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 waterbody[4] 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: Croisan Creek-Willamette River18,043.64 **acres**
Drainage area: 459 **acres**
Average annual rainfall: 42.69 inches
Average annual snowfall: 1 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through 2 tributaries before entering TNW.

Project waters are **2-5** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **2-5** 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: N/A.

Identify flow route to TNW[5]: Hillcrest Ditch, also known as West Middle Fork Pringle Creek flows into Pringle Creek, which flows into the Willamette River.

[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.

Tributary stream order, if known: N/A.

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

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain:
☒ Manipulated (man-altered). Explain: Hillcrest Ditch was relocated between 1994 and 1998. Prior to the relocation activities Hillcrest Ditch went through the center of the subject property.

Tributary properties with respect to top of bank (estimate):
Average width: ~57-39 feet
Average depth: ~4 to 7 feet
Average side slopes: **3:1 .**

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 tributary appears to be stable with welll vegetated banks without signs of erosion.
Presence of run/riffle/pool complexes. Explain: N/A.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): N/A %

(c) Flow:
Tributary provides for: **Year-round Flow**
Estimate average number of flow events in review area/year: **20 (or greater)**
Describe flow regime: Flow is present year around with a moderate to high flow pattern during rain events. Hillcrest Ditch is a broad channel capable of storing considerable volumes of water during flow events.
Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: .

Subsurface flow: **Unknown**. Explain findings: The tributary is perennial and likely has groundwater input.
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (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): Aquatic Vegetation	

☐ Discontinuous OHWM.[7] Explain: .

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

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

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: The Hillcrest Ditch (located adjacent to the subject property) is primarily in an industrial and commerical area

[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.

with some vacant fields scattered around. Stormwater runoff within the drainage area is directed to the tributary after and in some cases before passing though a catchment basins or stormwater conveyence system.

Identify specific pollutants, if known: N/A.

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

☒ Riparian corridor. Characteristics (type, average width): The Hillcrest Ditch has a small riparian corridor, approximately 12 feet on the northwest bank (confined by industrial developments) and 34 feet on the southeast bank (extending to an open field where Wetland A is located). Prior authorization under NWP-1994-422 required a 9.5 buffer zone between the relocated Hillcrest Ditch and upland development. Both banks have been highly manipulated during the relocation of the triburary between 1994 and 1998 as well as ongoing adjacent developments. In many areas the corridor is densely vegetated with Himalayan Blackberry (*Rubus armeniacus*).

☐ Wetland fringe. Characteristics: .

☒ Habitat for:

☒ Federally Listed species. Explain findings: Willamette Valley Daisy (Erigeron decumbens), Howellia (Howellia aquatilis), Golden paintbrush (Castilleja levisecta), Bradshaw's lomatium (Lomatium bradshawii), and Kincaid's lupine (Lupinus oreganus).

☐ 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:1.19 acres

Wetland type. Explain: Palustrine Emergent (PEM) /Palustrine Scrub Shrub (PSS)

Wetland A directly abuts Hillcrest Ditch, extending from the east to the north portion of the site where it slopes towards the northwest and abuts Hillcrest Ditch. Wetland A was previously excavated and ditched around a development fill pad placed between 1994 and 1998 during the Hillcrest Ditch relocation activities. Precipitation and adjacent up-gradient runoff recharges the feature while the gravel pad and other fill material serve as impoundments of the feature. Around the fill pad Wetland A was Cowardin classified as Palustrine Emergent Seasonally Flooded/ Saturated, impounded (PEMEh). The previously excavated ditch areas of Wetland A were Cowardin classified as Palustrine Emergent Seasonally Flooded excavated (PEMCx).

Fill Ditch is located along the south and southwest corner of the fill pad. The ditch was created in compacted gravel substrate and hydrologically connects or is physically abutting Wetland A. Precipitation and adjacent runoff recharges the feature. The feature was Cowardin classified as Palustrine Emergent Seasonally Flooded/Saturated spoils (PEMEs).

Wetland B and C directly abut the Fill Ditch to the north. The features are being impounded by spoil berms resulting in a collection or concentration of precipitation and up-gradient runoff. These topographically low areas adjacent to upland spoil berms satisfy FAC-Neutral Test (D5). Wetland B and C are Cowardin classified as Palustrine Emergent Seasonally Flooded/ Saturated, impounded (PEMEh).

Wetland quality. Explain:

Wetland A: Vegetation ranges from marginal communities supporting common bent grass (*Agrostis capillaris)*, velvet grass *(Holcus lanatus)*, American bird's-foot trefoil *(Lotus unifoliatus)*, hairy cat's ear *(Hypochaeris radicata)* to the excavated ditch area supporting spikerush (*Eleocharis palustris)*, poverty rush *(Juncus tenuis)*, common bent grass *(Agrostis capillaris)* and velvet grass *(Holcus lanatus)*. Several balsam poplar (*Populus balsamifera)* saplings are scattered along the base of the gravel fill pad. Relatively undisturbed areas contain very dark grayish brown silty clay loam to silty clay soils containing redoximorphic feature formations identifying Redox Dark Surface (F6) hydric soil indicator. The wetland is impounded by a gravel fill pad placed between 1994 and 1998 in the center of the property. The wetland experiences periods of seasonal inundation and saturation before draining into the abutting Hillcrest Ditch and Pringle Creek, located on the northwest boundary of the property line. A site visit was conducted September 26, 2016. The soils were relatively dry, but indicators such as tire tracks and bare ground in low areas indicating periods of seasonal inundation. Clear vegetation community shifts at fill pad berms indicate upland shift.

Fill Ditch: Vegetation ranges from spikerush (*Elecharis palustris)*, common bent grass *(Agrostis capillaris)*, pennyroyal *(Mentha puleguim)* and balsam poplar *(Populus balsamifera)* saplings within topographically low areas. The wetland is impounded by a gravel fill pad placed between 1994 and 1998 in the center of the property and spoil berms to the southwest of the feature. The wetland experiences periods of seasonal inundation and saturation before draining into Wetland A that drains into the abutting Hillcrest Ditch and Pringle Creek. A site visit was conducted September 26, 2016. The soils were relatively dry with bare ground in low areas indicating periods of seasonal inundation. Clear vegetation community shifts at fill pad and spoil berms indicate upland shift.

Wetland B and C: Vegetation ranges from common bent grass *(Agrostis capillaris)*, poverty rush *(Juncus tenuis)*, and velvet grass *(Holcus lanatus)* with low topographic areas that contain algal mat formations. Soils exhibit very dark grayish brown silty clay loam to silty clay soils containing redoximorphic formations identifying Redox Dark Surface (F6) hydric soil indicator. The wetlands are

impounded by spoil berms, experiencing periods of seasonal inundation and saturation before draining into the Fill Ditch which drains into Wetland A and discharging into the Hillcrest Ditch and Pringle Creek. A site visit was conducted September 26, 2016. The soils were relatively dry with bare ground in low areas indicating periods of seasonal inundation. Clear vegetation community shifts at fill pad and spoil berms indicate upland shift.

(b) General Flow Relationship with Non-TNW:
Flow is: **Intermittent flow**. Explain: Water flows from Wetland B, C and the Fill Ditch into Wetland A before dicharging into the RPW (Hillcrest Ditch) during rain events primarily from precipitation, up-gradient runoff and when the Wetlands are seasonally inundated.

Surface flow is**: Overland sheetflow**
Characteristics: The Fill Ditch provides a surface connection between Wetlands A, B, and C. Wetland A provides a surface connection to the Hillcrest Ditch to Pringle Creek.

Subsurface flow: **Yes**. Explain findings: Subsurface flows are likely during short periods of time between all idenified wetlands and the Hillcrest Ditch. Shovel probes completed wtihin all wetlands onsite suggest that the features experience peroidic saturation in upper and lower portions of soil profile.
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting: Wetland A directly abuts the Hillcrest Ditch to Pringle Creek. Wetland B and C are hydrological connection with the Fill Ditch which is hydrological connection with Wetland A.
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☐ Ecological connection. Explain:
☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **2-5** river miles from TNW.
Project waters are **2-5** 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 (0.2% or less annual chance of flood hazard).

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known:

Standing water was not observed in Wetland A, B, C, or the Fill Ditch during the wetland delineation in May 2016, but the presence of saturation in the upper portions of the soil profile was observed in all wetlands onsite. The site is surrounded by industrial and commercial developments with a network of roads and vacant fields scattered throughout the area. It appear that water inputs from the surrounding roads and developments enter the wetlands and Hillcrest Ditch as surface flows before and after passing through catchment basins.

(iii) Biological Characteristics. Wetland supports (check all that apply):
☒ Riparian buffer. Characteristics (type, average width):

Wetland A is within the riparian corridor of the Hillcrest Ditch which extends approximately 34 feet to the northeast, into the subject property and the adjacent empty taxlot.

Wetlands B, C, and the Fill Ditch is within the riparian corridor of the Hillcrest Ditch which extends to the southwest, into the subject property and is confined by SE Fairview Industrial Drive and an ODOT complex facility.

☐ Vegetation type/percent cover. Explain:

Wetland A, B, C and Fill Ditch are comprised of native and non-native grasses, approximately 95% within the herb stratum of the wetland. Bare ground was present in small areas, approximately 5% or less of the area.

☐ 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: **4**
Approximately (1.19) 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)
Wetland A	**Y**	**1.04-acre**	**Wetland B**	**Y**	**0.02**
Wetland C	**Y**	**0.07-acre**	**Fill Ditch**	**Y**	**0.06**

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?

  Wetland A is a sloped impounded wetland that receives precipitation, and up-gradient runoff from adjacent properties before flows directly enter the offsite Hillcrest Ditch. Detention ponds associated with other recent development are present in the vicinity to providing stormwater detention. However, not all surface flows or runoff enters a detention basin before discharging to the wetlands onsite and Hillcrest Ditch. The drainage basin is characterized by industrial and commercial development with scattered undeveloped lots in close proximately, which can result in flashy high flows during rain events entering the broad Hillcrest Ditch stream channel. Impoundments onsite likely contribute to longer inundation periods within Wetland A before discharging into the Hillcrest Ditch.

  Fill Ditch is impounded by a gravel fill pad that receives precipitation, and up-gradient runoff from adjacent properties before flows discharge into Wetland A. The channelized characteristics of the Fill Ditch allows for collection and concentration of precipitation and runoff, resulting in higher velocity flashy flows entering Wetland A and subsequently the Hillcrest Ditch, sometimes without detention during moderate to high rain events.

  Wetland B and C are sloped wetlands impounded by spoil berms that receive precipitation, up-gradient runoff from adjacent properties and roadways before discharging into the Fill Ditch. Similar to the Fill Ditch the channelized characteristics of these wetlands allow for collection and concentration of precipitation and runoff, resulting in high velocity flashy flows entering Wetland A and subsequently the Hillcrest Ditch with moderate detention during moderate to high rain events.

- 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?

  Wetland A in combination with the Hillcrest Ditch likely provides habitat support to macroinvertebrates, and amphibians during most, if not all life cycles. The Hillcrest Ditch was originally located through the center of the property and was relocated in the 1990's during adjacent development activities. The channel was constructed with a broad channel capable of flood storage.

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?

  Wetland A in combination with the Hillcrest Ditch can contribute organic material to downstream waters (Hillcrest Ditch) during rain events. The Hillcrest Ditch is a perennial stream that is constantly moving organic material downstream to Pringle Creek and the Willamette River. This organic material provides in-stream and downstream support of the 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:

   The Fill Ditch, Wetland B and C provide important collection, retention and detention of precipitation and up-gradient runoff from onsite and adjacent properties during rain events. This can contribute to high velocity flashy flows entering Wetland A (directly abutting RPW) and the Hillcrest Ditch (RPW) before flowing into Pringle Creek (RPW) and the Willamette River (TNW). These functions are notable in a small drainage basin where the primary land use is industrial and commercial. Some wetlands remain in the drainage basin that provide similar functions. Wetlands B, C and the Fill Ditch sustain a vital role in reducing flooding downstream and providing backwater habitat during seasonal rains and periods of inundation.

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: Hillcrest Ditch.
   - ☐ 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: .

     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: .

3. **Non-RPWs[8] 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:

       Wetland A, B, C and the Fill Ditch: Directly abuts the perennial Hillcrest Ditch based on the May 2016 wetland delineation that found the wetland topography to slope towards the tributary west-northwest and connect at the lowest point of the wetland. Surface connection is likely to occur seasonally or correspond to high rain events when the wetland is inundated. The wetland delineation conducted in May 2016 found saturation in the upper portions of the soil profile indicating a subsurface connection is likely to occur periodically throughout the year.

     - ☐ 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: .

[8]See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: **1.19** 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 jurisidictional. 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): **A stormwater conveyance was evaluated and determined it was not a water. There is not sufficient flow or duration to establish an ordinary high water mark, and the ditch was constructed solely in uplands.**

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: .

[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.*

☐ Wetlands: 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: SALEM WEST QUADRANDLE.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: Oregon.gov Salem/Keizer Map 5 of 5.
☒ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: FEMA National Flood Hazard Map.
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): .
  or ☐ Other (Name & Date): .
☒ Previous determination(s). File no. and date of response letter: 19941202 NWP-1994-422 and 20050707 NWP-2004-666.
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: A stormwater swale was constructed onsite in 1995 in uplands to provide conveyance and retention for Fairview Industrial Drive and lands being developed to the east-southeast. A wetland delineation (WD) was conducted in 1993 across the project area and concluded that wetlands were present in the northeast and southeast corners of the project area. Permit NWP-1994-422, authorized the relocation of Hillcrest Ditch and the filling of 7.6 acres of wetland, at which point the stormwater swale was constructed in uplands in the southwest corner of the project area.