant to the NWPR. The wetland is not physically separated from an a(1)-(3) water by a natural or artificial

<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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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			feature and it is not inundated by flooding from an a(1)-(3) water.
NWP-2021-138 Site E	0.20	acre(s)	(b)(1) Non-adjacent wetland.  Wetland E abuts a pond and is fed by flows from Stream B. The wetland is surrounded by uplands on the north, east, and south that are higher in elevation and does not meet the definition of an adjacent wetland pursuant to the NWPR.  Wetland E is part of a slow moving landslide. The wetland is growing within the landslide and is aiding in the slide to keep moving.
NWP-2021-138 Site Pond	0.69	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.  The pond is abutted by Wetland E and is fed by flows from Stream B. The pond is surrounded by uplands on the all sides which are higher in elevation and the pond does not meet the definition of an adjacent pond pursuant to the NWPR. The pond is not physically separated from an a(1)-(3) water by a natural or artificial feature and it is not inundated by flooding from an a(1)-(3) water.  The pond is part of a slow moving landslide. The pond is growing within a crevice forming in a landslide which is aiding in the slide to keep moving to the highway. No flows were observed in a relict channel found along the north side of the pond which may have formed years prior to the slide occurring.
NWP-2021-138 Site SB	0.03	acre(s)	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.  Stream B is surrounded by uplands that are higher in elevation and does not meet the definition of an (a)(2) water pursuant to the NWPR. The stream is not physically separated from an a(1)-(3) water by a natural or artificial feature and it is not inundated by flooding from an a(1)-(3) water.  This stream has intermittent flow which was observed during the wetland delineation and the Oregon Streamflow duration manual indicates the flows are intermittent. This stream flows into Wetland E and then into the pond. Flows were not observed leaving pond or this region of the review area. The stream is approximately one foot in width. The pond and Wetland E are non-jurisdictional waters.



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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: [US101 – Moolack Landslide Repair Wetland Delineation Report dated April 2019.](#)

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.](#)

Data sheets prepared by the Corps: [N/A](#)

Photographs: [Other: Delineation site photos dated February 2019.](#)

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: [WebSoil Survey retrieved for Moolack Slide Delineation Soil Maps and dated February 2019.](#)

USFWS NWI maps: [U.S. Fish and Wildlife Service National Wetland Inventory Map provided in delineation and dated February 2019.](#)

USGS topographic maps: [U.S. Geologic Survey Newport North Quadrangle Map in delineation and dated February 2019.](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">National Hydrography Dataset information obtained by USACE staff on 29 April 2021 from the USACE Regulatory WebViewer.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">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.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** [The USACE ran a typical year analysis for the Review Area vicinity for 21 February 2019 \(date of the wetland delineation field work\) and 24 July 2019, 18 August 2016, 17 July 2015, 24 May 2012, and 5 May 1994 \(dates of Google Earth imagery that show the presence and absence of surface waters\) utilizing the USACE's "Antecedent Precipitation Tool \(APT\)" \(<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.19>\).](#)

[02/21/2019 \(Delineation Field Work\) - "Normal Conditions." Normal conditions were present during the delineation field work. Flows were observed in the delineation site photographs of Stream A and waters flowing from Wetlands A, A2, and B to Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.](#)



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07/24/2019 (Google Earth Aerial) - "Drier Than Normal Conditions." Based on Google Earth imagery, surface water and saturation are visibly present on the beach and extends to the Pacific Ocean from Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.

08/18/2016 (Google Earth Aerial) - "Normal Conditions." Based on Google Earth imagery, surface water and saturation are visibly present on the beach and extends to the Pacific Ocean from Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.

07/17/2015 (Google Earth Image) - "Drier Than Normal Conditions." Based on Google Earth imagery, surface water and saturation are visibly present on the beach and extends to the Pacific Ocean from Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.

05/24/2012 (Google Earth Image) - "Wetter Than Normal Conditions." Based on Google Earth imagery, surface water and saturation are visibly present on the beach and extends to the Pacific Ocean from Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.

05/05/1994 (Google Earth Image) - "Normal Conditions." Based on Google Earth imagery, surface water and saturation are visibly present on the beach and extends to the Pacific Ocean from Stream A. No flows from the site were observed from Stream B, the Pond, or the drainage channel from the Pond.

Based upon the surface water presence and saturation visibility on the beach which extends to the Pacific Ocean from Stream A during the dry season and under normal conditions, drier than normal conditions, and wetter than normal conditions, the USACE has determined Stream A to have perennial flow. Based on the lack of surface water presence in the drainage channel from the Pond and no flows observed leaving the Pond from Stream B, the USACE had determined these features are not (a)(1-3) waters.

**C. Additional comments to support AJD: N/A**