

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): 5-15-2018

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Roy Rogers Road, NWP-2017-525

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Oregon County/parish/borough: Washington County City: Beaverton
 Center coordinates of site (lat/long in degree decimal format): Lat. 45.414° **N**, Long. 122.851° **W**.
 Universal Transverse Mercator:

Name of nearest waterbody: Tualatin River

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

Name of watershed or Hydrologic Unit Code (HUC): Rock Creek, Tualatin River

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. *Tributaries 1, 2, 3, Wetlands A and D, NRT Ditch, WRT Ditch, RR Ditch, SRT Ditch and RTEB Ditch were previously delineated under NWP-2017-32 on July 5, 2017.*

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: April 11, 2018

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "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: **S-2-4, Waterway 2, Waterway 3**

Non-RPWs that flow directly or indirectly into TNWs: **D-2-26, D-2-27**

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs: **Wetland B, Wetland C**

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: **Ditch 9 Wetland**

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: acres.

Non-Wetland Waters	OHWM Width (ft)	Length (ft)	Area (SF)	Acreage
S-2-4 (Trib 4)	26	55	1,640	0.03772
Waterway 2	4.5	60	275	0.006325
Waterway 3	8.5	150	1,315	0.030245

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).

D-2-26	4	95	380	0.00874
D-2-27	4	100	400	0.0092
Total			4,010	

Wetlands	Area (SF)	Acreage
Wetland B	40	0.00092
Wetland C	730	0.01679
Ditch 9 Wetland Portion	480	0.01104
Total	1,250	0.02875

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual and the Ordinary High Water Line

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: **Thirteen (13) ditches were reviewed and determined not to be waters. See Table below. Refer to Section IV B.**

Non-regulated Waters	Area (SF)	Acreage
Ditch 1	150	0.00345
Ditch 2	300	0.0069
Ditch 3	1,825	0.041975
Ditch 4	4,900	0.1127
Ditch 5	120	0.00276
Ditch 7	3,300	0.0759
Ditch 8	4,400	0.1012
Ditch 9 (partial)	2,610	0.06003
Ditch 11	3,075	0.070725
Ditch 15	5,650	0.12995
Ditch 16	1,200	0.0276
Ditch 17	3,350	0.07705
Ditch 18	3,650	0.08395
Total	34,530	0.79

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: N/A

Summarize rationale supporting determination: N/A

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: N/A

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: S-2-4, D-2-26, D-2-27, Waterway 2, Waterway 3

(i) General Area Conditions:

Watershed size: Rock Creek – Tualatin River, 16294 acres

Drainage area: unknown

Average annual rainfall: 39 inches

Average annual snowfall: 2 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW. **S-2-4**

Tributary flows through 2 tributaries before entering TNW. **D-2-26, D-2-27, Waterway 2, Waterway 3**

Project waters are 1-2 river miles from TNW.

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

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

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

Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW⁵: **D-2-26 and D-2-27 flow into S-2-4. S-2-4 flows directly into the Tualatin River.**

Waterways 2 and 3 flow into Tributary 1, which flows into the Tualatin River then into the Willamette River.

Tributary stream order, if known:

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

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 is: Natural
 Artificial (man-made). Explain: Waterway 2, Waterway 3, D-2-26 and D-2-27 are likely man made following the construction of the road. They receive hydrology through precipitation and storm runoff.
 Manipulated (man-altered). Explain: Tributary S-2-4 has been culverted and a road has been constructed over it. Outside of the review area, the tributary S-2-4 has been relatively unmodified with a wooded riparian zone.

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

Average width: Tributary S-2-4 measures 2 feet wide within review area. Waterway 2 is 4.5 feet wide. Waterway 3 is 8.5 feet wide. D-2-26 and D-2-27 are both 4 feet wide.

Average depth: Depths are unknown.
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

- | | | |
|---|--|-----------------------------------|
| <input checked="" type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input checked="" 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: Tributary condition is stable.

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

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): unknown.

(c) **Flow:**

Tributary provides for: S-2-4 provides perennial flow to the Tualatin River. Waterway 2 and 3 provide seasonal flow during winter/spring. D-2-26 and D-2-27 provide intermittent flow to downstream waterway S-2-4 during the rainy season.

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

Describe flow regime: Tributaries flow approximately 3 months of the year, during rain events.

Other information on duration and volume: unknown.

Surface flow is: **Discrete and confined.** Characteristics: The tributaries within the review area have been manipulated and flow is confined to the channel.

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

Dye (or other) test performed:

Tributary has (check all that apply): S-2-4, Waterway 2, Waterway 3, D-2-26 and D-2-27 show similar characteristics of an OHWM. Based upon photos provided to the Corps.

- | | |
|--|--|
| <input checked="" type="checkbox"/> Bed and banks | |
| <input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input checked="" type="checkbox"/> clear, natural line impressed on the bank | <input checked="" type="checkbox"/> the presence of litter and debris |
| <input checked="" 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 checked="" 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 checked="" 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): | |

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: Water quality would be impacted by runoff from Roy Rogers Road and nearby agricultural operations. D-2-26, D-2-27, Waterway 2, and Waterway 3 are along Roy Rogers and would receive sheet flow from the road, carrying auto related pollutants and dust. S-2-4 passes through agricultural areas prior to reaching the culvert under Roy Rogers Road.

Identify specific pollutants, if known: unknown

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): Downstream of the review area, the riparian area appears forested around S-2-4.
- 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: Wetlands B, C, and Ditch 9 Wetland**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:
 Wetland size: Wetland B is approximately 40 square feet in size and connected to Wetland A through an under driveway culvert. Wetland C is approximately 730 square feet in size. The Ditch 9 Wetland is approximately 480 square feet.
 Wetland type. Explain: Wetlands B and C are classified as PEMB. Ditch 9 wetland is PEM.
 Wetland quality. Explain: Wetlands B, C, and Ditch 9 Wetland are low quality roadside ditches with wetland properties.
 Project wetlands cross or serve as state boundaries. Explain: n/a.

(b) General Flow Relationship with Non-TNW:

Flow is: **Wetlands B and C flow into Tributary 2. The Ditch 9 Wetland flows into D-2-27 (non-RPW) and then to S-2-4 (tributary).**

Surface flow is: **Flow is through surface flow.**

Characteristics:

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

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting: Wetland B and C are directly abutting an RPW. Ditch 9 Wetland is directly abutting a Non-RPW.
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain:
 - Ecological connection. Explain:
 - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **1-2** river miles from TNW.
 Project waters are **1 (or less)** aerial (straight) miles from TNW.
 Flow is from: **Wetland to navigable waters**. Wetlands B and C flow into Tributary 2 – Tributary 2 is connected to the Tualatin River. The Ditch 9 wetland flows into D-2-27, which connects to S-2-4, an unnamed Tributary to the Tualatin River.
 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: Water is generally brown colored in the wetlands.
 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: Wetland B is classified as PEMB. Wetland C is classified as PEMB. The Ditch 9 Wetland contains maintained roadside grasses assumed to be FAC.
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: **5**
 Approximately (0.0739) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Wetland	Size (in acres)	Directly Abuts
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Wetland A	0.023575	Yes
Wetland B	0.00092	Yes
Wetland C	0.01679	Yes
Wetland D	0.02162	Yes
Ditch 9 Wetland Portion	0.01104	Yes
Total	0.0739	---

Summarize overall biological, chemical and physical functions being performed: The wetlands contain roadside vegetation. The wetlands filter water and allow for sediment settlement prior to water discharge into the Tributaries. The vegetation provides for detritus and nutrient enrichment of the waters both in the wetland and for the water that discharges into the Tributaries.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The Ditch 9 Wetland flows into D-2-27. D-2-2 connects to D-2-26 though an under road culvert, then D-2-26 discharges into Tributary S-2-4. The Ditch 9 wetlands and roadside ditches D-2-26 and D-2-27 collect water and pollution runoff from the roadway during rain events. These pollutants and waters then flow into the Tributary. The Ditch 9 Wetland would allow for sediment settlement during low flow events, which would help to reduce pollutants carried into the downstream Tributary. The vegetation growing in the Ditch 9 Wetland, D-2-27 and D-2-26 would be transported to the downstream tributary during rain events, transferring nutrients and organic carbon that would support downstream food webs.
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 S-2-4 - There is base flow and evidence of year round flow. The channels are well developed and contain detritus.
 - 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: Waterway 2 and Waterway 3 both have evidence of water. Waterway 2 contained water during the site visit.

Waterway 3 lacked surface water but had a high water table. The waterways flow seasonally as drainage to the nearby area, transporting detritus, chemical pollutants, and nutrients to downstream waterways.

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

Tributary waters:

Non-Wetland Waters	OHWL Width (ft)	Length (ft)	Area (SF)	Acreage
S-2-4 (Trib 4)	26	55	1,640	0.03772
Waterway 2	4.5	60	275	0.006325
Waterway 3	8.5	150	1,315	0.030245
Total		265	3,230	0.07415

Other non-wetland waters: acres.
Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

Tributary waters:
 Other non-wetland waters: acres.
Identify type(s) of waters: **Non-RPW.**

Non-Wetland Waters	OHWL Width (ft)	Length (ft)	Area (SF)	Acreage
D-2-26	4	95	380	0.00874
D-2-27	4	100	400	0.0092
Total		195	780	0.01794

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 B and C are adjacent to and flow directly into Tributary 2.**

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:

Wetlands	Area (SF)	Acreage
Wetland B	40	0.00092
Wetland C	730	0.01679
Total	770	0.01794

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.

⁸See Footnote # 3.

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:

Wetlands	Area (SF)	Acreage
Ditch 9 Wetland Portion	480	0.01104
Total	480	0.01104

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): **Roadside ditches did not meet the three criteria for wetland determinations and did not display an ordinary high water mark. The roadside ditches were likely created from uplands since all tributaries with flowing water and adjacent wetlands have bridges or culverts spanning the waterway.**

Non-regulated Waters	Area (SF)	Acreage
Ditch 1	150	0.00345
Ditch 2	300	0.0069
Ditch 3	1,825	0.041975
Ditch 4	4,900	0.1127
Ditch 5	120	0.00276
Ditch 7	3,300	0.0759

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.

Ditch 8	4,400	0.1012
Ditch 9 (partial)	2,610	0.06003
Ditch 11	3,075	0.070725
Ditch 15	5,650	0.12995
Ditch 16	1,200	0.0276
Ditch 17	3,350	0.07705
Ditch 18	3,650	0.08395
Total	34,530	0.79

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: 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: EGIS 4-25-2018.
 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: provided by consultant.
 National wetlands inventory map(s). Cite name: .
 State/Local wetland inventory map(s): .
 FEMA/FIRM maps: .
 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 Photographs: Aerial (Name & Date): Google earth 4-25-2018
or Other (Name & Date): photos provided by consultant.
 Previous determination(s). File no. and date of response letter: NWP-2017-32 contains ditches, wetlands, and tributaries on opposite sides of the road as compared to this determination.
 Applicable/supporting case law: .
 Applicable/supporting scientific literature: .
 Other information (please specify): DSL Delineation WD 2015-123 for information on Waterway 2 and 3. WD 2017-24 for information on D-2-26 and D-2-27.

B. ADDITIONAL COMMENTS TO SUPPORT JD:

RPW

- S-2-4 – Tributary 4 connects directly to the Tualatin River. Flows in an east to west direction, then southwesterly through a culvert below Roy Rogers Road through the southern part of the study area. Has flows originating from a small stream to the east and from D-2-26, which drains into S-2-4 through an 18-inch culvert. It is an incised perennial stream, with an OHWM 2 feet wide after a wider plunge pool, from steep banks, washed roots.
- Waterway 2 – Originates near the northern portion of Roy Rogers Road near the power station and runs south along the south along the site boundary. Contains wetland vegetation such as *Poa sp.*, soils, and wetland hydrology. The ditch flows into a concrete storm

drain box. From there it flows offsite into the unnamed creek flowing east/west beneath Roy Rogers Road into Tributary 1. (Tributary 1 as previously delineated in NWP-2017-32). Surface water hydrology in the waterway was present and documented, vegetation within the waterway is almost entirely *Alopecurus pratensis*.

- Waterway 3 – Waterway 2 is directly connected to Waterway 3 via culvert. Contains wetland vegetation such as *Alopecurus pratensis*, hydric soils, and wetland hydrology. Contains an east-west arm which connects offsite wetlands to the Waterway 3 then Waterway 2.

Wetland adjacent to RPW

- Wetland B – Connected to Wetland A via under road culvert (Wetland A as reviewed under NWP-2017-32). Flows into Tributary 2. Approximately 40 square feet in size. The wetland is predominantly fed by precipitation, secondarily by surface runoff. Classified as PEMB.
- Wetland C – Flows in to Tributary 2 (Tributary 2 as reviewed under NWP-2017-32). Approximately 730 square feet in size and located SW of Roy Rogers Road, south of Tributary 2. The wetland is primarily fed by precipitation and secondarily by surface runoff. Classified as PEMB.

Non-RPW

- D-2-26 – Flows into S-2-4. Located along the east side of SW Roy Rogers Road, south of Tributary 3. A rock ditch at the outfall from a failed drain tile outlet that carries water from a potential wetland outside of the study area into a rock ditch leading to an incised perennial stream named S-2-4. Approximately 4 feet wide and 95 feet in length.
- D-2-27 – Flows into S-2-4 by way of culvert placed under the road. Located along the west side of Roy Rogers Road, south of Tributary. Approximately 4 feet wide and 100 feet in length. Ditch with wetland vegetation.

Wetland adjacent to non-RPW

- Ditch 9 (Wetland Portion) – The southernmost 80 by 6 feet of the ditch is much flatter and does not contain riprap. It had standing water during the consultant's site visit. The area contained wetland soils. There are no other wetlands adjacent to this roadside wetland. It is classified as a PEM wetland that flows to a driveway culvert at the southern terminus. The culvert runs under the driveway and outfalls into D-2-27.

Non-Waters of the United States:

- Ditch 1 – Non-Water of the US - Applicant notes described the area from previous site visits as vegetated with a mix of common grasses and roadside weeds, including *Rubus armeniacus* and *Daucus carota*. Surface-water was absent from within the ditch and it lacks a defined bed and bank. As of March 2018, the ditch does not exist.
- Ditch 2 – Non-Water of the US - Located east of SW Roy Rogers Road and south of Friendly Lane. Extends in an east-west direction from the project area to SW Roy Rogers Road along Friendly Lane. Approximately 50 linear feet is within the review boundary. It is about 6 feet wide. It is vegetated with a mix of common grasses and roadside weeds, including *Rubus armeniacus* and *Daucus carota*. Surface-water was absent from within the ditch and it lacks a defined bed and bank. It does not contain hydric soils or wetland hydrology.
- Ditch 3 – Non-Water of the US - Located to the east of Roy Rogers Road extending from Blueberry Hill Farm to north of Roshak Road where it meets Wetland A (Wetland A was reviewed under NWP-2017-32). This section of ditch did not meet wetland criteria. The ditch contained hydrophytic vegetation of *Lolium perenne* but did not contain hydric soil or wetland hydrology and did not have an ordinary high water mark. The ditch is gravel lined. The ditch measures 375-linear feet by 4 to 6 feet wide before meeting Wetland A.
- Ditch 4 – Non-Water of the US – Located to the west of Roy Rogers Road and south of Tributary 2. This section of ditch does not meet wetland criteria, the portion that does meet wetland criteria was delineated and titled "Wetland C". Vegetation within the ditch is dominated by *Schedonorus arundinaceus* and *Trifolium ripens*. Surface waters within the ditch would flow to Tributary 2, but it does not have an ordinary high water mark and does not have a defined bed and bank. It does not contain hydric soil or wetland hydrology indicators.
- Ditch 5 – Non-Water of the US – Located to the west of Roy Rogers Road and north of Tributary 2. Approximately 15 feet by 6 to 8 feet wide of ditch area is daylighted before it reaches Tributary 2. The ditch has a moderately defined bed and bank, but no OHWM. Contains wetland vegetation, *Lolium perenne*, but does not contain wetland soils or hydrology.
- Ditch 7 – Non-Water of the US – Riprap lined ditch starts as a depression near Friendly Lane and goes south Towards Ditch II. There are no adjacent wetlands or tributaries. Soils are inaccessible due to riprap and vegetation consists primarily of roadside upland grasses and weeds. No standing water was visible in the ditch.
- Ditch 8 – Non-Water of the US – This is an extension of the RR Ditch reviewed in NWP-2017-32 which was determined to be a Non-Water of the US ditch. The ditch is on the north side of Bull Mountain Road, east of Roy Rogers Road. Does not contain wetland soils and hydrology.
- Ditch 9 (Ditch) – Non-Water of the US – The ditch is located to the west of Roy Rogers Road. It is lined with riprap and does not contain hydrologic soils or wetland vegetation or contain an ordinary high water mark. It is significantly sloped to the south.

- Ditch 11 – Non-Water of the US – Located to the east of Roy Rogers Road, north of Waterway 3. The ditch did not contain wetland soil indicators, did not meet wetland criteria, and does not contain an ordinary high water mark. It appears to drain uplands to Waterway 3 during precipitation events.
- Ditch 15 – Non-Water of the US – Located to the west of Roy Rogers Road, south of where Bull Mountain Road connects to Roy Rogers Road. The site contained maintained roadside grasses and *Daucus carota*. Hydrophytic vegetation was present on the site, the unidentifiable roadside grasses were assumed to be FAC. The site did not contain hydric soil or wetland hydrology. Appears to drain uplands, but did not have an ordinary high water mark or defined bed and bank.
- Ditch 16 – Non-Water of the US. Located on the east side of Roy Rogers Road, south of Tributary 3. Applicant notes described the area from previous site visits as flowing south to north, into an inlet. Vegetation consists of *Rubus armeniacus* and common roadside grasses, and it is armored in areas. Surface-water was absent from within the ditch and it lacks a defined bed and bank. As of March 2018, the ditch does not exist because it was recently excavated for utility line work. It is 5 to 8 feet wide.
- Ditch 17 – Non-Water of the US. Located on the east side of Roy Rogers Road, south of Tributary 1. It runs from south to north towards the tributary. This ditch is about 5 feet wide. There is no ordinary high water mark or bed and bank. The ditch contains dense vegetation of grasses and weeds, including *Rosa sp.*, and *R. armeniacus*. The ditch contains hydrophytic vegetation but does not contain hydric soils or wetland hydrology.
- Ditch 18 – Non-Water of the US. The ditch is located on the west side of Roy Rogers Road, south of tributary 3. It lacks a defined bed and bank and ordinary high water mark. It runs south to north toward the tributary, measuring 5 to 8 feet wide. Vegetation consists of roadside grasses and weeds. It did not contain hydrophytic vegetation, hydric soils, or wetland hydrology.