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): November 13, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:Portland District, NWP-2006-468, JTP Sandpines Resort, LLC

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Oregon County/parish/borough: Lane City: Florence
Center coordinates of site (lat/long in degree decimal format): Lat. 44.0029224982815° **N**, Long. -124.114897575208° **W**.
Universal Transverse Mercator: 410618.260037586 X; 4872801.59842102 Y
Name of nearest waterbody: seasonal tributary to the Siuslaw River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Siuslaw River
Name of watershed or Hydrologic Unit Code (HUC): 1710020608
☒ 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. **The review are for this JD encompasses Drainages A and B and wetlands adjacent to those drainages. Other wetlands that exist on the Sandpines property may be jurisdictional but are not described in this JD.**

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: August 28, 2008
☒ Field Determination. Date(s): June 10, 2008

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 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: 6500 linear feet: ~20 width (ft) and/or acres.
      Wetlands: Approx 1.5 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known):Unknown.

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: **Pond A is an ornamental water body created in uplands and is therefore not jurisdictional per the preamble to the 1986 regulations defining Waters of the United States (33 CFR 328.3).**

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the 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: 504,000**square miles**
Drainage area: ~1500 **acres**
Average annual rainfall: 50-65 inches
Average annual snowfall: <5 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 **1 (or less)** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **1 (or less)** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: The seasonal tributaries initiate from a large wetland to the north and flow in a generally southwesterly direction towards N. Rhododendron Drive. Upstream from N. Rhododendron Drive, the larger drainage

[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.

("Drainage A") turns and flows straight south, parallel to N. Rhododendron Drive, in a channelized drainage through the former KOA campground (now part of the Sandpines Resort, LLC) to a culvert on the north side of 35th Street at Rhododendron Drive. Another drainage ("Drainage B") flows across the former KOA property through a series of culverts and wetlands to the same culvert at N. Rhododendron Drive and 35th Street. Water flows through the culvert under N. Rhododendron Drive, then flows a short distance through a ravine and discharges into the Siuslaw River, approximate Mile 1.5. The Siuslaw is a Section 10 water, navigable in fact and discharges in the Pacific Ocean. Tributary stream order, if known: 1st order.

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

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Portions of the drainages have been altered. The Corps' administrative record record begins with documentation of unauthorized work in jurisdictional waters. NWP-1996-1560 documents unauthorized construction channelization of a stream channel along N. Rhododendron Drive in a March 14, 1997 letter from Wilbur Ternyik of Wave Beach Grass Nursery to John Craig, US Army Corps of Engineers (Corps). According to documentation submitted to the Corps the waterway was channelized around 1997, without Department of the Army authorization, to divert flood flows away from residential properties. Sandpines Golf Course & Subdivision (Sandpines) appears to have been under different ownership (Vandehey and Roake) at the time the unauthorized work occurred. According to the record, Mr. Ternyik has been the primary wetland consultant for Sandpines. In a January 28, 1999 letter to Ariki-Ltd.'s attorney, Mr. Ed Singer, the Corps documented a January 14,1999 pre-application onsite visit with Corps and State project managers and wetlands specialists, EGR Engineering, and consultants Wilbur and Matt Ternyik. The letter describes the mitigation the Corps required for unpermitted fill activities in jurisdictional waters occurring between 1972 and October 7, 1995. The mitigation did not cover the unpermitted construction of a box culvert at the northern property boundary and road fill south of the culvert completed by Mr. Ariki, who purchased the property in 1995.

Ariki-Oregon, Ltd. on August 16, 1999 received a Nationwide Permit verification (NWP-1999-362) for the discharge of fill into jurisdictional waters to construct Diversion Structure No. 2, excavate a channel between wetlands, excavate material to construct a channel at Diversion Structure No. 1, replace a culvert, and install 4 check dams into the larger drainage. The verification included special conditions. Special condition b. establishes the quantity of fill allowed, in the form of "temporary" sand bags to achieve the maximum footprint of Diversion Structure No. 2 , 880 square feet. Special condition c. refers to the overall dimensions of a "temporary channel connecting wetlands between Diversion #2 and Pond A". Special condition g. restricts the area of fill into the "road/channel" below the 1998 diversion structure to a maximum of 1000 square feet. Special condition h. requires all structures not required in the final storm water management plan for the city (sic-Florence) shall be removed. To date, the structures remain and appear to have been reconstructed based on a June 10, 2008 site visit.

Between 2006 and 2007, the drainage segment immediately adjacent and perpendicular to N. Rhododendron Drive has been culverted with a large diameter pipe intended for detention of stormwater flows (August 28, 2008 email from Mike Miller, City of Florence Public Works). Mr. Miller explained the purpose of the pipe is to meter flows from new stormwater improvements using 4-inch pipe and a flow control manhole to connect to a planned stromwater system of N. Rhododendron Dirve. The flow control manhole is also constructed in the stream channel.

Tributary properties with respect to top of bank (estimate):
Average width: 20 feet
Average depth: 1-4 feet
Average side slopes: **3:1 .**

Primary tributary substrate composition (check all that apply):

☐ Silts	☒ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☒ Vegetation. Type/% cover: herbaceous with woody overhang. Shrub-sized Pinus contorta (shore pine, a facultative species) is currently growing in portions of the channel along with carex obnupta.	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: eroded sands.
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): ~2 %

(c) Flow:
Tributary provides for: **Seasonal flow**
Estimate average number of flow events in review area/year: **1**
Describe flow regime: Water flows surface and subsurface unidirectionally towards surface water channels, which discharge into the Siuslaw River. The majority of the flow occurs during the winter months and early spring during the rainy season.
Other information on duration and volume: A July 1, 1998 letter was received from EGR discussing the drainage history of the Sandpines site and presenting a short term drainage plan. EGR describes the historical and current (1998) drainage history of the greater dunal area that includes Sandpines. According to EGR, water historically flowed onto this site mostly as sheet flow from the north during periods of higher than average precipitation. Water accumulates in low topographic areas until they are overtopped as the

water table exceeds ground surface elevations. The wetland delineation completed in August 2005 the larger drainage is described as "Wetland Drainage 2" and discusses a "long and linear seasonal drainageway running from North to Southdown a pioneered road that splits West Shore at Sandpines." The seasonal drainageway "comprises the largest area of wetlands within" the study area. .

Surface flow is: **Discrete and confined.** Characteristics: Described as an "old road," the channel is clearly defined in the upper reaches to the point where it has been filled. A recent site visit conducted June 10, 2008 in the vicinity of the lower diversion dam ("Diversion Structure No. 2") notes the dam diverts a portion of the flow from Drainage A into Wetlands 14, 13, and 11, and then into Pond A. Discharge from Pond A flows via culvert to Wetlands 10, 9, and 30, and then to Drainage B. The segment of Drainage B within the KOA area has many culverts, but is well-defined. The site visit notes indicate "it appears the authorized re-routing has, despite adjusted flows, maintained a considerable hydrologic connection, albeit fragmented, between the head of the property and its toe" (outlet at Rhododendron Drive and 35th Street). Walking west from the new culverts located in Drainage A, Corps staff examined a small culvert inlet that appeared to divert surface runoff under several building lots and into the KOA area. Flow paths leading to this culvert appeared to be ephemeral, but were described as a main conduit of flow during the 1996 flood.

Subsurface flow: **Yes**. Explain findings: Apparently the surface water hydrology in the area is driven by saturated unidirectional overland flow generated during periods of high winter precipitation that coincide with seasonally high water tables. During these times, surface flow can be generated from many areas, and surface flow paths can be dynamic (especially given the ongoing urbanization, which (1) creates impervious areas, (2) involves intentional and unintentional diversion of flow paths, and (3) involves 'triage' stormwater management during large storm events that overwhelm the existing, poorly integrated, stormwater system).
.

☐ 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:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The water color is expected to be clear to slightly tannin-colored due to the presence of organics in associated wetlands.

Identify specific pollutants, if known: It can reasonably be assumed oil and grease and other hydrocarbons from motorized vehicles have made their way into the drainages proportionate with increases in development and associated infrastructure. Because of the areas use as a golf course for a number of years, it is equally reasonable to presume the presence of herbicides, pesticides, and fertilizers used for maintenance of golf greens. It is unknown whether the new developments nearby are connected to the City of Florence's wastewater system or contain individual septic treatment systems (ISTS). If ISTS sites are located less than three feet from the groundwater, inadequate treatment of effluent results, which can subsequently contribute pollutants to downstream waters in the form of viruses, bacteria as well as antibiotic, antidepressant and other medical residues. Stormwater runoff from impervious surfaces located in nearby newly urbanizing areas is generally warmer than natural stream flows and can contribute to warmer stream temperatures at the confluence of the stream segment with the Siuslaw River.

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

☒ Riparian corridor. Characteristics (type, average width): In undeveloped portions, a fairly substantial riparian area exists that includes adjacent wetlands.

[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.

☒ Wetland fringe. Characteristics: Abutting wetlands are well hydrated and support forest species such as shore pine as well as carex obnupta, salix and juncus species.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: The seasonal tributaries provide connectivity for wildlife and amphibians between the northern offsite wetlands and the Siuslaw River. During a summer 2007 onsite visit there was plentiful evidence of small mammals and birds, and possibly black bear, utilizing the corridor and the wetlands..

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:Approx 1.5 acres

Wetland type. Explain:Palustrine emergent, shrub-scrub and forested.

Wetland quality. Explain: The wetlands are vegetatively intact and provide an intact and diverse connected habitat for songbirds, resting habitat for tropical migranting birds, refugia and food for small mammals, black bear and amphibians. The wetlands have high function for water quality, water storage and delay and floodwater attenuation, as well as functioning highly for primary productivity.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Wetlands on the project site are adjacent to Drainages A and B Seasonal flows generated from wetland areas (described above in Section III.B.1.c), as well as flow generated elsewhere that then flows through these wetlands, ultimately discharges to Drainages A and B and thence the Siuslaw River.

Surface flow is**: Discrete**

Characteristics: Surface flow paths have developed as a result of natural processes and strong human intervention. Flow between Wetlands 13, 11, 10, 9, and 30, for instance, occurs via human created channels.

Subsurface flow: **Yes**. Explain findings: Yaquina Soils are hydric with high transmissivity (Ksat) of 1.98 to 5.95 inches/hour and have the capacity to transmit subsusrface flows as described above in Section III.B.1.c.

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: The hydrology is described as water accumulating in low topographic areas until they are overtopped as the water table exceeds ground surface elevations. Surface and subsurface flows are unidirectional to local drainages..

☒ Ecological connection. Explain: The wetlands provide an intact and diverse connected habitat for songbirds, resting habitat for tropical migranting birds, refugia and food for small mammals, black bear and amphibians. The wetland have high function for water quality, water storage and delay and floodwater attenuation, as well as functioning highly for primary productivity.

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

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

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

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

Estimate approximate location of wetland as within the **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: The wetlands are typical of coastal dunal wetlands in that they generally contain slightly tannin-stained standing water during the winter and early spring months. No surface water is present during the drier summer months. The wetlands are relatively pristine as the high porosity of the sand substrate leaves little time for pollutants to accumulate. The typically thin organic surface layer would be expected to bind, at least temporarily, nutrients such as phophorus and heavy metals. It is common for wetlands to release weakly bound phosphorus as a pulse when all binding sites are saturated. .

Identify specific pollutants, if known: Phosphorus and other chemical nutrients found in fertilizers, chemical pesticides and herbicides, including broadleaf herbicides such as Round-up and Rodeo. Heavy metals, such as copper, zinc, nickel and cadmium, and hydrocarbons from motorized vehicles where wetlands are located near roads and other impervious surfaces..

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

☒ Riparian buffer. Characteristics (type, average width): .
☒ Vegetation type/percent cover. Explain:Fully vegetated where unauthorized impacts have not altered documented chanracteristics..
☒ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☒ Aquatic/wildlife diversity. Explain findings: The wetlands are expected to provide connectivity for wildlife and amphibians between the northern offsite wetlands and the Siuslaw River. During a summer 2007 onsite visit there was plentiful evidence of small mammals and birds, and possibly bear, utilizing the corridor and the wetlands..

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

All wetland(s) being considered in the cumulative analysis: **13**
Approximately (~1.5) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

	Directly abuts? (Y/N)	Size (in acres)
Abutting Adjacent Wetlands: 9, 10, 11, 13, 14, 18, 20, 22, 30		Approx. 1.32 acre
Non-Abutting Adjacent Wetlands: 17, 21, 23, 24		Approx. 0.17 acre

Summarize overall biological, chemical and physical functions being performed: The wetlands are typical of coastal dunal wetlands in that they generally contain slightly tannin-stained standing water during the winter and early spring months. No surface water is present during the drier summer months. The wetlands are relatively pristine as the high porosity of the sand substrate leaves little time for pollutnats to accumulate. The typically thin organic surface layer is expected to bind, at least temporarily, nutrients such as phophorus and heavy metals. It is common for wetlands to release weakly bound phosphorus as a pulse when all binding sites are saturated. The wetlands are expected to provide connectivity for wildlife and amphibians between the northern offsite wetlands and the Siuslaw River during a period where high levels of urbanizing are occurring in the coastal community of Florence and its outlying areas. Phosphorus and other chemical nutrients found in fertilizers, chemical pesticides and herbicides, including broadleaf herbicides such as Round-up and Rodeo. Heavy metals, such as copper, zinc, nickel and cadmium, and hydrocarbons from motorized vehicles where wetlands are located near roads and other impervious surfaces. The wetlands are expected to contribute nutrients, unbound pollutants from impervious surfaces where they are located adjacent to roads to local 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: Drainages A and B together comprise the relevant reach for this analysis, as Drainage

B functions hydrologically as a side channel of Drainage A (specifically, it is diverted from Drainage A and then flows back into it). The stream channels and their adjacent wetlands have a direct hydrologic connection to the Siuslaw River and filter pollutants, provide stormwater attenuation functions, maintain stream temperatures, and provide food chain support for anadromous fish populations and other aquatic species that use the Siuslaw River. In addition, bird species that use habitat along the Siuslaw River likely also utilize habitat provided by the adjacent wetlands.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Provide rationale indicating that tributary flows seasonally: Drainages A and B are seasonal tributaries. Data supporting this conclusion is provided at Section III.B.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **6500** linear feet **20** 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: **Approx. 1.32** 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: **Approx 0.17** 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: .
☒ Other: (explain, if not covered above): **Pond A is an ornamental water body created in uplands and is therefore not jurisdictional per the preamble to the 1986 regulations defining Waters of the United States (33 CFR 328.3)..**

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. **The Corps has not concurred with the extent and number of wetlands documented in the submitted delineations, beginning with the delineation submitted in 1998**
☒ Data sheets prepared by the Corps: Modified version of wetland delineation map, transmitted to applicant on January 28, 1999.
☒ Corps navigable waters' study: Portland District Navigable Riverways.

[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.*

- ☐ 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:WebSoil Survey, Lane County.
- ☐ National wetlands inventory map(s). Cite name: .
- ☒ State/Local wetland inventory map(s): City of Florence LWI.
- ☐ FEMA/FIRM maps: .
- ☐ 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:NWP-1996-1590, January 28, 1999, NWP-2006-468, May 13, 2008.
- ☐ Applicable/supporting case law: .
- ☐ Applicable/supporting scientific literature: .
- ☒ Other information (please specify):Administrative record for NWP-1996-1590, NWP-1999-362.

B. ADDITIONAL COMMENTS TO SUPPORT JD: In a May 8, 1998 letter to Ariki-Ltd. the Corps documented an April 16, 1998 onsite visit to Sandpines. Staff from the Corps Regulatory Branch, Division of State Lands and the City of Florence were present along with Mr. Ternyik and his son Matt, Shane Hughes from EGR & Associates, Inc.(EGR) , and staff from the Sandpines Golf Course. The Corps documented information necessary to determine the extent of completed and proposed fill activities in wetlands and other waters in order to proceed with our review. The Corps also discussed the type and location of compensatory mitigation for fill in jurisdictional waters that occurred under the previous owner.

A July 1, 1998 letter was received from EGR discussing the drainage history of the Sandpines site and presenting a short term drainage plan. EGR describes the historical and current (1998) drainage history of the greater dunal area that includes Sandpines. Water historically flowed onto this site mostly as sheet flow from the north during periods of higher than average precipitation to surface drainages and discharged to the Siuslaw River. The hydrology is described as water accumulating in low topographic areas until they are overtopped as the water table exceeds ground surface elevations. Water flows surface and subsurface flows unidirectionally towards surface water channels, which discharge into the Siuslaw River. At Sandpines, several drainages exist, which outlet at the culverted crossing beneath Rhododendron Drive (north of the 35th Street intersection).

Conditions have been greatly altered, particularly in the vicinity of Sandpines. The golf course developers and operators have manipulated hydrology and altered historical flow paths by diverting and containing flows in constructed waterways. EGR points to development occurring upgradient of Sandpines as an important factor for increasing volumes of stormwater runoff and reducing infiltration into the upper aquifer by replacing open dunal areas with impervious surface. As a result, surface runoff has replaced infiltration creating higher volumes and more frequent surface water flows at the northern property line of Sandpines. The precipitation received in 1996 exceeded annual average rainfall causing surface water flow velocities across Sandpines estimated at 250 cubic feet per second.

The presence of surface water in this area is an indicator of the elevation of the water table or exposed subsurface flows which ultimately discharge into the Siuslaw River a few miles away. Under normal unaltered hydrologic conditions in this dunal area, unidirectional subsurface flows appear as surface water seasonally in response to higher precipitation during winter and early spring. Two primary surface flow paths existed on the site in 1998. The primary historical flow path is toward the Rhododendron Drive crossing, with a secondary flow path towards 35th Street. Both flows generally follow historic natural flow paths with most of the water during flood events following the path to Rhododendron Drive. At the time flows at the north property line were split as a result of construction of a water control structure associated with the alleged unauthorized activities identified in the 1997 letter referenced above.

EGR's short term proposal described constructing diversion structures to direct surface flows to limit flooding. Included in the description is a proposal to maintain the channel eroded during 1996/1997 flooding as an overflow channel. The overflow/diversion system would be abandoned upon adoption of the City of Florence of their comprehensive stormwater management plan, according to EGR. At no time does the letter indicate flows into the eroded channel be prevented. Rather, EGR states surface flows experienced during the 1996/1997 precipitation year would not have been affected by their proposal.

A wetland delineation report entitled "Wetland delineation report Sandpines Golf Course & Residential Subdivision, Florence, Lane County, Oregon" and dated December 1998 was reviewed under this project number (NWP-1996-1560).

In a January 28, 1999 letter to Ariki-Ltd.'s attorney, Mr. Ed Singer, the Corps documented a January 14,1999 pre-application onsite visit with Corps and State staff and wetlands experts, EGR and Wilbur and Matt Ternyik. The short term drainage plan EGR described at the meeting would require an individual standard permit. The letter describes the mitigation the Corps required for fill activities in jurisdictional waters occurring between 1972 up to October 7, 1995. The mitigation did not cover construction of a box culvert at the northern property boundary and road fill south of the culvert completed by Mr. Ariki, who purchased the property in 1995. The Corps noted many wetlands and waters witnessed during the site visit were not documented in the wetland delineation report or map. The Corps indicated they were aware of Mr. Ariki's intentions to sell the Sandpines property in the near future and emphasized the importance of informing any new owners of the permitting history of the property. The Corps' letter referenced a detailed discussion of the results of Mr. Jim Goudzwaard's, Portland District Wetlands Specialist, review of the delineation report.

Mr. Goudzwaard's January 28, 1999 letter and attachments, are addressed to Mr. Wilbur Ternyik. The Corps asserted jurisdiction over the full extent of the "old road/ditch" waterway based on the results of the January 14, 1999 site visit, a review of the 1998 wetland delineation report and the Corps' regulations found in 33 CFR Parts 320-330. Mr. Goudzwaard provided drawings showing the overall extent of the Corps' jurisdiction over the drainage. Our determination included "the branch of the drainage that runs west reconnecting to the west of Wetland 13 heading west and then bordering Rhododendron Drive and leaving the Sandpines property in the southwest corner." Mr. Goudzwaard indicated the drainage was recently channelized (two years previous) and currently transports "waters of the U.S. from offsite areas north of Wetlands 20 and 22. His determination was based on field indications and verbal verification from Mr. Ternyik and staff from the Division (Department) of State Lands water seasonally flows through the channel.

The Corps determined the 1998 delineation report did not accurately represent the overall extent of wetlands and waters on the subject property. Mr. Goudzwaard further indicated recent redirection of surface flows has permanently altered hydrology of and eliminated Wetland 16 and a "moon-shaped wetland north of Wetland 16. The Corps requested Mr. Ternyik delineate the boundaries of additional wetlands found on the Sandpines and KOA parcels and refine the boundaries of delineated wetlands based on the site visit. Mr. Goudzwaard requested the area identified in black marker as the "NW Area" on the November 23, 1998 delineation map needs further review based on a request from Mr. Ariki's agents. Goudzwaard also requested "(T)the two drainages in the old KOA campground be properly located and sized if the area is to be part of the Sandpines review." We subsequently requested Mr. Ternyik to provide information necessary to allow the Corps to determine the overall extent of aquatic impacts associated with the Sandpines Golf Course project.

On March 18, 1999 the Corps received a permit application from Ariki-Ltd. requesting Department of the Army authorization to place fill into .01-acre of jurisdictional waters to install a "sandbag diversion dam and to excavate .04-acre for a "water diversion ditch". The stated project purpose was to address seasonal flooding concerns by property owners along Rhododendron Drive, "from St. George Street south to the culvert crossing beneath Rhododendron Drive". Ariki-Ltd. proposed to modify the channel adjacent to a recently installed and unpermitted concrete diversion structure at the northern property line to a portion of the surface flow towards the 35th Street drainage.

According to the application, natural drainage would continue west and south through the existing eroded "old road/drainage" to a proposed second diversion structure. Diversion Structure No. 2 would be installed in the channel to divert "low flows" while continuing to pass flows other than low flows through the existing old road/drainage" channel. Checkdams would be placed upstream of Diversion Structure No. 2 to maintain wetland hydrology. Ariki proposed to divert up to 15 cfs through an excavated channel into Pond A. Water would outlet on the southwest side of the pond into a wetland and on into an existing drainage. The drainage would be modified, including culvert replacement, to provide capacity for the diverted flows. Diversion Structure No. 2 and the checkdams would be constructed of sand bags "to allow for easy removal".

An April 7, 1999 letter from the Corps acknowledged receipt of Mr. Ariki's permit application. The Corps requested additional information necessary to evaluate overall aquatic impacts. The Corps also noted additional work had been completed in jurisdictional waters since the January 14, 1999 site visit such as fill associated with construction of a concrete diversion structure (diversion Structure 1) in a waterway and a road in potentially jurisdictional wetlands.

EGR provided responses to the Corps' April 7, 1999 letter on April 20, 1999 and May 20, 1999. The May 20 letter clarifies the temporary nature of Diversion Structure No. 2, stating the design would provide 1-foot of vertical clearance between foundation vents on the lowest dwelling "in the vicinity of the pond overflow path" and "the highest water level anticipated during 100-year flood conditions." Under these conditions up to 15 cfs would pass through the pond and through residential areas. The remaining flows would overflow the diversion structure and flow west in the existing, eroded channel to the culvert under Rhododendron Drive to the Siuslaw River. The structure was designed so the sand bags can be removed from the overflow side of the structure as needed.

Ariki-Oregon, Ltd. on August 16, 1999 received verification the discharge of fill into jurisdictional waters to construct Diversion Structure No. 2, excavate a channel between wetlands, excavate material to construct a channel at Diversion Structure No. 1, replace a culvert and to install 4 check dams into jurisdictional waters was authorized under Nationwide Permit No. 26 (NWP-1999-362). The verification included project specific special conditions for the work on the Sandpines Golf Course. Special condition b. establishes the quantity of fill allowed, in the form of "temporary" sand bags to achieve the maximum footprint of Diversion Structure No. 2 , 880 square feet. Special condition c. refers to the overall dimensions of a "temporary channel connecting wetlands between Diversion #2 and Pond A". Special condition g. restricts the area of fill into the "road/channel" below the 1998 diversion structure to a maximum of 1000 square feet. Special condition h. requires all structures not required in the final storm water management plan for the city (sic-Florence) shall be removed.

In a letter dated November 16, 1999 Mr. Ternyik provided the Corps with a notice of completion including a photo record and description of the completed work. In the letter Mr. Ternyik's continues to protest the Corps and State's assertion of jurisdiction over the "old road/drainage". Mr. Ternyik also notes the City is not expected to approve the Master Drainage Plan until late 2000. ..