

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 12, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWP-2021-233

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Jackson City: Medford
Center coordinates of site (lat/long in degree decimal format): Lat. 42.338782° N, Long. -122.900920° W.
Universal Transverse Mercator:

Name of nearest waterbody: Elk Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rogue River

Name of watershed or Hydrologic Unit Code (HUC): Larson Creek - Bear Creek HUC 171003080110

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: April 11, 2022

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 0.33 acres.

Wetlands: Wetland 1 (W1): 0.08 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **Wetland 2 (W2) is an isolated, palustrine emergent wetland that was created circa 2010 during fill and removal activities that occurred in the Review Area. W2 is dominated by herbaceous plants, including goldfields (Lasthenia glaberrima), which has an obligate wetland indicator status, and unknown species of bentgrass (Agrostis sp.) and buttercup (Ranunculus sp.). Soil within W2 was determined to be nonnative fill material during the wetland**

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

delineation survey due to the presence of gravels in the matrix and a compacted gravel layer six inches below the ground surface. Redox concentrations were identified in the upper portion of the soil profile and qualified for the redox dark surface (F6) hydric soil indicator. W2 is situated in a concave, closed depression and the source of hydrology is incident rainfall. W2 is located approximately 315 linear feet to the west of Elk Creek, the nearest water of the U.S. It is situated roughly 3 feet below the elevation of the OHWM for Elk Creek and there are no berms, barriers, wetlands, or other waters between the two aquatic features. The Corps reviewed historical aerial imagery from 1939 to the present day provided as Figures 6.10-6.16 in the wetland delineation report and did not find evidence for the presence of a surface water connection between Elk Creek and W2. In addition, there is no evidence for a shallow subsurface hydrological connection between Elk Creek and W2 due to the presence of poorly drained, Gregory silty clay loam soil in the upper portion of the soil profile in the uplands between the two aquatic features. The presence of a compacted gravel layer in this upland area would not promote subsurface lateral flow because it is permeable. The Federal Emergency Management Agency (FEMA) has mapped a corridor along both sides of Elk Creek in the Review Area as a Zone A area which is subject to inundation by the 1-percent-annual-chance flood event. However, the Zone A mapping does not overlap with the boundaries of W2. W2 has no interstate commerce connection as it is not associated with industrial, agricultural, or siccultural processes. Furthermore, W2 is not used by interstate or foreign travelers and does not support habitat, plants, or wildlife of special significance that would attract interstate or foreign travelers.

Wetland 3 (W3) is an isolated, palustrine emergent wetland that was created circa 2008 during fill and removal activities that occurred in the Review Area. W3 is dominated by curly dock (*Rumex crispus*) and black cottonwood (*Populus balsamifera*) saplings, both of which have a facultative wetland indicator status. Redox concentrations were identified in the upper portion of the soil profile and qualified for the redox dark surface (F6) hydric soil indicator. W3 is situated in a concave, closed depression and the source of hydrology is incident rainfall. W3 is located approximately 430 linear feet to the east of Elk Creek, the nearest water of the U.S. It is situated roughly 2 feet below the elevation of the OHWM for Elk Creek and there are no wetlands or other waters between the two aquatic features. The Corps reviewed historical aerial imagery from 1939 to the present day provided as Figures 6.10-6.16 in the wetland delineation report and did not find evidence for the presence of a surface water connection between Elk Creek and W3. In addition, there is no evidence for a shallow subsurface hydrological connection between Elk Creek and W3 due to the presence of poorly drained, Gregory silty clay loam soil in the uplands between the two aquatic features. The FEMA has mapped a corridor along both sides of Elk Creek in the Review Area as a Zone A area which is subject to inundation by the 1-percent-annual-chance flood event. However, the Zone A mapping does not overlap with the boundaries of W3. W3 has no interstate commerce connection as it is not associated with industrial, agricultural, or siccultural processes. Furthermore, W3 is not used by interstate or foreign travelers and does not support habitat, plants, or wildlife of special significance that would attract interstate or foreign travelers.

Stormwater features 1 and 2 (SW1 and SW2) were excavated in uplands circa 2008. The Corps reviewed historical aerial imagery from 1939 to the present day provided as Figures 6.10-6.16 in the wetland delineation report and did not find evidence for the presence of historic wetlands or waterways in the current locations of SW1 and SW2 prior to the construction of the stormwater features. SW1 is a pond that supports palustrine emergent wetland vegetation such as reed canary grass (*Phalaris arundinacea*) and unknown species of sedges (*Carex* spp.). The eastern portion of SW1 is classified as a palustrine scurb-shrub wetland and is dominated by native narrowleaf willow (*Salix exigua*) shrubs. Soils were determined to be nonnative fill due to the prevalence of gravels in the profile. SW2 is a bioswale that is dominated by reed canarygrass and unknown species of sedges. Soils are similar to those observed in SW1. SW1 and SW2 have a direct hydrologic connection to Elk Creek via subsurface culvert pipes. The requestor provided permit authorizations obtained by the previous landowner of the site from local agencies which demonstrate that SW1 and SW2 were originally constructed for the purpose of stormwater treatment. The Corps determined that SW1 and SW2 meet the definition of "Preamble Waters" defined in the November 13, 1986 Federal Register (Page 41217), Part 328 (c) as artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigations, settling basins, or rice growing. Documentation indicates that SW1 and SW2 were created in dry land and are not impoundments of a tributary to a water of the US. Both the bioswale and pond are considered "settling basins" because the features collect runoff, provide water quality treatment through vegetative uptake of pollutants, and slow the flow and circulation of runoff prior to water being discharged into Elk Creek.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 50 square miles
Drainage area: 6 square miles
Average annual rainfall: 15 inches
Average annual snowfall: 0 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.
Project waters are 5-10 river miles from RPW.
Project waters are 5-10 aerial (straight) miles from TNW.
Project waters are 1 (or less) aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵: Elk Creek flows into the southeast corner of the Review Area and continues offsite to the north through a culvert beneath Rossanley Lane. Elk Creek enters a series of subsurface culverts and flows to the east

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

into Griffin Creek, which discharges into Bear Creek. Surface water flows within Bear Creek ultimately enter the Rogue River (a TNW) near Tolo, Oregon.
 Tributary stream order, if known: 1st order.

(b) General Tributary Characteristics (check all that apply):

Tributary is:

- Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: Historical U.S. Geological Survey (USGS) topographic

maps from 1938 to 1953 do not show blue line streams in the Review Area or within 3 miles to the east of Griffin Creek. Elk Creek first appears in historical USGS topographic maps in 1954. A review of historical aerial images from 1939 and 1949 provided as Figures 6.10 and 6.20 in the wetland delineation report shows a meandering channel in the same location as present day Elk Creek. The Elk Creek channel is linear and does not exhibit the meandering characteristics of a naturally occurring tributary; Elk Creek was altered into its present day linear form after 1949.

Tributary properties with respect to top of bank (estimate):

- Average width: 2 feet
 Average depth: 5 feet
 Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

- Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: Narrowleaf willow (*Saix exigua*)/90% overhead cover
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The banks of Elk Creek are incised and subject to erosion.

Presence of run/riffle/pool complexes. Explain: Not present.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1-5 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: The wetland delineator observed surface flow in Elk Creek in the summer (dry season) and during the wetland delineation survey conducted on February 16, 2021. The Corps reviewed Google Earth Pro aerial imagery from 2016 through 2020 and determined surface water is present in the tributary during the early portion of dry season (June through September). Surface water flow during the dry season is a result of the tributary receiving irrigation water from the Medford Irrigation District's infrastructure, including canals that empty surface water into subsurface culverts that discharge into Elk Creek upstream of the Review Area. In the absence of a hydrological input from irrigation water, the channel would not contain surface water in the dry season. During the wet season (November to May), the presence of surface water in Elk Creek is a result of stormwater runoff, incidental precipitation, and upgradient runoff. The Corps determined Elk Creek conveys seasonal surface water flow to the Rogue River via other downstream tributaries.

Other information on duration and volume: .

Surface flow is: **Confined**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

- Bed and banks
 OHWM⁶ (check all indicators that apply):
- | | |
|--|---|
| <input type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input checked="" type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input checked="" type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input checked="" type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input checked="" type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by: | <input type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The open channel of Elk Creek originates 0.10 mile to the south of the Review Area at the edge of a residential development. Hydrological inputs to Elk Creek include stormwater runoff from the residential area to the south of the Review Area and other surrounding urban development, incidental rainfall, upgradient runoff from surrounding urban and agricultural areas, and irrigation water. All of these hydrological inputs with the exception of rainfall result in poor water quality in Elk Creek due to the high cover of impervious surfaces in urban areas within the watershed and upslope of Elk Creek which creates the potential for pollutants to enter the tributary as stormwater runoff. In addition, agricultural runoff creates the potential for pollutants to enter the tributary.

Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): The riparian corridor consists of narrowleaf willow that is rooted along the OHW of Elk Creek and constitutes 90 percent overhead cover. The width of the corridor is roughly 20 to 40 feet.
- Wetland fringe. Characteristics: See explanation above under "Riparian Corridor".
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: W1: 0.08 acres

Wetland type. Explain: W1: palustrine emergent wetland.

Wetland quality. Explain: Vegetation in W1 is dominated by hydrophytes such as bentgrass (*Agrostis* sp.), teasel (*Dipsacus fullonum*), and poison hemlock (*Conium maculatum*). Teasel, poison hemlock, and some species of bentgrass that are common in ruderal areas in the Southern Oregon region are nonnative species. The upper soil profile in W1 consists of gravelly silty clay loam material that is nonnative to the Review Area and was discharged in the feature as fill circa 2010. The quality of W1 is low due to the dominance of nonnative vegetation and soils.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: W1 is separated from Elk Creek by a man-made berm that impedes flow between the two aquatic features.

Surface flow is: **Discrete and confined**

Characteristics: .

Subsurface flow: **Yes**. Explain findings: See above under "General Flow Relationship with Non-TNW".

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: The Corps reviewed Google Earth aerial images and determined that W1 is a man-made feature that was created circa 2010 when a roadway was constructed through the Review Area. During a series of site alterations, fill material was placed in the location of the existing roadway and a depressional area was excavated alongside the road. W1 is separated from Elk Creek by a man-made berm that is several feet higher than the depressional area. Data during the wetland

⁷ibid.

delineation survey confirm that the upper portion of the soil profile is nonnative fill due to the prevalence of gravel within a clay loam matrix. W1 is approximately 25 feet landward of the OHWM of Elk Creek. The FEMA has mapped a corridor along both sides of Elk Creek in the Review Area as a Zone A area which is subject to inundation by the 1-percent-annual-chance flood event. Zone A mapping overlaps with the boundaries of W1 and therefore, W1 and Elk Creek would have a direct hydrologic connection through overland sheet flow and/or channelized surface water connection during flood events in the absence of the man-made berm.

- (d) Proximity (Relationship) to TNW
Project wetlands are **5-10** river miles from TNW.
Project waters are **5-10** aerial (straight) miles from TNW.
Flow is from: **No Flow**.
Estimate approximate location of wetland as within the **2-year or less** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: See Section B(i)(a).
Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): See Section B2(i)(a).
- Vegetation type/percent cover. Explain: See Section B2(i)(a).
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **1**
Approximately (0.08) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
W1: N	0.08 acre		

Summarize overall biological, chemical and physical functions being performed: See Section B2(i)(a).

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: See Section B(ii)(C) for a description of the perennial flow regime.
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: See Section B1(ii)(c).

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **1314** linear feet **2** width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: **W1: 0.25 acre, SW2: 0.10** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **W1: 0.08** acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): **The Corps determined that SW1 and SW2 meet the definition of "Preamble Waters" defined in the November 13, 1986 Federal Register (Page 41217), Part 328 (c) as artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigations, settling basins, or rice growing. Documentation indicates that SW1 and SW2 were created in dry land and are not impoundments of a tributary to a water of the US. Both the bioswale and pond are considered "settling basins" because the features collect runoff, provide water quality treatment through vegetative uptake of pollutants, and slow the flow and circulation of runoff prior to water being discharged into Elk Creek.**

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Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: W2: 0.02 acre, W3: 0.41 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Terra Science, Inc. May 2021. Wetland Delineation Report Prepared for the City of Medford Aquatics and Events Center Project. Figures 1-8.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters’ study: .
- U.S. Geological Survey Hydrologic Atlas:USGS. February 2022. National Hydrography Dataset. Portland District Regulatory Web Map Application. Online: <http://geoportal.nwd.usace.army.mil/>.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: USGS. February 2022. Topoview. Topographic Maps: Medford, 1938, 1:250k and Medford, 1978, 1:24k. Online: <https://ngmdb.usgs.gov/topoview/viewer/>.
- USDA Natural Resources Conservation Service Soil Survey. Citation: U.S. Department of Agriculture Natural Resources Conservation Service. February 2022. Web Soil Survey. Online: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> .
- National wetlands inventory map(s). Cite name: U.S. Fish and Wildlife Service. February 2022. National Wetland Inventory. Portland District Regulatory Web Map Application. Online: <http://geoportal.nwd.usace.army.mil/>.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps:FEMA. February 2022. Floodplain Map Service Center. Online: <https://msc.fema.gov/portal/>.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

- Photographs: Aerial (Name & Date): Terra Science, Inc. May 2021. Wetland Delineation Report Prepared for the City of Medford Aquatics and Events Center Project. Figures 6.10-6.16.
or Other (Name & Date): Terra Science, Inc. May 2021. Wetland Delineation Report Prepared for the City of Medford Aquatics and Events Center Project. Appendix C. Ground Level Photographs.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): USGS. February 2022. Streamer. Online: <https://txpub.usgs.gov/DSS/streamer/web/>.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Corps completed coordination with the Environmental Protection Agency on April 11, 2022 for W2 and W3 which are isolated waters. Coordination with the Corps' Headquarters was completed on April 11, 2022 for W2 and W3 which are isolated waters with no nexus to interstate or foreign commerce.