



**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): 8/13/2021
 ORM Number: NWP-2021-400
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Oregon City: Bandon County/Parish/Borough: Coos
 Center Coordinates of Review Area: Latitude 43.202239 Longitude -124.382101

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)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
N/A.	N/A.	N/A.	N/A.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Elbow Lake	2.15	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	<p>Based on the U.S. Army Corps of Engineers (Corps) review of Google Earth Pro aerial imagery and topographic maps Elbow Lake was artificially constructed in uplands or non-jurisdictional waters. Per the Navigable Waters Protection Rule (NWPR) an artificial lake or pond will be excluded even if it satisfies the definition in paragraph (c)(6), so long as it was constructed or excavated in upland or in non-jurisdictional waters and is not a jurisdictional impoundment. NWPR exclusion (b)(8) is designed to exclude artificial lakes and ponds that are constructed in upland or non-jurisdictional waters, even where they may have a surface water connection to a downstream jurisdictional water in a typical year.</p> <p>Per aerial imagery Elbow Lake was artificially constructed between August 2005 and June 2007.</p> <p>Surface water flow from Elbow Lake to downstream waters is controlled by a vertical standpipe and outfall culvert measuring approximately 12 inches in diameter and 150 feet in length. This culvert outfall possesses a hydrologic surface connection to an ephemeral surface water channel feature located north and downstream of Elbow Lake within the Review Area; Ditch 1a.</p> <p>The Elbow Lake outfall culvert discharges into a 40 foot portion of Ditch 1a, as discussed below, but Ditch 1a then loses its ditch form and becomes upland.</p> <p>The Corps has determined Elbow Lake meets the (b)(8) NWPR exclusion because Elbow Lake was constructed or excavated in uplands or non-jurisdictional waters and Elbow Lake does not impound jurisdictional waters. Elbow Lake is a non-jurisdictional surface water feature pursuant to the NWPR.</p>

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
Elbow Lake outfall culvert	150	linear feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	The culvert which provides the hydrologic connection between Elbow Lake and Ditch 1a is subsurface below an existing roadway within the Review Area. The subsurface culvert is approximately 12 inches in diameter and 150 feet in length. The Corps has determined the Elbow Lake outfall culvert meets the (b)(1) NWPR exclusion and is a non-jurisdictional water feature pursuant to the NWPR.
Ditch 1a	40	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 1a is an excavated ditch constructed in uplands which measures approximately one foot wide, two feet deep and 40 feet in length within the central portion of the Review Area. As discussed above, Ditch 1a loses its ditch form approximately 40 feet after receiving overflow surface water from Elbow Lake via the Elbow Lake outfall culvert. Surface water flow within Ditch 1a is ephemeral. The Corps has found no evidence Ditch 1a was constructed in a tributary, relocated a tributary or was constructed in adjacent wetlands as defined by the NWPR at the time of construction. The Corps has determined Ditch 1a meets the (b)(5) NWPR exclusion and is a non-jurisdictional surface water feature pursuant to the NWPR.
Ditch 1b	130	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 1b is an excavated ditch constructed in uplands which measures approximately one foot wide, two feet deep and 130 feet in length within the central portion of the Review Area. Ditch 1b is hydrologically connected to Wetland 1 within the Review Area. Surface water flow within Ditch 1b is ephemeral. The Corps has found no evidence Ditch 1b was constructed in a tributary, relocated a tributary or was constructed in adjacent wetlands as defined by the NWPR at the time of construction. The Corps has determined Ditch 1b meets the (b)(5) NWPR exclusion and is a non-jurisdictional surface water feature pursuant to the NWPR.
Wetland 1	0.023	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 is a palustrine scrub-shrub wetland located in the northern portion of the Review Area. Wetland 1 is recognized as the partial headwaters of Whiskey Run Creek within the Review Area. Wetland 1 abuts Ditch 1b at its southern extent and abuts a 24-inch diameter, 40-foot-long outfall culvert at its northern extent as discussed below. Wetland 1 is not inundated in a typical year by a perennial or intermittent



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>tributary. There is no indication Wetland 1 extends north of an existing access road and the outfall culvert flows into an ephemeral channel, discussed below in Section III B, outside of the Review Area.</p> <p>This wetland does not directly abut an (a)(1)-(a)(3) water, as it abuts Ditch 1b, a (b)(5) ditch discussed above. There is no evidence Wetland 1 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. The Corps has determined Wetland 1 does not meet the definition of an adjacent wetland under the NWPR.</p>
Wetland 1 outfall culvert	10	linear feet	<p>(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.</p> <p>The culvert which hydrologically connects Wetland 1 to downstream surface waters is subsurface below an existing roadway within the northern portion of the Review Area. The culvert is approximately 24 inches in diameter and 40 feet in length. Approximately 10 feet of the 40-foot length culvert is located within the Review Area. The Corps has determined the Wetland 1 outfall culvert meets the (b)(1) NWPR exclusion and is a non-jurisdictional water feature pursuant to the NWPR.</p>

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 for Bandon Dunes Golf Courses LLC., Old McDonald Village, Bandon Dunes Golf Resort, Coos County, Oregon, received by the Corps on July 27, 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The wetland delineator utilized the methods described in the Corps 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 aquatic resources within the Review Area.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Corps Google Earth Pro aerial imagery review on August 11, 2021; imagery dates: May 9, 2019, May 1, 2015, May 3, 2013, August 1, 2011, June 16, 2007, June 28, 2005,](#)



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April 10, 2004, June 15, 2003, July 13, 2001, and May 26, 1994. Corps site visit photographs obtained August 9, 2021.

- Corps site visit(s) conducted on: [August 9, 2021](#).
- 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: [Title\(s\) and/or date\(s\)](#).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	U.S. Geological Survey (USGS) StreamStats raindrop flowpath tool review by Corps staff on July 28, 2021.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	National Hydrography Dataset, National Wetland Inventory and USGS topographic map review by Corps staff on July 28, 2021 via the Corps Portland District eGIS tool.
State/Local/Tribal Sources	N/A.
Other Sources	Oregon Department of Geology and Mineral Industries LiDAR review on July 28, 2021.

B. Typical year assessment(s): The Corps utilized the Antecedent Precipitation Tool (APT) to evaluate the Review Area via a single point method for two distinct time periods discussed below. The APT analysis determines if the date-specific observation falls within the normal periodic range for the geographic area based on a rolling thirty-year period. A single point method using the latitude and longitude coordinates identified in Section (I) above were utilized because the single point method adequately represents the data sources available via the APT to conduct an appropriate analysis of climatic conditions on-site. Specifically, the Corps utilized the APT to evaluate the ephemeral flow regime of ephemeral channel (outside of Review Area), Ditch 1a, and Ditch 1b. The APT is available online at the following web address: <https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool>.

1) February 14, 2021 (Delineation Data Forms) – The APT determined this date was under “Normal Conditions”. The APT was run by the Corps on August 9, 2021 for the mid-range date when the wetland delineator captured wetland and other surface water feature data. Wetland delineation data was captured by the wetland delineator between January and April 2021. The APT demonstrated the site conditions on this date represent a time of year referenced as the wet season. The Corps can draw the conclusion from the use of the APT on this date represents a time period when site conditions represent a time period when surface water features are seasonally saturated or inundated but that the site conditions were climatically normal. The wetland delineation identifies some standing water in Ditch 1a in March 2021 which receded by April 2021 following a lack of surface water input to Ditch 1a via the Elbow Lake outfall culvert. Wetland delineation data captured in Ditch 1b did not identify wetland indicators, including a standing water table. No surface water was present within the ephemeral channel (outside of Review Area).

2) August 9, 2021 (Corps Site Visit) – The APT determined this date was under “Normal Conditions”. The APT was run by the Corps on August 11, 2021 for the date the Corps conducted a site visit with the



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wetland delineator and representative of the requestor. The APT demonstrated the site conditions on this date represent a time of year referenced as the dry season, that the general region and site were in a severe drought, but that site conditions were climatically normal. The Corps can draw the conclusion from the use of the APT and field observations that site conditions on this day represent a time period when site conditions were seasonally drier than normal climatic conditions but within a normal climatic range. The Corps field observations did not identify surface water within the ephemeral channel (outside of Review Area), Ditch 1a, Ditch 1b, or any other surface water feature delineated aside from ponded surface water in Elbow Lake, a man-made lake.

Summary: When evaluating the seasonal time period when wetland delineation data and Corps field observations were conducted, coupled with use of the APT, the Corps can conclude the Corps can conclude surface water flow within the ephemeral channel (outside of Review Area), Ditch 1a, and Ditch 1b are ephemeral in flow regime.

C. Additional comments to support AJD: N/A