



**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): 6/21/2021  
 ORM Number: NWP-2021-23  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Oregon City: Banks County/Parish/Borough: Washington  
 Center Coordinates of Review Area: Latitude 45.623481 Longitude -123.115796

**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
West Fork Dairy Creek	192 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The West Fork Dairy Creek possess an Ordinary High Water Mark (OHWM) and exhibits a bed and bank and is located within the northwestern portion of the Review Area. The West Fork Dairy Creek flows from North to South and continues outside of the Review Area. The West Fork Dairy Creek possess perennial surface water flow based on the typical year assessment, see Section III B.  The West Fork Dairy Creek contributes surface water flow in a typical year via Dairy Creek to the

<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
			<p>Tualatin River. The Tualatin 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 District's 1993 List of Navigable Riverways within the State of Oregon.</p> <p>The West Fork Dairy Creek meets the definitions of an (a)(2) tributary pursuant the Navigable Waters Protection Rule (NWPR).</p>

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
Wetland A	0.26 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature.	Wetland A is a palustrine emergent wetland located between Port of Tillamook Bay Railroad track and the Banks-Vernonia Trail. Based upon Oregon Department of Geology and Mineral industries Lidar and Google Earth aeriels Wetland A is a part of a contiguous wetland that extends to the northwest between the tracks and trail until the wetland is only separated from West Fork Dairy Creek by the natural bank, which is documented as an (a)(2) tributary above. Therefore, Wetland A meets the definition of (a)(4) water pursuant the NWPR.

**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
Wetland B	0.09 acre(s)	(b)(1) Non-adjacent wetland.	This wetland does not directly abut an (a)(1)-(a)(3) water, as it is surrounded 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 connection between the wetlands and the (a)(1) (a)(3) water in a typical year. Wetland 4 does not

<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	
				meet the definition of an adjacent wetland under the NWPR
Ditch 1	141	linear 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 located in the southwestern portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence the ditch is a relocated tributary, was constructed in a tributary, or was constructed in an adjacent wetland; therefore, the ditch meets the (b)(5) exclusion pursuant to the NWPR.
Ditch 2	714	linear 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 located in the center portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence the ditch is a relocated tributary, was constructed in a tributary, or was constructed in an adjacent wetland; therefore, the ditch meets the (b)(5) exclusion pursuant to the NWPR.
Ditch 3	14	linear 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 located in the southern portion of the Review Area. Based on historic aerial imagery and topographic maps, there is no evidence the ditch is a relocated tributary, was constructed in a tributary, or was constructed in an adjacent wetland; therefore, the ditch meets the (b)(5) exclusion 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: [Main Street, Banks Road, & Cedar Canyon Road Intersection Improvements Banks, Washington County, Oregon Wetland and Water Delineation Report dated November 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: The requestor utilized the methods described in 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 aquatic resources within the Review Area.

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Aerial: [Google Earth, June 15, 2021](#)



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- 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: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [U.S. Geologic Survey Topoviewer: 1941, 1956, 2011, and 2020 Topographic Maps, June 15, 2021.](#)

**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="#">N/A.</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="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">Oregon Department of Geology and Mineral industries Lidar</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** The Corps reviewed the output from the Antecedent Precipitation Tool (APT) for the Review Area using a single point method on July 16, 2018, May 8, 2019, and August 13, 2020 (dates of Google Earth Pro aerial imagery which demonstrate the presence of surface water within the Review Area). The APT is an automation tool that rapidly evaluates climatic parameters for a given location. The APT is one tool that the Corps may use to determine and document typical year conditions. The APT is available online (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool>).

[West Fork Dairy Creek:](#)

July 16, 2018 (Google Earth Aerial) – The APT determined this date was under “Drier than Normal.” Conditions at the site are drier than normal and the aerial occurs within the dry season. Surface water is present within the West Fork Dairy Creek.

May 8, 2019 (Google Earth Aerial) – The APT determined this date was under “Normal Conditions.” While normal conditions are present at the site, the aerial occurs within the dry season. Surface water is present within the West Fork Dairy Creek.

August 13, 2020 (Google Earth Aerial) – The APT determined this date was under “Normal Conditions.” While normal conditions are present at the site, the aerial occurs within the dry season. Surface water is present within the West Fork Dairy Creek.

Based on upon the above assessment, surface water is present within the West Fork Dairy Creek during the dry season under normal conditions. The Corps has determined that the creek possesses perennial flow.

**C. Additional comments to support AJD:** [N/A or provide additional discussion as appropriate.](#)