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): December 19, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Industrial Park - McLean Point, NWP-2016-545

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Lincoln County City: Newport
Center coordinates of site (lat/long in degree decimal format): Lat. 44.625991° **N**, Long. 124.02746° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Yaquina Bay
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Yaquina Bay
Name of watershed or Hydrologic Unit Code (HUC): 12th field HUC 171002040303 Poole Slough - Yaquina Bay

☒ 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 18, 2016
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are** *"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 *Yaquina Bay*
☒ Wetlands adjacent to TNWs *Wetlands A, B, C, P, Q, R*
☐ Relatively permanent waters[2] (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: 0 linear feet: 0 width (ft) and/or 0 acres.
Wetlands: 0.72 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: **There are wetlands within the review area determined to be non-jurisdictional. Wetlands D-O (0.818 ac) and Wetlands S-W (0.045 ac)**.

[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: **Yaquina Bay**.

Summarize rationale supporting determination: The Yaquina Bay is subject to ebb and flow of the tide and is listed on the US Army Corps of Engineers Navigable Waters list.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Wetlands A, B, C, and P (0.49 ac) are wetlands connected through a series of culverts. These wetlands are adjacent to the Yaquina by surface water connection based upon culvert connection at the south end of Wetland P. Wetland Q (0.05 ac) is determined adjacent to the Yaquina Bay, the wetland is located at a lower elevation than the high tide line of the Yaquina Bay and has a surface connection during high tides. Wetland R (0.20 ac) is considered to be adjacent to the Yaquina Bay through a ditch/culvert surface connection, Wetland R is connected to the Yaquina Bay through a culvert on the northwest side of the wetland.

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 (NA)

(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.

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

Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(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):
☐ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☐ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ 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):
☐ 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):
☐ 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:

[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.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

(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 (NA)

(i) Physical Characteristics:

(a) General Wetland Characteristics:
Properties:
Wetland size: acres
Wetland type. Explain: .
Wetland quality. Explain: .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** 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: .
Identify specific pollutants, if known: .

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

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ 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: **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: Wetlands D-O and Wetlands S-W have been deemed not jurisdictional by the Corps. The following information documents the absence of significant nexus for those wetlands.

Site Soils: The soils encountered within the study area vary widely in composition, reflecting the diverse origins of material used in originally constructing the Point, as well as subsequent materials storage and removal over the decades. Some areas were nearly impenetrable due to compact gravelly or cobble fill, while other areas were mostly comprised of sandy dredge spoils. Much of the site also included an upper layer comprised mostly of wood chips and finer organic debris, often mixed with smaller quantities of sand, silts and clays, or even gravel.

Site Hydrology: Although the Point has been constructed within the Yaquina River estuary, its elevation above the river and variable nature of the fill largely isolates its surface from any tidal or regional groundwater influences. An unknown amount of seasonal groundwater and surface water runoff likely enters the site along its northern end at the base of the slope that extends above Yaquina Bay Road. However, most of this input is almost immediately captured and either stored or conveyed within a large ditch system.

Capacity to Carry Flood Waters: These wetlands do have the capacity to carry flood waters to the TNW, there are not connecting tributaries. These are perched seasonal ponded wetlands with no visual surface connection or documented shallow subsurface connection. Based on their nearby location a significant nexus is being performed for each wetland.

Habitat and Lifecycle Support: The nearest TNW is the Yaquina Bay which is salt water influenced. Populations of shorebirds and migratory species frequent the Yaquina Bay. The wetlands are freshwater and seasonal without a visual surface connection to the bay. It is highly improbable that these wetlands support habitat or lifecycle functions for the Yaquina Bay species.

Capacity to Transfer Nutrients: These freshwater wetlands lack any visual surface hydrologic connection or sub-surface shallow water connection. Based upon the vegetation and soils found it is highly improbable that these wetlands could transfer nutrients to the Yaquina Bay.

Wetland D (0.02 ac) is dominated by jointed rush, creeping bentgrass, birds-foot trefoil, and creeping buttercup. The highly disturbed soils met the 'sandy redox' (S5) indicator for hydric soils, while the presence of oxidized rhizospheres and the shallowly depressional geomorphic position met the wetland hydrology criterion.. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collecting in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay. The vegetation between the wetland and Yaquina Bay is dominated by various grasses and blackberry.

Wetland E (0.007 ac) is dominated primarily by birds-foot trefoil and creeping buttercup. The highly disturbed soils again met the 'sandy redox' (S5) indicator for hydric soils, while the presence of oxidized rhizospheres and the shallowly depressional geomorphic position met the wetland hydrology criterion. The adjacent uplands, which is dominated by annual ryegrass, birds'-foot trefoil, velvetgrass, and yellow parentucellia. The mostly sandy soils at these locations lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland F (0.03 ac) is dominated by jointed rush, birds-foot trefoil, and spike bentgrass (Agrostis exarata, FACW). The highly disturbed soils again met the 'sandy redox' (S5) indicator for hydric soils, while the presence of drift deposits, surface soil cracks, and shallowly depressional geomorphic position met the wetland hydrology criterion. Adjacent upland areas are dominated by clumps of Himalayan blackberry, along with a variety of mostly facultative herbaceous species such as birds - foot trefoil, velvetgrass, creeping bentgrass, red clover, and yellow parentucellia. The mostly sandy soils at these locations lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland G (0.006 ac) is dominated by Bolander's rush (Juncus bolanderi, OBL), creeping bentgrass, birds-foot trefoil, and velvetgrass. The soils met the 'redox dark surface' (A6) indicator for hydric soils, while the presence of oxidized rhizospheres and the shallowly depressional geomorphic position met the wetland hydrology criterion. Adjacent upland areas is dominated by Himalayan blackberry clumps, along with birds'-foot trefoil, velvetgrass, both red clover and white clover (Trifolium repens, FAC), and annual ryegrass. The mostly sandy soil at this location lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland H (0.07 ac) is dominated by slough sedge, jointed rush, marsh speedwell (Veronica scutellata, OBL), and yellow parentucellia. The soils met the 'sandy redox' (S5) indicator for hydric soils, and indicators of prolonged seasonal saturation (oxidized rhizospheres and surface soil cracks) were evident. Adjacent upland areas are dominated by mostly facultative species (dominants included birds'-foot trefoil, velvetgrass, and sweet vernalgrass), but had a P-I ratio over 3.0. The mostly sandy soils lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland I (0.03 ac) is dominated by jointed rush, slough sedge, reed canarygrass (Phalaris arundinacea, FACW), and birds-foot trefoil. The soils met the 'sandy redox' (S5) indicator for hydric soils, and indicators of seasonal ponding (including drift deposits and soil cracks) were evident. Adjacent upland characteristics are described in Wetland H above. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland J (0.03 ac) is dominated by pennyroyal (Mentha pulegium, OBL), white clover, and jointed rush, among others. The soils did not meet specific hydric soil criteria, being comprised of compacted, rocky fill material that could not be penetrated more than 6 inches; however, the poorly drained, sparsely vegetated depression provided strong evidence of prolonged seasonal ponding. Adjacent uplands areas are dominated by Himalayan blackberry, birds'- foot trefoil, velvetgrass, and sweet vernalgrass. The mostly sandy fill material at

this location lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland K (0.007 ac) is dominated by slough sedge, velvetgrass, sweet vernalgrass, and hedgehog dogtail. The soils did not meet specific hydric soil criteria, being comprised of greater than 40% wood chips in the upper 10 inches; however, both the hydric soils and wetland hydrology criteria were assumed due to the reduction apparent in the mostly sand layer below the wood chips. Adjacent upland areas are dominated by mostly facultative herbaceous species such as birds'-foot trefoil, velvetgrass, and sweet vernalgrass. The mostly sandy soils lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland L (0.02 ac) is dominated by slough sedge, birds-foot trefoil, and spike bentgrass. The fill material did not quite meet specific hydric soil criteria; however, both the soils and wetland hydrology criteria were assumed due to the presence of redox concentrations and oxidized rhizospheres in the sand below a wood chip layer. Adjacent upland characteristics are described in Wetland K above. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland M (0.008 ac) is dominated by spike bentgrass and pennyroyal. The soils met the 'sandy redox' (S5) indicator for hydric soils, and hydrology was assumed based on the shallowly depressional landscape position and drainage patterns evident in this area. Adjacent upland areas are dominated by Himalayan blackberry, velvetgrass, sweet vernalgrass, hedgehog dogtail, and yellow parentucellia. The mostly sandy soils lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay..

Wetland N (0.02 ac) is dominated by pennyroyal. The soils met the 'sandy redox' (S5) indicator for hydric soils, and hydrology was assumed based on the shallowly depressional landscape position and drainage patterns evident in this area. adjacent upland, which is dominated by velvetgrass, sweet vernalgrass, and hedgehog dogtail. The cobbly sand at this location could not be penetrated to a depth below 6 inches; still, it lacked both hydric soil and hydrology indicators to that depth, and occupied a slightly elevated landscape position. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between this wetland and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetland O (0.57 ac) is dominated by Baltic rush (Juncus balticus, FACW), and tall fescue (Festuca arundinacea, FAC). The soils met the 'redox dark surface' (A6) indicator for hydric soils, and indicators of prolonged saturation (oxidized rhizospheres in particular) were evident. Adjacent upland areas are dominated by Himalayan blackberry along with tall fescue, creeping bentgrass, and spotted catsear (Hypochaeris radicata, FACU). The mostly sandy soil lacked both hydric soil and wetland hydrology indicators. This wetland does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are is a gravel road that seperates Wetland O from Wetland C. Wetland C does have a connection to the Yaquina Bay. Due to the soil . The source of hydrology is likely related to perched rainwater collected in the depression. This wetland is location in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event this wetland would overflow into the Yaquina Bay.

Wetlands S,U and V (0.031 ac) are combined due to similarly positions and vegetation. These wetlands are dominated by pennyroyal, tall flatsedge, creeping bentgrass, birds-foot trefoil, and ryegrass (Lolium perenne, FAC). As noted above, the hydric soils criterion was not applicable due to refusal on the compacted gravel. However, the shallowly depressional geomorphic position and evidence of seasonal ponding met the wetland hydrology criterion. Adjacent upland areas are dominated by suckling clover (Trifolium dubium, FACU), flax (Linum angustifolium, UPL), lesser hawkbit (Leontodon saxatilis, FACU), and narrowleaf crimson clover (Trifolium angustifolium, UPL). The gravel surface at these locations was not depressional and lacked wetland hydrology indicators. These wetlands does not share any surface water connection or sub-surface water connection with the Yaquina Bay. There are no berms or man-made structures between the wetlands and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. These wetlands are located in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event that any of these wetlands would overflow into the Yaquina Bay.

Wetlands T and W (0.014 ac) are narrow, shallow (less than 1 foot deep) ditch segments that closely border the paved storage yard immediately to the north. The gravel substrate is again impenetrable below a few inches; however, seasonal rainfall and storm runoff collect in these depressions. As such, the ditch segments support a wetland community dominated primarily by tall flatsedge, creeping bentgrass, ryegrass, and creeping bentgrass. These wetlands does not share any surface water connection or sub-surface water

connection with the Yaquina Bay. There are no berms or man-made structures between the wetlands and the Yaquina Bay. The source of hydrology is likely related to perched rainwater collected in the depression. These wetlands are located in the 500-year floodplain according to FEMA data. It is highly improbable that during a lesser storm event that any of these wetlands would overflow into the Yaquina Bay.

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: 5126 linear feet 10 width (ft), Or, 1.2 acres.
☒ Wetlands adjacent to TNWs: Wetlands A,B,C, and P (0.49 ac), Wetland Q (0.05 ac), and Wetland R (0.20)

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: .

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: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

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

[8]See Footnote # 3.

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: Isolated wetlands that did not meet the significant nexus standard**. Refer to Section C for Significant Nexus Analysis for Wetlands D-O and Wetlands S-W.**
☐ Other: (explain, if not covered above): .

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.

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: 0.863 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.

[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.*

☒ Office concurs with data sheets/delineation report. (Wetland Delineation within McLean Point in Newport, Oregon)
☐ 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 Geodectic Vertical Datum of 1929)
☐ Photographs: ☒ Aerial (Google Earth, eGIS): .
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: EPA Response stated I have reviewed the subject draft AJD, which concludes that wetlands A, B, C, P, Q, and R are jurisdictional (adjacent to TNW Yaquina Bay); and wetlands D-O and S-W are isolated waters not subject to Clean Water Act jurisdiction. EPA Region 10 concurs with your conclusion that wetlands A, B, C, P, Q, and R are jurisdictional, and that the remaining wetlands may not be.

We would like to offer an additional alternative for your consideration: Since wetlands A, B, C, and P have a surface connection to Yaquina Bay, could this linear string of wetlands be considered an RPW or non-RPW? (USGS hydrology maps indicate this drainage feature may be an intermittent stream.) As a result, other nearby wetlands could be adjacent to the RPW/non-RPW, rather than Yaquina Bay, and the man-made barrier between Wetland O would not sever jurisdiction.

This alternative was not considered since linear string of wetlands had no present of a channel. Each wetland was vegetated throughout, with no defined ordinary high water mark. These wetlands were connected through culverts, and during the site visit surface water was present. The surface water however was not flowing.