



**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): 8/12/2021

ORM Number: NWP-2020-478

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Oregon City: near Arlington County/Parish/Borough: Gilliam

Center Coordinates of Review Area: Latitude 45.553428 Longitude -120.175653

**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: Review areas 2-12 & 14-16 are comprised entirely of dry land. The Corps utilized the remote sensing tools identified in Section III A to determine that these review areas did not contain jurisdictional waters nor excluded waters or features within the limits of each review area. See Section III C for additional discussion.
- 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.

<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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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.

**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
Site 1	3,000 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Section III C.
Site 2	350 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Section III C.
N/A.	N/A.	N/A.	N/A.
N/A.	N/A.	N/A.	N/A.

**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: *The information submitted by the consultant includes review area maps submitted on 18DEC2020 & revised 01JUL2021, site photographs taken on 05AUG2020, streamflow duration field assessment forms dated 27APR2017, a letter dated 26OCT2017 from Oregon Department of State Lands regarding WD #2017-0111 wetland delineation report for Montague Wind Power Facility (larger review area than reviewed for this AJD), and a draft copy of wetland and nonwetland waters delineation dated NOV2020 which did not include wetland/stream data forms.*

This information is not sufficient for purposes of this AJD.

Rationale: *The information provided did not include an Antecedent Precipitation Tool (APT) analysis to determine stream flow duration. Soil maps and existing wetland inventories, such as the USFWS NWI mapper, was not included. The site photographs were taken from the outside boundary of each review area and not from the interior of the review area.*

- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *Aerial and Other: Site photographs taken by the agent during site visit on 05AUG202, Google Earth Pro aerial imagery dated 28SEP2020, 14JUN2019, 03MAY2015, 27JUN2013, and undated Google Earth Pro's street view feature imagery from Oregon State Highway 19.*
- 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.*

<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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- USDA NRCS Soil Survey: Viewed online and downloaded via the NRCS Web Soil Survey on 04AUG2021.
- USFWS NWI maps: Viewed online and downloaded via the USFWS NWI Mapper on 04AUG2021.
- USGS topographic maps: 1965 and 2020 editions of the Shulter Flat, Oregon 1:24,000 topographic maps viewed online and downloaded via USFS Topview on 04AUG2020.

**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	N/A.

**B. Typical year assessment(s):** The Corps completed typical year assessments using the Antecedent Precipitation Tool (APT). The APT analysis was performed for four dates where historical aerial imagery provided clear views of potential stream channels. The dates for the APT analysis are limited to the dry season for the review areas due to the limited available historical imagery.

- 28SEP2020: Dry season, drier than normal, severe drought
- 14JUN2019: Dry season, normal conditions, normal drought index (PDSI)
- 03MAY2015: Dry season, drier than normal, moderate drought
- 27JUN2013: Dry season, normal conditions, incipient wetness

The Corps reviewed historical aerial imagery for the dates the APT analysis were completed. This review include areas both within and adjacent to the 16 review areas identified in the AJD request. Emphasis was placed on reviewing potential intermittent stream channels as identified on the topographical map. The Corps was unable to identify surface water in any mapped intermittent stream nor in any drainage/flow line within or adjacent to the 16 review areas.

**C. Additional comments to support AJD:**

Excluded waters or features: Both Sites 1 & 2 (in Review Areas 1 and 13, respectively) are identified as intermittent stream channels on the topographical map. Characteristics for the up and downstream limits of Site 1 are shown in photos 4-9 in the photolog provided by the consultant. In those photos, modern agricultural practices for the production of row crops have erased any defining characteristics associated with a stream channel. A review of the historic aerial imagery identified in Section III A indicates that runoff from precipitation events result in an erosion feature that reappears year after year until agricultural practices of discing and planting remove the feature. This indicates that surface flows occur within Site 1 in response to precipitation and but for the impacts of agricultural production the characteristics of a stream channel would be observed. The historic aerial images and APT analysis failed to identify surface water present within Site 1 for the four dates analyzed. The Corps has determined that Site 1 meets criteria (b)(3) for excluded water or feature under the NWPR and Site 1 is not a jurisdictional water.

Characteristics for Site 2 are shown in photo 37 in the photolog provided by the consultant. In that photo an area excluded from planting of agricultural crops is shown. There appears to be a meandering path of



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unvegetated soil bounded by a narrow band of herbaceous vegetation. Just upstream and outside of the review area flow is artificially concentrated by a culvert crossing beneath a rural road. The area appears to be managed as a grassed waterway to transfer consolidated water flows from outside the review area between existing agricultural fields. This indicates that surface flows occur within Site 2 in response to precipitation. The historic aerial images and APT analysis failed to identify surface water present within Site 2 for the four dates analyzed. The Corps has determined that Site 2 meets criteria (b)(3) for excluded water or feature under the NWPR and Site 1 is not a jurisdictional water.

Dry land determinations for review areas 2-12 & 14-16: The revised request for jurisdictional determination dated 01JUL2021 included an updated map identifying sixteen (16) separate geographic areas for which a jurisdictional determination was requested. The Corps determined review areas 2-12 & 14-16 are comprised entirely of dry land. This determination was made after reviewing the supporting information identified in Section III A. Specific discussion and the Corps determination for each review area is provided below.

Review area 2 is approximately 30 acres in size and located wholly within an existing agricultural field. The boundary of this review area was drawn in a manner that excludes a nearby drainage/flow line. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 2 is comprised of dry land.

Review area 3 is approximately 250 acres in size and located wholly within an existing agricultural field. The boundary of this review area was drawn in a manner that excludes a nearby drainage/flow line along the western boundary and a culverted road crossing along the northern boundary. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. There is a small area in the northeast corner of the review area where the vegetation is consistently greener than the surrounding vegetation in the aerial imagery. Based upon the topographical maps and site photographs the Corps determined this feature is a swale in uplands; it does not meet the requirements for an excluded water ((b)(1) – (b)(12)) and is an upland area with more suitable hydrology for agricultural crop production. The Corps has determined the entirety of review area 3 is comprised of dry land.

Review area 4 is approximately 165 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. There is a small area in the middle of the review area running along a line from the southeast to the northwest where the vegetation is consistently greener than the surrounding vegetation in the aerial imagery. Based upon the topographical maps and site photographs, the Corps determined this feature is a swale in uplands; it does not meet the requirements for an excluded water ((b)(1) – (b)(12)) and is an upland area with more suitable hydrology for agricultural crop production. The Corps has determined the entirety of review area 4 is comprised of dry land.

Review area 5 is approximately 1 acre in size and located wholly within an existing agricultural field. The



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topographical map identifies a potential intermittent stream just downstream, and outside, of the northern limit of the requested review area. Site photographs do not indicate the presence of any stream channel within the review area and showed the entirety of review area 5 was planted for row crop production. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 5 is comprised of dry land.

Review area 6 is approximately 65 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. There is a small area in the northeast corner of the review area where the vegetation is consistently greener than the surrounding vegetation in the aerial imagery. Based upon the topographical maps and site photographs the Corps determined this feature is a swale in uplands; it does not meet the requirements for an excluded water ((b)(1) – (b)(12)) and is an upland area with more suitable hydrology for agricultural crop production than the other portions of the agricultural field. The Corps has determined the entirety of review area 6 is comprised of dry land.

Review area 7 is approximately 9 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 7 is comprised of dry land.

Review area 8 is approximately 3 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 8 is comprised of dry land.

Review area 9 is approximately 2 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 9 is comprised of dry land.

Review area 10 is approximately 5 acres in size and located within an existing agricultural field and a farm yard comprised of parking areas, feedlot, and other agricultural related buildings/structures. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 10 is comprised of dry land.

Review area 11 is approximately 47 acres in size and located almost wholly within existing agricultural fields. There is an existing rural residence located in the southeast corner of the review area. The majority





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of the agricultural fields within this review area are influenced by irrigation water provided via multiple pivot irrigation systems. Along the eastern boundary there is a depressional area that drains into a culvert crossing beneath Highway 19 and discharges to the east of the roadway in another agricultural field located in review area 12. The updated map identifying the review areas shows photos 34 & 35 were taken at the culvert crossing looking up and downstream along the drainage. The photolog provided with the AJD request did not include photos 34 & 35. The topographical maps identifies a potential intermittent stream at this location. The Corps utilized Google Earth Pro's street view feature to see the drainage area from the roadway. The image did not provide evidence of a potential jurisdictional feature or excluded water ((b)(1)-(b)(12)). The landscape has a natural depression and is under agricultural production within review area 11. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 11 is comprised of dry land.

Review area 12 is approximately 70 acres in size and located wholly within an existing agricultural field. Along the western boundary there is a depressional area that drains from a culvert crossing beneath Highway 19 as identified in review area 11. The topographical maps identifies a potential intermittent stream at this location. The updated map identifying the review areas shows photos 34 & 35 were taken at the culvert crossing looking up and downstream along the drainage. The photolog provided with the AJD request did not include photos 34 & 35. The Corps utilized Google Earth Pro's street view feature to see the drainage area from the roadway. The image did not provide evidence of a potential jurisdictional feature or excluded water ((b)(1)-(b)(12)) at this location. This depression feature extends beyond the review area to the northeast where it then enters the review area again just south of Old Tree Road. The updated map identifying the review areas shows photos 38 & 39 were taken at the boundary of the review area looking upstream at the drainage. The photos did not provide evidence of a potential jurisdictional feature or excluded water ((b)(1)-(b)(12)) at this location. The landscape has a natural depression and is under agricultural production within and adjacent to the review area. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 12 is comprised of dry land.

Review area 14 is approximately 8 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 14 is comprised of dry land.

Review area 15 is approximately 8 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 15 is comprised of dry land.

Review area 16 is approximately 6 acres in size and located wholly within an existing agricultural field. The Corps reviewed historical aerial imagery, site photographs, NRCS soil maps, USFWS NWI maps, and



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USGS topographical maps. The Corps did not find indicators of potential wetlands within the review area and no potential stream channels are located within the boundary of the review area. The Corps has determined the entirety of review area 16 is comprised of dry land.