

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): 20 January 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENWP-ODG, Family Tree Real Estate LLC, NWP-2022-212

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Linn City: Lebanon

Center coordinates of site (lat/long in degree decimal format): Lat. 44.510495° N, Long. 122.910885° W.

Universal Transverse Mercator: Refer to Lat./Long.

Name of nearest waterbody: Channelized Drainage - Unnamed Tributary to Oak Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 170900030401

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: 2 September 2022 and 28 December 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: 1,339 linear feet: 1-5 width (ft) and/or 0.27 acres.

Wetlands: 1.05 acres.

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

Elevation of established OHWM (if known): Typically 1-2 feet below the adjacent upland.

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 1, Wetland 3, and Wetland 5 are isolated wetlands with no connection to downstream waters.**

Additional information can be found in Section III. F. below.

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: 374 square miles

Drainage area: Pick List

Average annual rainfall: 46.38 inches

Average annual snowfall: 2 inches

(ii) Physical Characteristics: Channelized Drainage (unnamed tributary to Oak Creek)

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 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: .

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

Identify flow route to TNW⁵: The Channelized Drainage (unnamed tributary to Oak Creek) flows directly into Oak Creek and then into the Calapooia River, a TNW. The roadside ditches flow directly into the Channelized Drainage, then into Oak Creek and then into the Calapooia River.

Tributary stream order, if known: 1.

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

Tributary is:

Natural

Artificial (man-made). Explain:

Manipulated (man-altered). Explain: The property has been ditched around the entire parcel to

channelize and direct flows away from the site. The Channelized Drainage maintains a perennial flow.

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

Average width: 4-6 feet

Average depth: 1-3 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts

Sands

Concrete

Cobbles

Gravel

Muck

Bedrock

Vegetation. Type/% cover:

Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The Channelized Drainage is fairly stabilized and was dug down to ensure flows offsite at least 30 years ago for agricultural purposes. Excavated materials were discharged along the south side of the drainage and used to make the existing Joy Road.

Presence of run/riffle/pool complexes. Explain: Several runs and riffles are observed within the review area.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): >1 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: The Channelized Drainage maintains a perennial flow.

Other information on duration and volume:

Surface flow is: **Discrete and confined**. Characteristics: The tributary has been ditched to prevent flooding of properties.

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):

clear, natural line impressed on the bank

changes in the character of soil

shelving

vegetation matted down, bent, or absent

leaf litter disturbed or washed away

sediment deposition

water staining

other (list):

Discontinuous OHWM.⁷ Explain:

the presence of litter and debris

destruction of terrestrial vegetation

the presence of wrack line

sediment sorting

scour

multiple observed or predicted flow events

abrupt change in plant community

(ii) **Physical Characteristics: Roadside Ditches (West Side)**

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **3** tributaries before entering TNW.

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

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

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.

⁶ A 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.

⁷ Ibid.

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 TNW⁸: The roadside ditches flow directly into the Channelized Drainage, then into Oak Creek and then into the Calapooia River.
Tributary stream order, if known: .

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

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: The property has been ditched around the entire parcel to channelize and direct flows away from the site. The Roadside Ditches maintain flows for approximately 3 months of the year.

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

Average width: 1-3 feet
Average depth: 0.2-1 feet
Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The ditch is well maintained and there are no signs of erosion.

Presence of run/riffle/pool complexes. Explain: The ditch has a straight run and some riffles from sediments and debris being moved to downstream areas.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 0.5 %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **1**

Describe flow regime: Flows in the ditch begin in the wet season when soils are saturated. Then flows begin and are relatively permanent during the wet season. As rainfall tapers off, the flows recede until the next wet season.

Other information on duration and volume: The consultant has performed a preliminary review of the bed of the ditch and delineated an ordinary high water mark based upon several biological and chemical characteristics.

Surface flow is: **Discrete and confined**. Characteristics: The ditch has been well maintained and flows are within the lower 1-2 feet of the 3 foot deep ditch.

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

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁹ (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.¹⁰ Explain: .

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

⁸ 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.

⁹ A 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.

¹⁰Ibid.

- | | |
|--|--|
| <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: Both the Channelized Drainage and the Roadside Ditches have been observed several times over the years to have clear water color, no oily films, and provides storage capacity for high flows before discharging into Oak Creek.

Identify specific pollutants, if known: Pollutant sources include stormwater runoff from roadway surfaces, urban development runoff from nearby residential developments, agricultural pollutant runoff from farms, and pollutants from farm animals.

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

Riparian corridor. Characteristics (type, average width): The riparian corridor is highly impacted in the review area and immediately upstream by residential development and the ditching performed on-site. The riparian corridor outside the review area increases as the tributaries flow through an un-ditched open field before discharging into Oak Creek.

Wetland fringe. Characteristics: Wetlands in this region have water levels that fluctuate with the wet season rainfall and the amount of water in the tributaries. The soils in this region have a loam coverage for the top 4-8 inches with lower levels comprised of clay and rock. When the wet season begins, the clay absorbs the water and then seals off the deeper soils. Flows then move through the loam soil and percolate into the tributaries or flow back into the wetlands depending upon water level fluctuation.

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: 1.05 acres

Wetland type. Explain: Palustrine Emergent, Palustrine Scrub-Shrub, and Palustrine Open Water.

Wetland quality. Explain: Wetlands at this site have been manipulated with the previous use of the site for growing trees. The wetlands have reduced in size due to all of the agricultural use and in some areas have become more pronounced with the excavation and removal of loam soils.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Flows from the wetlands begin with the wet season soil saturation. Once the clay layers below the top loam soil are saturated, the wetlands fill and flows move from the wetlands to the ditched areas.

Surface flow is: **Overland sheetflow**

Characteristics: .

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: The drainage was excavated sometime in the 1980's as part of a tree growing operation and the soils were discharged next to the drainage. The berm is approximately 1-2 feet in height and is comprised of a mixture of loam, clay, and rock from the soils removed within the drainage. The soils beneath the berm are comprised of the loam soils that existed prior to site disturbance. The wetlands would have been directly connected, similar to the wetlands located downstream (west of the site) in an agricultural field as part of a flood plain bench.

(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: Water color in the wetlands have been observed to be clear.

Identify specific pollutants, if known: The site was previously used for agricultural production of trees. It is anticipated sources of pollutants include fertilizers and stormwater runoff from gravel roadway surfaces created on-site.

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

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain: Vegetation in the wetlands vary from sites with only *Alopecurus pratensis* to wetlands with scrub-shrub species such as *Crataegus spp.*, *Fraxinus latifolia*, *Alopecurus pratensis*, *Agrostis capillaris*, *Deschampsia cespitosa*, *Camassia spp.*, *Mentha pulegium*, and *Dispacus fullonum*.
- 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: **5**
Approximately (1.05) 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>
Excavated Ditch Y	0.09	Wetland 2 Y	0.01
Wetland 4 N	0.13	Wetland 6 Y	0.51
Wetland 7 N	0.31		

Summarize overall biological, chemical and physical functions being performed: See Section C. below for summary.

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: The Roadside Ditches, Excavated Ditch, Wetland 2, and Wetland 6 are performing physical functions such as the storage of stormwater, which prevent storm surges, reduce velocities, and minimize flooding of the

downstream waterways. Chemical functions being performed include removing source pollutants such as those found in stormwater, heavy metals, and sequestering agricultural pollutants/fertilizers. The biological functions being performed include providing habitat for non-ESA listed species and providing carbon sources for the downstream food web in the TNW. The resources provided by the wetlands are not insubstantial or speculative.

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: Wetland 4 and Wetland 7 are performing physical functions such as the storage of stormwater, which prevent storm surges, reduce velocities, and minimize flooding of the downstream waterways and reducing flood risks. Chemical functions being performed include removing source pollutants such as those found in stormwater, heavy metals, and sequestering agricultural pollutants/fertilizers. The biological functions being performed includes providing habitat for non-ESA listed species and providing carbon sources for the downstream food web in the TNW. The resources provided by the wetlands are not insubstantial or speculative.

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: The Channelized Drainage (unnamed Tributary to Oak Creek) has been observed to have flows during the dry season and even when the delineation for the site was performed in a dry year.
- 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: The wetland delineation identified the flows in the Roadside Ditch to be seasonal with sediment sorting and characteristics of a relatively permanent water.

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

Tributary waters: ~200 linear feet 1-3 width (ft).
 Other non-wetland waters: acres.
 Identify type(s) of waters: .

3. **Non-RPWs¹¹ 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: Wetland 2 and Wetland 6 have berms with low spots that allow for a direct hydrological connection to the Excavated Ditch on the north side of the review area that has reverted a wetland from the lack of maintenance. The Excavated Ditch has a direct hydrological connection to the Roadside Ditch (an RPW) on the west side.

Provide acreage estimates for jurisdictional wetlands in the review area: **0.61** acres.

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

¹¹See 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: **0.44** 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.¹²

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):¹³

- 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 1 and Wetland 3 are depressions from previously placed and compacted fill material. Each feature is slightly lower than the surrounding fill terrace landforms. These landforms consist of garbage and debris within the fill portion of the soil profile (delineation of soils). Hydrology is driven by precipitation and upgradient runoff. Wetland 5 is surrounded by fill and a roadway. Wetland 5 is located between Wetland 6 and the Excavated Ditch with no low spots for direct hydrological connections. Wetland 5 is a compacted low spot with hydrology from precipitation and gravel road stormwater runoff.**

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: _____ acres.

¹² To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹³ 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 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 Report Prepared for Tax lot 1001 and Adjacent Road Right-of-ways, prepared by Terra Science, Inc.
- 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: Calapooia River.
- U.S. Geological Survey Hydrologic Atlas: HUC #170900030401.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Lebanon.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Clackamas Soil Variant.
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Google Earth 1985 to 2019.
or Other (Name & Date):Google Street View photos and wetland delineation photos.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: On 4 January 2023 we coordinated this JD with EPA Region 10 and Corps HQ. EPA Region 10 responded in an email dated 20 January 2023 stating the EPA concurs with the Corps findings. Corps HQ responded in an email dated 12 January 2023 stating HQ has no comments.