



**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-2021-063  
 Associated JDs: NWP-2016-545 and NWP-2018-341  
 Review Area Location<sup>1</sup>: State/Territory: Oregon City: Newport County/Parish/Borough: Lincoln  
 Center Coordinates of Review Area: Latitude 45.285969 Longitude -123.036801

**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
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
N/A.	N/A.	N/A.	N/A.

<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.



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**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 A	0.15	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 A is a seasonally flooded palustrine emergent wetland that that formed in the bottom of an excavated swale. Wetland A continues offsite from the Review Area. The remaining segment of Wetland A that extends offsite is reviewed under AJD NWP-2018-341. 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 A formed meets the (b)(5) exclusion pursuant the Navigable Waters Protection Rule.

**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 Newport, Oregon, dated November 13, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

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 taken by the requestor dated September 9, 2020. Google Earth imagery dated July 24, 2019.](#)

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

Previous Jurisdictional Determinations (AJDs or PJDs): [NWP-2016-545 and NWP-2018-341](#)

Antecedent Precipitation Tool: [\*provide detailed discussion in Section III.B.\*](#)

USDA NRCS Soil Survey: [USACE Portland District Regulatory ArcGIS, last accessed on May 24, 2021.](#)

USFWS NWI maps: [USACE Portland District Regulatory ArcGIS, last accessed on May 24, 2021.](#)

USGS topographic maps: [USACE Portland District Regulatory ArcGIS, last accessed on May 24, 2021.](#)

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

<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.



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USACE Portland District Regulatory ArcGIS, last accessed on May 24, 2021.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	USACE Portland District Regulatory ArcGIS, last accessed on May 24, 2021.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** The Corps utilized the Antecedent Precipitation Tool (APT) to evaluate the study area via a single point method for one distinct time period. The APT was generated for a date that correlates with 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) July 24, 2019: The APT indicated that date was during the dry season during a moderate drought with drier than normal conditions. Google Earth imagery shows a distinct vegetation change with new plant growth within the boundaries of the delineated wetland. The vegetation imagery indicates that despite being in dry season during a moderate drought with drier than normal conditions, wetland hydrology is sustained and caused vegetation growth in the palustrine emergent wetland.

**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. The Review Area covers approximately 8.95 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.