

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): June 15, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NWP-2016-165/1 - Pacific Habitat Services, 17th Street, Bandon AJD

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Coos City: Bandon
Center coordinates of site (lat/long in degree decimal format): Lat. 43.10897° **N**, Long. 124.414431° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: East Fork Gross Creek

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

Name of watershed or Hydrologic Unit Code (HUC): Ferry Creek-Coquille River (171003060500)

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: May 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: East Fork Gross Creek

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs: Wetland B and Wetland D

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 0.026 acres.

Wetlands: Wetland B: 0.13 acre; Wetland D: 0.26 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 A, see Section III F for additional information.

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.

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: 18,500 **acres**

Drainage area: 18,500 **acres**

Average annual rainfall: 61.5 inches

Average annual snowfall: 0.1 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributaries before entering TNW.

Project waters are **1 (or less)** river miles from TNW.

Project waters are **1 (or less)** river miles from RPW.

Project waters are **1 (or less)** 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: East Fork Gross Creek is located along the western edge of the Review Area. Surface water within East Fork Gross Creek flows northwest into a 48-inch diameter concrete pipe culvert located partially within the

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.

Review Area. Surface water flow within East Fork Gross Creek flows under U.S. Highway 101 west of the Review Area. East Fork Gross Creek reappears as an open surface water tributary feature west of U.S. Highway 101, and north of 13 Street SW; East Fork Gross Creek maintains a hydrologic surface connection with Gross Creek approximately 0.24 miles northwest and outside of the Review Area. Surface water flow in Gross Creek extends approximately 0.60 miles from the confluence of East Fork and West Fork Gross Creek to the Coquille River. Gross Creek maintains a hydrologic surface water connection with the Coquille River at approximate river mile 0.5. The Coquille River is recognized by the Corps, Portland District, as a navigable water to river mile 36.3 pursuant to the Corps 1993 list of Navigable Riverways within the State of Oregon.

Tributary stream order, if known: 2.

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

Tributary is:

Natural

Artificial (man-made). Explain: .

Manipulated (man-altered). Explain: The East Fork of Gross Creek has been modified by human

activity over time, via placement of the creek within a culvert and potential channel relocation. These land development activities have manipulated the natural evolution and position of the stream channel on the landscape.

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

Average width: 4 feet

Average depth: 2 feet

Average side slopes: **3:1**.

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover: 75%+.

Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Confined; vegetated riparian area.

Presence of run/riffle/pool complexes. Explain: No.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 1 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

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

Describe flow regime: Intermittent.

Other information on duration and volume: Per U.S. Geologic Survey (USGS) Stream Stats monthly surface water flow reporting less than 1 cubic foot per second of flow is present within the creek 9 out of 12 months during the calendar year.

Surface flow is: **Confined**. Characteristics: East Fork Gross Creek is confined within its current channel located along the western side of the Review Area.

Subsurface flow: **No**. Explain findings: There is no information demonstrating subsurface flow within the East Fork of Gross Creek.

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks

OHWM⁶ (check all indicators that apply):

clear, natural line impressed on the bank

the presence of litter and debris

changes in the character of soil

destruction of terrestrial vegetation

shelving

the presence of wrack line

vegetation matted down, bent, or absent

sediment sorting

leaf litter disturbed or washed away

scour

sediment deposition

multiple observed or predicted flow events

water staining

abrupt change in plant community

other (list):

Discontinuous OHWM.⁷ Explain: .

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

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.

⁷Ibid.

- | | |
|--|--|
| <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: East Fork Gross Creek within the Review Area is a headwater reach. Water color is turbid when fall, winter and spring freshets occur.

Identify specific pollutants, if known: Stormwater runoff from surrounding developed properties.

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

Riparian corridor. Characteristics (type, average width):

Wetland fringe. Characteristics: Well vegetated. Canopy cover is densely covered with Hooker's willow (*Salix hookeriana*) and Himalayan blackberry (*Rubus americanus*) and a few specimens of Cascara buckthorn (*Rhamnus purshiana*). The herb stratum possesses reed canary grass (*Phalaris arundinacea*), Slough sedge (*Carex obnupta*), Ostrich fern (*Matteuccia struthiopteris*), and Western skunk cabbage (*Lysichiton americanum*). Non-native grasses and forbs also exist. Habitat for:

Federally Listed species. Explain findings: None.

Fish/spawn areas. Explain findings: None.

Other environmentally-sensitive species. Explain findings: None.

Aquatic/wildlife diversity. Explain findings: Headwater stream reach; provides habitat for amphibians and may provide habitat for three-spined stickleback (*Gasterosteus aculeatus*).

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: 0.39 acres

Wetland type. Explain: Well vegetated. Canopy cover is densely covered with Hooker's willow (*Salix hookeriana*) and Himalayan blackberry (*Rubus americanus*) and a few specimens of Cascara buckthorn (*Rhamnus purshiana*). The herb stratum possesses reed canary grass (*Phalaris arundinacea*), Slough sedge (*Carex obnupta*), Ostrich fern (*Matteuccia struthiopteris*), and Western skunk cabbage (*Lysichiton americanum*). Non-native grasses and forbs also exist. Wetland B is a palustrine scrub-shrub wetland (PSS) which abuts the East Fork of Gross Creek within the Review Area and is recognized as 0.13 acres in size. Wetland D is a PSS wetland which abuts the East Fork Gross Creek within the Review Area and is recognized as 0.26 acres in size.

Wetland quality. Explain: Wetland B and D are both well vegetated and provide moderate wetland functions and services such as filtering pollutants found within overland sheet flow prior to the sheet flow reaching the East Fork of Gross Creek, trapping and storing minor amounts of surface water during rain events, and providing minor habitat for terrestrial species such as rodents, insects, and amphibians.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Based on a review of aerial imagery and the wetland delineation provided for the Review Area, Wetland B and D provide intermittent surface water flow to the East Fork of Gross Creek. Aerial imagery depicts visible wetland saturation within the Review Area at the location of Wetland B and D.

Surface flow is: Discrete

Characteristics: Based on a review of aerial imagery and the wetland delineation provided for the review area both Wetland B and D convey surface water flow to the East Fork of Gross Creek seasonally.

Subsurface flow: Unknown. Explain findings:

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:

(d) Proximity (Relationship) to TNW

Project wetlands are 1 (or less) river miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

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: Unknown.
Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width): Well vegetated canopy cover as described below; approximately 10 feet in width.

Vegetation type/percent cover. Explain: Well vegetated. Canopy cover is densely covered with Hooker's willow (*Salix hookeriana*) and Himalayan blackberry (*Rubus americanus*) and a few specimens of Cascara buckthorn (*Rhamnus purshiana*). The herb stratum possesses reed canary grass (*Phalaris arundinacea*), Slough sedge (*Carex obnupta*), Ostrich fern (*Matteuccia struthiopteris*), and Western skunk cabbage (*Lysichiton americanum*). Non-native grasses and forbs also exist.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: Headwater stream reach; provides habitat for amphibians and may

provide habitat for three-spined stickleback (*Gasterosteus aculeatus*).

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

All wetland(s) being considered in the cumulative analysis:2

Approximately (0.39) 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>
Wetland B - Y	0.13 acre	Wetland D - Y	0.26 acre

Summarize overall biological, chemical and physical functions being performed: Wetland B and D act as natural filters to filter pollutants found within overland sheet flow prior to the sheet flow reaching the East Fork of Gros Creek. Wetland B and D trap and store minor amounts of surface water flow and provide minor habitat for terrestrial species such as rodents, insects, and amphibians.

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:
 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: East Fork Gross Creek has an observed streambed, streambanks and ordinary high water mark. Per U.S. Geologic Survey Stream Stats monthly surface water flow reporting less than 1 cubic foot per second of flow is present within the creek 9 out of 12 months during the calendar year.

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

- Tributary waters: **1,160** linear feet **4** 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: Both Wetland B and D abut East Fork Gross Creek within the Review Area. The wetlands are PSS in Cowardin classification and form the wetland fringe of the headwater reach of East Fork Gross Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **Wetland B: 0.13 acre; Wetland D: 0.26 acres.**

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

⁸See Footnote # 3.

- 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: 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: .

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): Wetland A is 0.21-acre and is a north-south oriented PSS depressional wetland located in the northeast portion of the Review Area. Wetland A is located approximately 300 feet east of East Fork Gross Creek. Wetland A is bounded to the north by 15th Street SE and bounded to the south by 16th Street SE. Surface water hydrology within Wetland A is received from precipitation, groundwater, and overland sheet flow. There was no evidence of surface water outflows from Wetland A to East Fork Gross Creek. East Fork Creek does not inundate Wetland A during high water events. The Corps did not identify information demonstrating Wetland A possess a shallow-subsurface hydrologic surface water connection to the East Fork of Gross Creek. The soil type within the Review Area is Bullards sandy loam, 0-7% slopes (8B). This soil type is a deep, well-drained soil located on upland marine terraces with 75% of the soil type is comprised of the Bullards soil series, an upland marine terrace soil. An impermeable soil layer does not exist within the Review Area. As described in Section III.B.1(iv) the Review Area is well vegetated with canopy cover over the East Fork of Gross Creek and the Review Area comprised of an herbaceous layer and non-native grasses.

The Review Area is not located in a floodplain as recognized by the Federal Emergency Management Agency.

⁹ To 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.

Wetland A lacks an interstate commerce connection. Wetland A is not used by interstate or foreign travelers for recreational purposes, and lacks habitat, resources, birds and wildlife of special significance which would attract interstate or foreign travelers. Wetland A lacks fish or shellfish which could be taken or sold in interstate or foreign commerce. Wetland A lacks the ability to be used for water withdrawal for industrial use and agriculture and silviculture which could be sold or used by interstate or foreign travelers.

Wetland A has been determined to be an isolated water.

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: 0.21 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: Wetland delineation for MMCG, GOI, Bandon, LLC., received by the Corps on May 2, 2022.
- 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: Corps 1993 list of Navigable Riverways within the State of Oregon accessed May 9, 2022 at https://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable_US_Waters_Oregon_1993.pdf?ver=b_nFSoXJ1YwCARFvh9kNbw%3d%3d.
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: FEMA Flood Insurance Rate Map review by Corps staff on June 1, 2022.
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Pro aerial imagery retrieved by Corps staff on May 9, 2022.
 - or Other (Name & Date): Site photographs taken by Corps staff on June 2, 2016.
- Previous determination(s). File no. and date of response letter: NWP-2016-165. The Corps previously completed an AJD review of the Review Area on October 6, 2020 under the Navigable Waters Protection Rule. The Corps determined Wetland B, D, and the East Fork of Gross Creek were jurisdictional as waters of the U.S. but that Wetland A was non-jurisdictional.
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): USGS Stream Stats monthly surface water flow reporting retrieved by Corps staff on May 9, 2022.

B. ADDITIONAL COMMENTS TO SUPPORT JD: On June 1 2022, the Corps initiated coordination for the review of this AJD with the U.S. Environmental Protection Agency (EPA) Region 10 and Corps Headquarters (HQ). On June 7, 2022, the EPA concurred with our determination. On July 14, 2022, the Corps Portland District completed coordination of this jurisdictional determination with Corps HQ.