

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): 2 February 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Dutch Bros. (Wetland Delineation) NWP-2016-296

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Josephine City: Merlin
Center coordinates of site (lat/long in degree decimal format): Lat. 42.504624° N, Long. 123.366207° W.
Universal Transverse Mercator:

Name of nearest waterbody: Wetland 1, 2

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

Name of watershed or Hydrologic Unit Code (HUC): Louse Creek (171003100103)

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: November 28, 2016

Field Determination. Date(s): August 2, 2016

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Appear to be 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 acres.

Wetlands: 1.39 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: **The Corps identified Wetland 2 as non-regulated wetland. Refer to attachment 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: **Pick List**

Drainage area: **Pick List**

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

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

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

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.

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

- Tributary is:** Natural
 Artificial (man-made). Explain: _____
 Manipulated (man-altered). Explain: _____

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

- Average width: _____ feet
Average depth: _____ feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: _____ | |
| <input type="checkbox"/> Other. Explain: _____ | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: _____

Presence of run/riffle/pool complexes. Explain: _____

Tributary geometry: Pick List

Tributary gradient (approximate average slope): _____ %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime: _____

Other information on duration and volume: _____

Surface flow is: Pick List. Characteristics: _____

Subsurface flow: Pick List. Explain findings: _____

Dye (or other) test performed: _____

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input 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 type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): _____ | |
| <input type="checkbox"/> 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: _____

Identify specific pollutants, if known: _____

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.

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- 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: 1.3 acres

Wetland type. Explain: Wetland 1 is PEM and PSS with an openwater feature.

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain: Wetland 1 is defined by the consultant as Wetland 1a, 1b, and 1c in Figures 6a, 6b, and 7 where the wetland is within the boundary of the study area. Wetland 1 is on the edge of the study area and portions go out of the boundaries but is all one connected wetland. Wetland 1 has medium quality function as it has been altered along the eastern boarder of the site to confine waters and channel flows. This ditch-like formation shows up in 2002 aerial imagery and likely altered on-site wetlands. Directly abutting the ditch-like Wetland 1b & c is a high, steep berm. This ditch-like feature originates off the property to the northeast as a natural channel primarily fed by stormwater from the nearby I-5. At the southeast corner of the property the ditch-like feature, which was delineated as wetlands due to having vegetation throughout and lacking sediment sorting, turns to the west and empties into a palustrine emergent wetland. Flow continues to an open water feature and continues off site into a perennial tributary, Macks Creek.

(b) General Flow Relationship with Non-TNW:

Flow is: **Perennial flow**. Explain: Seasonal Wetland 1 flows directly into the RPW Mack's Creek which continues off site.

Surface flow is: **Discrete and confined**

Characteristics: Wetland 1 is confined along the eastern edge of the property and surface flow becomes discrete as it moves along the southern part of the property from east to west.

Subsurface flow: **Unknown**. Explain findings: It is unlikely Wetland 1 exhibits subsurface flow based on soil type; no formal testing has occurred.

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 **5-10** river miles from TNW.

Project waters are **5-10** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** 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: In the open water feature of Wetland 1 the water was approximately 3 feet deep at the deepest point and clear during the August site visit. There did not appear to be water flowing into the pool.

Identify specific pollutants, if known:

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

- Riparian buffer. Characteristics (type, average width): Wetland 1 is primarily scrub shrub with an average riparian width of 50 feet.
- Vegetation type/percent cover. Explain: Wetland 1 is approximately 10% open water, 25% PEM, 65% PSS.
- Habitat for:
 - Federally Listed species. Explain findings:

- Fish/spawn areas. Explain findings: .
- Other environmentally-sensitive species. Explain findings: .
- Aquatic/wildlife diversity. Explain findings: Explain findings: Did not see any animals on-site during August site visit but Wetland 1 likely supports aquatic insects and birds.

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

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

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: Flow moves westerly through Wetland 1 and continues off site directly into a perennial tributary, Macks Creek. Macks Creek begins immediately outside of the review area.

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

- Tributary waters: 0 linear feet 0 width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. Non-RPW⁸ 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 1, a ditch-like formation shows up in 2002 aerial imagery and likely altered on-site wetlands. Directly abutting the ditch-like Wetland 1b & c is a high, steep berm. This ditch-like feature originates off the property to the northeast as a natural channel primarily fed by stormwater from the nearby I-5. At the southeast corner of the property the ditch-like feature, which was delineated as wetlands due to having vegetation throughout and lacking sediment sorting, turns to the west and empties into a palustrine emergent wetland. Flow continues to an open water feature and continues off site directly into a perennial tributary, Macks Creek.**

Provide acreage estimates for jurisdictional wetlands in the review area: **1.3** 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: 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.

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.

- 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 2 is a depressional wetland and does not meet the criteria of adjacency to traditionally navigable waters (TNW), relatively permanent waters (RPW), or non-relatively permanent waters (non-RPW). The nearest TNW is the Rogue River; the nearest RPW is Macks Creek, at least 0.19 miles away; and the nearest non-RPW is Wetland 1 which drains into Macks Creek.

Geographic and hydrologic isolation:

1. Absence of any surface drainage features between the isolated water and the nearest water of the U.S (WoUS).
There were no surface drainage features between the isolated Wetland 2 and nearest WoUS, Wetland 1, present at the time of the site visit.
2. Absence (or presence) of any berms between the isolated water and the nearest water of the U.S.
There is no indication of physical barriers, either natural or artificial between Wetland 2 and Wetland 1; though much of Wetland 1, just south of the southeastern most edge of Wetland 2, is confined by a berm for approximately 0.13 miles that was created when the ditch-like feature was excavated.
3. Horizontal and vertical distance to the nearest water of the U.S.
Wetland 2 is horizontally 96 feet from offsite portion of wetland 1. Wetland 2 is about 3.5 feet above the OHW in Wetland 1.
4. Source of hydrology for the isolated water
 - a. Precipitation, seeps? Overland flow?
Source of hydrology for the isolated Wetland 2 is primarily from a seep and precipitation.
 - b. Could the nearest water of the U.S., during extreme floods, overflow into the isolated water?
Potentially under very extreme circumstances the Wetland 1 may be able to overflow into the Wetland 2 but the topography is such that the overflow water would likely remain in the depressional area of Wetland 2 or move southerly dissipating across the uplands away from the ditch-like portion of Wetland 1 and Wetland 2 and not return back to the WoUS (Wetland 1). The overflow path from Wetland 1 is approximately 220 ft south of the northern study area boundary and flows toward the south-southwest. On Figure 6b, it would flow in the direction of plots 14, 2, 3, and 9.
5. During extreme storm/flood conditions, could the isolated water "overflow" into the nearest water of the U.S.?
Only in the utmost extreme conditions would this be possible. Wetland 1 has a high berm along most of its length separating it from the rest of the area. The northern portion which continues off-site to the northeast does not have a high berm but the topography of the landscape lends to making flow into the ditch unlikely. During extreme events water from Wetland 2 would flow SSW. There is a high area between Wetland 1 and 2 which runs SW/NE and would prevent direct overflow from Wetland 2 to Wetland 1.
6. Description of the intervening land between the isolated water and the nearest water of the U.S. (potential for shallow subsurface connection)
 - a. The area of the isolated wetland has moderate tree cover; just south the area becomes forested.
 - b. It is primarily vegetated with *Festuca rubra* (FAC), *Juncus tenuis* (FAC), *Pinus ponderosa* (FACU), *Vulpia myuros* (FACU), *Quercus garryana* (FACU), *Ceanothus cuneatus* (UPL), *Camassia leichtlinii* (FACW), *Bromus diandrus* (UPL).
 - c. The land nearest the isolated water provides habitat to deer, song birds, and other commonly found urban forest species.
7. Mapped or actual soil types on- and off-site (potential for shallow subsurface connection)
12 B Brockman cobbly clay loam 2-7% slope – moderately well drained, hydric
8. Floodplain designation, if any, of the area where the isolated water is located in relation to the nearest water of the U.S.
FEMA has mapped this area as Zone X, indicating the area has less than a 0.2-percent annual chance of flooding

9. Proof of absence of shallow subsurface connection (e.g., waterwells, geologic analysis, dye test, etc)

Wetland 2 appears to be an isolated wetland depression which collects for a seep to the west and direct precipitation, sheet flow from the north including the road to the north and sheet flow from about 80 ft to the south. There is no indication of a subsurface connection between Wetlands 1 and 2. Additionally, a water table was not observed within the soil samples taken up to 14 inches deep (Sampling point 13A) within Wetland 2, though surface water was present up to 2 inches deep (sampling point 6A), which indicates there is no shallow subsurface connection. The wetland delineation describes the standing water as coming from a seep and the soils as clay-like, creating a restrictive barrier resulting in no found saturation or water table.

Wetland 2 lack of interstate commerce connection:

1. Lack of interstate use by interstate or foreign travelers for recreational purposes
 - a. Lack of habitat or resources of special significance which would attract interstate or foreign travelers
 - b. Lack of bird and wildlife species of special significance which would attract interstate or foreign travelers
2. Lack of fish or shellfish which could be taken or sold in interstate or foreign commerce
3. Lack of industrial purposes (e.g., water withdrawal for industrial use)
4. Lack of agriculture which is sold interstate/foreign
5. Lack of silviculture which is sold interstate/foreign

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: 0.09 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: .
- 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 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: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): From the Wetland Delineation: Figure 1, 6a & 6b (2016).
or Other (Name & Date):
- 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: Wetland 1 is located within the Louse Creek watershed (HUC12: 171003100103). The source of hydrology for Wetland 1 is precipitation and stormwater. The study area taxlot is located on the urban fringe of the city of Merlin and Grants Pass, residential, light industrial, and commercial land uses are occurring within the vicinity of the taxlot. Vegetation in the region is dominated by grasses with limited forested areas.

Aerial imagery, the National Hydrography Dataset, and Topographic maps detail the location of the nearest waters of the United States. The nearest traditionally navigable water is the Rogue River. The Rogue River's Section 10 limits of navigation are from RM 0 to RM 27.1. The 404 traditionally navigable water (404 TNW) limits extend from at RM 27.1 to RM 157.5. Macks Creek flows into Harris Creek which flows into Jumpoff Joe Creek which terminates into the Rogue River at approximately RM 83.5. Wetland 1 is geographically situated near the headwaters of Macks Creek. Macks Creek is the nearest relatively permanent water, which is located 0.4 miles to the southwest of the study area (shortest line distance).

NRCS Soil mapping indicates the soils within the study area are Brockman cobbly clay loam, 2-7% slope which is moderately well drained and hydric as well as Jerome sandy loam which is poorly drained and hydric.

LiDAR imagery indicates overland flow from extreme storm/flood conditions would be captured by Wetland 1. LiDAR and Aerial imagery indicate there is no direct or indirect connection from Wetland 2 in the study area to either Wetland 1 or Macks Creek, the nearest waters of the U.S.

The FEMA FIRM map indicates the study area is located in an area of least flooding concern and is outside of the 100-year floodplain (Zone X).

The Wetland 1 provides small amounts of wetland habitat appropriate for migratory bird species, however, the wetland would not attract interstate or foreign recreational commerce due to wetland's small size and land setting lacking access to recreational visitors.

Also, See the attached additional information in "F".

E-mail coordination was sent to the EPA and Corps Headquarters on 12 January 2017 requesting response within 21 days. No response was received by the Corps Headquarters or EPA.