



**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): 7/1/2021
 ORM Number: NWP-2018-341
 Associated JDs: NWP-2016-545
 Review Area Location¹: State/Territory: Oregon City: Newport County/Parish/Borough: Lincoln
 Center Coordinates of Review Area: Latitude 44.625991 Longitude -124.02746

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):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland Q	0.05 acre(s)	(a)(4) Wetland inundated by flooding from an	Wetland Q is a seasonally saturated palustrine emergent wetland in the southwest corner of the Review Area. Wetland Q is located at the Mean

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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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
		(a)(1)-(a)(3) water in a typical year.	Higher High Water (MHHW) elevation of Yaquina Bay. The MHHW for Yaquina Bay is approximately 8.2 feet according to the NOAA tidal datum for Yaquina Bay and DOGAMI lidar data documents the elevation for Wetland Q at 8.2 feet. Google Earth imagery shows the riprap bank that separates Wetland Q from Yaquina Bay frequently eroded where high tidal water flows into the wetland. Wetland Q is inundated by flooding from an (a)(1) water in a typical year, thus Wetland Q meets the criteria to be recognized as a water of the U.S. pursuant to (a)(4).
Wetland R	0.20	acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year. Wetland R is a seasonally saturated palustrine emergent wetland located along the western boundary of the Review Area. A culvert located at the elevation of the MHHW connects the northwest side of Wetland R into Yaquina Bay. Wetland R maintains a direct hydrologic surface water connection to Yaquina Bay during a typical year. Yaquina Bay is recognized as an (a)(1) water. The Yaquina Bay is a navigable water of the U.S. pursuant to the Corps 1993 list of Navigable Harbors and Bays within the State of Oregon. Since Wetland R is separated from an (a)(1) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1) water in a typical year, Wetland R meets the criteria to be recognized as a water of the U.S. pursuant to (a)(4).

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	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 Wetland A is a seasonally flooded palustrine emergent wetland that formed in the bottom of an excavated swale. The swale was constructed sometime between 1973 and 1980. Based on historic aerial imagery, there is not sufficient evidence that documents that the excavated swale was constructed in a tributary, relocated a tributary, or was constructed in an adjacent wetland. Therefore, the Corps has determined

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
			conditions of (c)(1).	that the excavated swale where Wetland A formed meets the (b)(5) exclusion pursuant the Navigable Waters Protection Rule.
Wetland B	0.22	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).	Wetland B is a seasonally flooded palustrine emergent wetland that formed in the bottom of an excavated swale. The swale was constructed sometime between 1973 and 1980. Based on historic aerial imagery, there is not sufficient evidence that documents that the excavated swale was constructed in a tributary, relocated a tributary, or was constructed in an adjacent wetland. Therefore, the Corps has determined that the excavated swale where Wetland B formed meets the (b)(5) exclusion pursuant the Navigable Waters Protection Rule.
Wetland C	0.18	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).	Wetland C is a seasonally flooded palustrine emergent wetland that formed in the bottom of an excavated swale. The swale was constructed sometime between 1973 and 1980. Based on historic aerial imagery, there is not sufficient evidence that documents that the excavated swale was constructed in a tributary, relocated a tributary, or was constructed in an adjacent wetland. Therefore, the Corps has determined that the excavated swale where Wetland C formed meets the (b)(5) exclusion pursuant the Navigable Waters Protection Rule.
Wetland D	0.02	acre(s)	(b)(1) Non-adjacent wetland.	Wetland D is a seasonally saturated palustrine emergent wetland. The 0.02 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland E	0.007	acre(s)	(b)(1) Non-adjacent wetland.	Wetland E is a seasonally saturated palustrine emergent wetland. The 0.007 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland F	0.03	acre(s)	(b)(1) Non-adjacent wetland.	Wetland F is a seasonally saturated palustrine emergent wetland. The 0.03 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland G	0.006	acre(s)	(b)(1) Non-adjacent wetland.	Wetland G is a seasonally saturated palustrine emergent wetland. The 0.006 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland H	0.07 acre(s)	(b)(1) Non-adjacent wetland.	Wetland H is a seasonally saturated palustrine emergent wetland. The 0.07 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland I	0.03 acre(s)	(b)(1) Non-adjacent wetland.	Wetland I is a seasonally saturated palustrine emergent wetland. The 0.03 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland J	0.03 acre(s)	(b)(1) Non-adjacent wetland.	Wetland J is a seasonally saturated palustrine emergent wetland. The 0.03 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland K	0.007 acre(s)	(b)(1) Non-adjacent wetland.	Wetland K is a seasonally saturated palustrine emergent wetland. The 0.007 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland L	0.02 acre(s)	(b)(1) Non-adjacent wetland.	Wetland L is a seasonally saturated palustrine emergent wetland. The 0.02 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland M	0.008 acre(s)	(b)(1) Non-adjacent wetland.	Wetland M is a seasonally saturated palustrine emergent wetland. The 0.008 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland N	0.02 acre(s)	(b)(1) Non-adjacent wetland.	Wetland N is a seasonally saturated palustrine emergent wetland. The 0.02 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland O	0.57 acre(s)	(b)(1) Non-adjacent wetland.	Wetland O is a seasonally saturated palustrine emergent wetland. The 0.57 acre wetland does not meet the criteria of an (a)(4) water and is an excluded water (b)(1) under the Navigable Waters Protection Rule.
Wetland P	0.09 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	Wetland P is a seasonally flooded palustrine emergent wetland that formed in the bottom of an excavated swale. The swale was constructed sometime between 1973 and 1980. Based on historic aerial imagery, there is not sufficient evidence that documents that the excavated swale was constructed in a tributary, relocated a



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		do not satisfy the conditions of (c)(1).	tributary, or was constructed in an adjacent wetland. Therefore, the Corps has determined that the excavated swale where Wetland P formed meets the (b)(5) exclusion pursuant the Navigable Waters Protection Rule.
Wetland S	0.02	acre(s)	(b)(1) Non-adjacent wetland.
Wetland T	0.004	acre(s)	(b)(1) Non-adjacent wetland.
Wetland U	0.003	acre(s)	(b)(1) Non-adjacent wetland.
Wetland V	0.008	acre(s)	(b)(1) Non-adjacent wetland.
Wetland W	0.01	acre(s)	(b)(1) Non-adjacent wetland.

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 within McLean Point in Newport, Oregon, dated November 2, 2016.](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [The Corps requested additional information and data collection which was provided on April 30, 2021 by the consultant, Pacific Habitat Services, Inc.](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

Photographs: [Aerial and Other: Corps historic aerial imagery: 1958, 1962, 1968, 1972, 1973, 1978, 1980, 1985, 1986, 1989, 1991, 1994, and 2001. Site photographs and drone aerial: February 17, 2016 and April 30, 2021. Google Earth Imagery: April 18, 2005; October 21, 2011; May 24, 2012 and April 28, 2016.](#)

Corps site visit(s) conducted on: [Date\(s\).](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [AJD NWP-2016-545](#)



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- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: [USACE Portland District Regulatory ArcGIS](#), last accessed on June 17, 2021.
- USFWS NWI maps: [USACE Portland District Regulatory ArcGIS](#), last accessed on June 17, 2021.
- USGS topographic maps: [USACE Portland District Regulatory ArcGIS](#), last accessed on June 17, 2021.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USACE Portland District Regulatory ArcGIS , last accessed on June 17, 2021.
USDA Sources	N/A.
NOAA Sources	NOAA tidal datum, last accessed on June 17, 2021.
USACE Sources	USACE Portland District Regulatory ArcGIS , last accessed on June 17, 2021.
State/Local/Tribal Sources	N/A.
Other Sources	DOGAMI Lidar, last accessed on June 17, 2021.

B. Typical year assessment(s): The Corps utilized the Antecedent Precipitation Tool (APT) to evaluate the study area via a single point method for four distinct time periods. The APT was generated for dates that correlate with field work conducted by the requestor and aerial imagery. The APT analysis determines if the date-specific observations fall within the normal periodic range for the geographic area based on a rolling thirty-year period. A single point method using latitude and longitude coordinates identified in Section (1) above were utilized because the single point method adequately represents the data sources available via the APT to conduct an analysis of climatic conditions within the study area. The APT is available online (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool>).

1) April 18, 2005: Google Earth imagery did not have multiple years of aerial imagery during the wet season of the Review Area. The APT indicated the date was during the wet season with normal conditions. Aerial imagery on this date shows visible surface water through the entire site documenting the wetlands retain surface water in normal conditions during the wet season.

2) October 21, 2011: Date of the field work conducted by the requestor for the wetland delineation. The APT indicated the date was during the dry season with normal conditions. Conducting a delineation during the dry season can impact the delineators ability to accurately determine the boundaries of wetlands. The Corps requested additional data collection after reviewing the delineation.

3) May 24, 2012: Google Earth imagery of the Review Area during the wet season. The APT indicated the date was during the wet season with normal conditions. Aerial imagery on this date shows visible surface water through the entire site and increased on-site activities with dredged material placement.

4) April 28, 2016: Date of additional field work conducted by the requestor for the wetland delineation. The APT indicated the date was during the wet season during a mild drought with normal conditions. The additional field work expanded the mapped wetlands to include wetlands S, T, U, V, and W in the western portion of the Review Area.



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C. Additional comments to support AJD: The boundaries of the wetlands were determined using the methodology provided in the 1987 Corps of Engineers Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region. In addition, the requestor utilized Section F, Atypical Situations, Subsection 4: Man-Induced Wetlands. The Review Area covers approximately 40 acres of a manmade peninsula that extends 2,000 feet south into Yaquina Bay/Yaquina River. The peninsula was created by the Corps starting sometime between 1948 and 1955. The eastern region of the peninsula was the last area to be filled and was completed sometime between 1968 and 1978.