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): 8/13/08

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:Portland, TRIP NWP-2007-889, (Salmon Cr. Trib Lower, Middle & Upper, Wetlands C, D, I, J, K, L, Z)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Oregon County/parish/borough: Multnomah City: Troutdale
Center coordinates of site (lat/long in degree decimal format): Lat. 45.554167° **N**, Long. -122.4075° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Salmon Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Columbia River
Name of watershed or Hydrologic Unit Code (HUC): Columbia Slough
☒ 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 . (JD Form 1 of 5).

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 6/6/08
☒ Field Determination. Date(s): 11/29/07, 01/14/08, & 6/5/08

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 and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☒ Relatively permanent 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: 1,350 (Upper reach), 2,720 (Middle reach) & 900 (Lower reach) linear feet: width (ft) and/or acres.

      Wetlands: 26.92 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
      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: **Wetland D is isolated**.

[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: 36622 **acres**
Drainage area: 720 **acres**
Average annual rainfall: 44.8 inches
Average annual snowfall: 5 inches

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

Project waters are **2-5** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **1 (or less)** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: Salmon Creek Tributary system flows into Salmon Creek (RPW) which flows into Columbia River (TNW) (see Section IV.B. below) .

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: 1st.

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

Tributary is: ☐ Natural

☒ Artificial (man-made). Explain: Waterway is generally a ditch drainage system. (see IV.B). below).

☐ Manipulated (man-altered). Explain: .

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

Average width: 15 feet

Average depth: 6 feet

Average side slopes: **Vertical (1:1 or less).**

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: Not well vegetated.

Presence of run/riffle/pool complexes. Explain: none.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): see IV.B. below %

(c) Flow:

Tributary provides for: **Seasonal flow**

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

Describe flow regime: Tributary observed to be seasonal in its lower reach but mostly ponded or ephemeral in upper reaches. see IV.B. below.

Other information on duration and volume: .

Surface flow is: **Pick List.** Characteristics: see IV.B below.

Subsurface flow: **Yes**. Explain findings: The Middle Tributary reach is impounded at its lower end by a man-made service road comprised of small gravel. The Middle Tributary likely percolates water subsurface through course fill material into Wetland L.

☐ 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:Lower Tributary flows diffusely through Wetland L before re-entering channel.

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:

[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: Watershed for Tributary mostly is a combination of brown field and undeveloped, "idle" land.
Identify specific pollutants, if known: Because Wetland L intercepts auto-related pollutants in runoff from Graham Rd, and because the Tributary carries diffuse flows from the Middle Tributary reach to the Lower Tributary reach, effectively the Tributary can deliver such auto-related pollutants to the TNW.

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

☒ Riparian corridor. Characteristics (type, average width): scrub-shrub, 10 feet.
☐ 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: Tributary ditch would not support aquatic life, except for invertebrates such as insects, but would provide low to moderate habitat for herp species, small mammals, and passerines.

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: C = 5.39; I = 0.36; J = 1.16; K = 0.97; L = 16.95; Z = 2.09 acres
Wetland type. Explain: C = forested, emergent, scrub-shrub; I = emergent; J = forested, emergent; K = scrub-shrub, emergent; L = emergent; Z = forested, emergent, scrub-shrub.
Wetland quality. Explain: C + Z = very diverse communities, high quality; I = low to moderate diversity & quality, subject to past disturbance likely related to pipeline right-of-way; J = moderate to high diversity & quality, bisected by abandoned roadway; K = moderate to high diversity & quality; L = moderate diversity & quality, bisected by paved street. Culverts connect all 3 portions of Wetland L.
Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: Wetlands I, J, K, and Z have no flow; flow to and from Wetland C is ephemeral; flow within Wetland L is intermittent (i.e., "seasonal").

Surface flow is**: Pick List**
Characteristics: Wetlands I, J, K, and Z have no surface flow; flow to and from Wetland C is discrete except for interruption by a 30 foot wide service road; Wetland L, directly abuts the Salmon Creek Tributary Lower reach and provides overland sheetflow (i.e., no discrete channel).

Subsurface flow: **Unknown**. Explain findings: These wetlands likely provide groundwater recharge to the TNW due to the rapid permeability of the soil, presence of water table at 1 foot, and the location of the wetlands within the historical floodplain.
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting (Wetland L)
☒ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☒ Ecological connection. Explain: Wetlands I, J, K, and Z have no direct, hydrological surface connection to the Salmon Creek Tributary (i.e., RPW) except in lower probability storm events. Wetland Z is located within 400-600 feet of other wetlands and 1,000 feet from the Upper reach of Salmon Creek tributary. All wetlands herein are on historic floodplain with hydric soils connected to the groundwater and which can influence the chemical and biological integrity of the TNW.
☒ Separated by berm/barrier. Explain: A service road (i.e., 30 feet wide) separates Wetland C from the Upper Tributary reach. A service road (i.e., 30 feet wide) and approximately 135 feet separates Wetland I from the reach. Wetland J lies within 50 feet of the reach and itself is bisected by an abandoned dirt road.

(d) Proximity (Relationship) to TNW
Project wetlands are **2-5** 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 **100 - 500-year** 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: Wetland L intercepts auto-related pollutants in runoff from Graham Rd.

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

☒ Riparian buffer. Characteristics (type, average width): Typical buffer around wetlands C, I, K, L, J, and Z is mix of herbaceous, scrub-shrub, and forested communities. Except at southern edge of Wetland L, where the buffer is interrupted by a street and mowed lawn and near Wetland I, where a service road interrupts part of the buffer, the wetland buffers would be at least 25 feet wide.

☒ Vegetation type/percent cover. Explain: A mix of herbaceous, scrub-shrub, and forested communities with 100% cover .

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Wetlands expected to support a variety of invertebrates such as insects and crustaceans. Wetlands C & Z expected to provide high valued habitat for herp species, small mammals, passerines, and raptors. Wetlands K, J, and L expected to provide moderate habitat for herp species, small mammals, and passerines. Wetland I expected to provide low to moderate habitat for herp species, small mammals and passerines. Great Blue Heron observed on Wetland I.

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

All wetland(s) being considered in the cumulative analysis: **6**

Approximately (26.92) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Wetland L Y	16.95	Wetland C N	5.39
Wetland K N	0.97	Wetland I N	0.36
Wetland J N	1.16	Wetland Z N	2.09

Summarize overall biological, chemical and physical functions being performed: It is expected that wetlands C, L, & Z provide nearly similar functional capacity for floodwater delay and storage, groundwater recharge, pollutant retention and removal (e.g., nitrogen, sediments) and primary production. Some differences would exist for Wetland L given its capacity to intercept auto-related pollutants in runoff from Graham Rd. Further, the wildlife habitat support function (e.g., invertebrates, amphibs and reptiles, water- and songbirds, and mammals), would be significantly less in Wetland L as it appears to be predominantly an emergent plant community dominated by reed canarygrass. In contrast, wetlands C & Z would have a high habitat support function due to its high plant species diversity and high diversity of plant communities. Wetlands I, J, K, and Z, though not hydrologically surface connected to the Salmon Creek Tributary, are nonetheless considered adjacent. These wetlands particularly support the integrity of the TNW for the following reasons: First, these wetlands, combined with the Tributary provide a mosaic of habitats that would be expected to support a diverse assemblage of herp species, including turtles, snakes, frogs, and salamanders, all of which would be species common to the TNW. Secondly, although having varying opportunities for filtering pollutants, these wetlands sustain viable plant communities and microbiota that would function to perform such filtering. Third, these historical floodplain wetlands are located on soils classified as Faloma silt loam protected (by levee), a soil type on alluvium with a rapid permeability beginning at 13 inches depth and with a water table within 1 foot from December to June. Thus, these wetlands when viewed together likely function to recharge the aquifer associated with the TNW.

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: Salmon Creek Tributary, in combination with its adjacent wetlands, would have a medium to high capacity to carry pollutants (e.g., auto-related pollutants, including hydrocarbons and heavy metals) to the TNW as well as to provide food chain support and detain/store flood waters. Of course, these same wetlands would be able to capture and assimilate pollutants and provide groundwater recharge due to the rapid permeability of the soil and the location of the wetlands within the historical floodplain. The opportunity for such functioning at a high level would be greatest in the Lower reach of the Tributary where flows to Salmon Creek and eventually to the TNW are uninterrupted. However, flows to the TNW from the Middle and Upper reaches of the Tributary are mostly interrupted by a low impoundment (i.e., service road) and a less than fully functioning ditch between the Middle and Upper reaches. These interruptions are not viewed as discounting the nexus, between the Middle and Upper reaches with their adjacent wetlands and the TNW, to a level considered insubstantial.

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

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

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: The Salmon Creek Lower Tributary reach contained flowing water during storm events observed November 29, 2007, and January 14, 2008. Because of frequency of rain events during winter months, this reach is expected to flow seasonally. Further, the Middle reach is known to have water permanently ponded throughout the year. Finally, the applicant reported that water, though diverted (i.e., in a reverse flow manner) to Wetland C during low flow periods, would be draining Wetland C (i.e., eventually to Salmon Creek) during heavy precipitation and high groundwater periods.

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☒ Tributary waters: **(see IV. B. below) 4,970 total** linear feet**; at OHWM 5-8** 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.**

[8]See Footnote # 3.

☒ 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: Water flowing and percolating from the Middle Tributary reach flows overland (i.e., diffusely) through Wetland L and then is discharged into the discrete Lower Tributary reach channel. Wetland L abuts the Lower Tributary reach, approximately 900 feet long, which drains to Salmon Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **Wetland L = 16.95** 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: **Wetlands C, I, J, K, Z = 9.97** acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or

☒ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.

☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

☐ which are or could be used for industrial purposes by industries in interstate commerce.

☐ Interstate isolated waters. Explain: .

☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

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

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .

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[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.*

☒ Other: (explain, if not covered above): **Isolated Wetland D meets wetland criteria but, unlike other wetlands adjacent to the Salmon Creek Tributary, is directly located on the former industrial site footprint and is associated with historic fill activities. Site appeared to have degraded and sparse vegetational community. Site is at higher elevation from other nearby wetlands, is contained on two sides by service roads and more industrial fill on two other sides, and contains no surface connection to other waters or the Tributary. .**

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: Wetland D = 0.05 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:Composite wetland/other waters map AN_Z/2007/4452; permit application plan view.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  ☒ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☒ U.S. Geological Survey Hydrologic Atlas: .
  ☒ USGS NHD data.
  ☒ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name:Camas OR-WA 1:24000.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Multnomah County 1975 photography.
☒ National wetlands inventory map(s). Cite name: Camas (digital).
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: digital.
☐ 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: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Internet search on herp species ecology.

B. ADDITIONAL COMMENTS TO SUPPORT JD: [Section II.B.1.c: Note that Limits of JD for Salmon Creek tributary based on OHWM and limits for wetlands based on 1987 Delineation Manual. Also, some project activities are located at the confluence of the Tributary and the RPW. See other JD forms for other water bodies included in overall project.]

The Salmon Creek Tributary "system" includes a highly modified (generally ditched) waterway, an assortment of wetlands, and a number of service roads that dissect the system which are described as follows: The Upper Tributary reach is a discrete ditch approximately 1,350 feet long, that provides ephemeral flows and contains adjacent wetlands (C, I, and J) within the project area. Wetland Z, though not in the current Phase I project area, was identified as part of the Phase III future project area and is considered adjacent as part of the overall stream-wetland complex. Improper design, lack of maintenance, and/or sedimentation between the Upper Tributary and Middle Tributary reaches have effectively resulted in an impounded Upper reach. The Upper reach channel diverts runoff towards Wetland C during low flows, but its apparently unintentional "impoundment" or plug would be overtopped during heavy precipitation events and periods of high groundwater elevations. Any ponding in the Upper reach is expected to occur less than three months per year. The Middle Tributary reach, approximately 2,720 feet long, is impounded at its lower end by a man-made service road. Water is ponded in the Middle reach likely year round and was observed overtopping its impoundment structure during a November 29, 2007, storm event. Thus, the Middle Tributary is known to drain (infrequently) on the surface and likely percolates water subsurface through course fill material into Wetland L. Wetland L is located approximately 80 feet downgradient of the Middle Tributary reach. Flows in Wetland L are generally diffuse, as no apparent channel is

present. Wetland L abuts the Lower Tributary reach, approximately 900 feet long, which drains to Salmon Creek. This Lower Tributary reach contained flowing water during storm events observed November 29, 2007, and January 14, 2008, but based on observations by applicant is believed by Corps to be seasonal. Thus, when examining the entire Salmon Creek Tributary, its highly modified condition and diversity of flows (i.e., seasonal flow, permanent ponding, reverse flow) do not allow for it to be characterized conveniently in the JD form at Section III.B.1(ii)(c). This is form 1 of 5. See other JD forms for other water bodies included in overall project.