



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): August 26, 2021

ORM Number: SAC-2021-00090

Associated JDs: N/A

Review Area Location¹:

State: SC City: Summerville County: Berkeley County

Center Coordinates of Review Area: Latitude 33.025722 Longitude -80.138712

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list **MUST** be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in section II.B).
- ☒ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A	N/A	N/A	N/A

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Tributary 1	731 Feet	(a)(2) Intermittent tributary that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	This feature is a ditch with an intermittent flow regime that was constructed within a former wetland and contributes flow to an (a)(1) water in a typical year. This feature meets the (c)(12) tributary requirements and qualifies as an (a)(2) water. See Section III.C for more information.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

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Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 2	0.4 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland 2 extends outside of the review area and abuts Sawmill Branch, which is an (a)(2) water. See Paragraph III.C for more information.
Wetland 3	0.6 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland 3 directly abuts the ordinary high water mark of Tributary 1. Tributary 1 contributes surface water flow to Wetland 2, which is an (a)(4) water. See Paragraph III.C for more information.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ditch 1	1128 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	This feature is not a relocated tributary, is not tidally influenced, and was constructed entirely in the uplands. Therefore, this feature is a (b)(5) excluded water since it is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. See Section III.C for more information.
Ditch 2	139 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	This feature is not a relocated tributary and is not tidally influenced. Although this feature may have been constructed in wetlands that previously connected Wetland 4 and Wetland 1, neither of those features satisfy the conditions of (c)(1) and are not (a)(4) waters. Therefore, this feature is a (b)(5) excluded water since it is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water that satisfies the conditions of (c)(1). See Section III.C for more information.
Ditch 3	120 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	This feature is not a relocated tributary, is not tidally influenced, and was constructed entirely in the uplands. Therefore, this feature is a (b)(5) excluded water since it is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) water. See Section III.C for more information.
Wetland 1	8 acres	(b)(1) Non-adjacent wetland	This feature does not abut an (a)(1) through (a)(4) water, is not inundated by such a feature, and is not separated from such a feature by only a natural feature or artificial structure. See Section III.C for more information.
Wetland 3a	0.8 acre	(b)(1) Non-adjacent wetland	This feature does not abut an (a)(1) through (a)(4) water, is not inundated by such a feature, and is not separated from such a feature by only a natural feature or artificial structure. See Section III.C for more information.

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REGULATORY PROGRAM
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Wetland 4	0.4 acre	(b)(1) Non-adjacent wetland	This feature does not abut an (a)(1) through (a)(4) water, is not inundated by such a feature, and is not separated from such a feature by only a natural feature or artificial structure. See Section III.C for more information.
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III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- ☒ Information submitted by, or on behalf of, the applicant/consultant: *Request for Jurisdictional Determination (JD)/Delineation, submitted on January 12, 2021.*
This information is and is not sufficient for purposes of this AJD.
Rationale: *The submittal lacks justification for the jurisdictional determinations proposed in the submittal and was missing an aquatic feature.*
- ☐ Data sheets prepared by the Corps: *N/A.*
- ☒ Photographs: *Site Photos provided by requestor (July 21, 2020, July 22, 2021); Google Earth Aerial Imagery (January 28, 2021); Aerial Imagery from www.historicaerials.com (1955, 1957, 1971, 1984).*
- ☒ Corps Site visit(s) conducted on: *June 10, 2021.*
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs): *N/A.*
- ☒ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- ☒ USDA NRCS Soil Survey: *Web Soil Survey, Accessed July 1, 2021.*
- ☒ USFWS NWI maps: *NWI Wetland Mapper, Accessed July 1, 2021.*
- ☒ USGS topographic maps: *Summerville 7.5-minute Topographic Map (1919, 1941, 1973, 2020).*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	LiDAR Data; South Carolina Department of Natural Resources (SCDNR), U.S. Geological Survey
Other Sources	N/A.

B. Typical year assessment(s): To determine if the site conditions observed during the June 10, 2021 Corps site visit were typical, the Corps ran the Antecedent Precipitation Tool (APT) for that date. The APT provides the Palmer Drought Severity Index (a measure of long-term, broad-scale drought conditions observed in an area), the WebWIMP H2O Value (wet season or dry season conditions), and a weighted value for the antecedent precipitation conditions reported in the area for the previous 90 days. For the review area, the APT gathered precipitation data from three weather stations within a 6-

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REGULATORY PROGRAM
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NAVIGABLE WATERS PROTECTION RULE

mile radius which had similar elevations and climate conditions as the review area. Therefore, the results were determined to be accurate for this site.

Based on the APT results, the site was experiencing mild drought conditions and was in the dry season during the Corps' June 10, 2021 site visit. However, the site had an antecedent precipitation score of 14 for the previous 90 days, which is the upper limit of 'normal' (a score of 15 or higher indicates wetter than normal conditions). The 30-day rolling average of precipitation was approximately 8 inches, with one large storm (result in 5 inches of rain observed) and several small storm events (1 inch or less) occurring in the two weeks leading up to the site visit. Based on the APT results, it is likely that seasonal aquatic features would be dry but that conditions overall should be typical for the time of year.

C. Additional comments to support AJD:

Ditch 1:

Ditch 1 is a feature on the eastern boundary of the review area measuring approximately 6 feet wide and 1,128 feet long. This feature collects water from Ditch 3 (discussed below) and from a borrow pit located outside of the review area. The ditch conveys water to the north where it continues in a culvert under Interstate 26. During the Corps site visit on June 10, 2021, the feature contained water and is considered a perennial feature.

Several soil samples were examined by the Corps around Ditch 1 to determine if hydric soils may be present, which would indicate that the area may have previously been a wetland. No hydric soils or hydrology indicators were observed outside of the ditch or outside of Wetland 1 (which is near Ditch 1), but it should be noted that the area showed evidence of past soil disturbance. A desktop review of historic topographic maps and aerial imagery was also conducted by the Corps to determine the history of the ditch. Based on the information available, the ditch appears to have been built during the original construction of Interstate 26 along an access road used to reach the offsite borrow pit. No historical evidence was observed that would indicate that Ditch 1 was constructed in a tributary, relocated a tributary, or was constructed in a wetland. Based on this information, Ditch 1 is a (b)(5) excluded water and is not subject to regulation under Section 404 of the Clean Water Act or Section 9 and 10 of the Rivers and Harbors Act.

Ditch 2:

Ditch 2 is a feature measuring approximately 4 feet wide and 139 feet long. This feature conveys water from Wetland 4 to Wetland 1 and contained water during the Corps site visit on June 10, 2021; it is considered a perennial feature.

LiDAR data for this portion of the review area indicates that Ditch 2 is located in an area that is lower than the surrounding uplands but similar to that of Wetland 1 and 4, which are discussed below.

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REGULATORY PROGRAM
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Furthermore, aerial imagery from 1957 and 1971 show the two wetlands potentially connecting (indicated by vegetation cover in 1957 and soil color in 1971). This observation indicates that Ditch 2 may have been constructed in an area that was previously wetland. However, since neither wetland qualifies as an (a)(4) water under the Navigable Waters Protection Rule, the historical wetland would also not have been jurisdictional. Therefore, Ditch 2 is an excluded (b)(5) ditch since it is not located in a tributary, did not relocate a tributary, and was not constructed in an (a)(4) wetland that meets the conditions in (c)(1).

Ditch 3:

Ditch 3 is a small feature measuring approximately 3 feet wide and 138 feet long. This feature conveys water from Wetland 4 to Ditch 1 and contained water during the June 10, 2021 Corps site visit.

Hydric vegetation (primarily water tupelo) was observed within and along the edges of the ditch. However, this vegetation did not extend beyond the edge of the ditch and no other indicators of wetland characteristics (soil or hydrology) were observed in the area. No evidence of any tributary or wetlands were observed except for Wetland 4, which did not appear to extend past its current boundaries in historic aerial imagery. Based on these observations, Ditch 3 was constructed entirely in the uplands and is a (b)(5) excluded ditch.

Wetland 1:

Wetland 1 is an 8-acre forested freshwater wetland located on the southeast portion of the site. This feature receives water from Wetland 4 (a 0.4-acre forested wetland) through Ditch 2. However, prior to the construction of Ditch 2, the wetland areas may have been connected during wet times of year based on topography. Wetland 1 directly abuts Ditch 3 which conveys flow to Ditch 1, which are both (b)(5) excluded waters (see discussion above). Although Wetland 1 extends outside of the review area to the west, it appears to be separated from other potentially jurisdictional features by fills placed for roadways, residential developments, and other structures. Since Wetland 1 is not adjacent to any other jurisdictional feature, as defined in (c)(1), it is a non-adjacent wetland and is a (b)(1) excluded feature.

Wetland 2:

Wetland 2, measuring 0.4 acre in area, is located in a narrow offshoot of the review area that extends from the northern corner towards Interstate 26. Based on the June 10, 2021 Corps site visit and a review of LiDAR data, Wetland 2 receives flow from Wetland 3 through Tributary 1, which is a ditch that connects the two features (see discussion below). Tributary 1 continues through Wetland 2 before crossing a breached berm and abruptly ending just outside of the review area to the northwest.

No site inspection of this area occurred since access outside of the review area was not authorized. However, based on a review of LiDAR data, flows from Wetland 2 continue through the breached berm

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REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

to the west in a meandering depressional area that gradually becomes channelized before emptying into the Sawmill Branch.

This depressional area is clearly visible in historic aerial imagery from 1955 where dark soils are visible in contrast to the lighter upland soils and appear similar to the other observed wetlands on the site. In the imagery, it appears that the wetland area previously extended across the current footprint of Interstate 26 before connecting to the Sawmill Branch. Soil data supports this, which shows Pantego loam and other hydric soils extending along the same path from wetlands 2, 3, and 3a (discussed below). After the construction of Interstate 26, imagery from 1987 shows that the feature was truncated and surface flows were rerouted along a more direct route to the Sawmill branch (which correlates with the depressional area shown in the LiDAR data). Based on these observations, it is highly likely that wetlands extend from Wetland 2 along the depressional feature to the Sawmill Branch.

In order for Wetland 2 to be considered an (a)(4) adjacent wetland, it must touch at least one point or side of an (a)(1), (a)(2), or (a)(3) water. An (a)(2) water is defined as a naturally occurring perennial or intermittent tributary that contributes flow to an (a)(1) water either directly or through one or more (a)(2)-(a)(4) waters in a typical year. The Sawmill branch is a perennial tributary to Dorchester Creek, which in turn is a perennial tributary to the Ashley River (an (a)(1) water). This connection makes the Sawmill Branch an (a)(2) water, and all wetlands that meet the (c)(2) adjacency criteria are (a)(4) waters. Because Wetland 2 is contiguous beyond the boundary of the review area and abuts the Sawmill branch, Wetland 2 are considered an (a)(4) water under the Navigable Waters Protection Rule.

Tributary 1:

Tributary 1 is a ditch located along the northern boundary of the review area. This feature originates within Wetland 3 and ends at Wetland 2, where flows travel through a breached berm and out of the review area. Prior to visiting the site, the Corps conducted a desktop review of LiDAR data, soil survey data, NWI data, historic aerial imagery, topographic maps, and information provided by the consultant to determine the areas that may be wetlands. LiDAR data clearly showed a large depressional area at Wetland 3 and 3a that also extended to the northwest, encompassing Tributary 1 and Wetland 2 (an (a)(4) water, discussed above). This suggests all of these features may be part of one contiguous wetland. Other evidence to support this conclusion included Web Soil Survey data, which has hydric soils mapped in this depressional area (Pantego loam), and the NWI Wetland Mapper, which has the area mapped as PFO1/4Ad (palustrine broad-leaved deciduous/needle-leaved evergreen, temporarily flooded, partially drained/ditched). Historic aerial imagery from 1955 and 1984 shows the area cleared of vegetation and dark soils (indicative of potential wetlands) encompass all the areas identified as Tributary 1, Wetlands 2, 3, and 3a, and the offsite wetlands to the northwest.

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U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

To confirm if Wetland 3 was contiguous with Wetland 2, the Corps conducted a site visit on June 10, 2021. Saturated conditions, hydric soils and vegetation were observed in Wetland 3/3a and in the bottom of Tributary 1. However, the parts of the depressional area outside of these features did not have consistent indicators of hydric soils or hydrology, indicating that these areas lack wetland characteristics.

Based on these observations, Wetland 3 is not contiguous with Wetland 2 but it is likely that it previously was in the past. Field observations and LiDAR data indicate that the soils within the depressional area between Wetland 3 and Wetland 2 have been extensively disturbed, which is likely due to the historical agricultural practices seen in historic aerial imagery. This disturbance would have eliminated most of the hydric soil indicators that may have been present. Furthermore, Tributary 1 likely drains excess water from the area during the wet season, reducing the wetlands' extent to their current locations.

Although the two wetland areas are no longer contiguous, there is sufficient evidence to demonstrate that Tributary 1 was constructed within the historical wetland and that a surface connection still exists. Although no surface water was observed in the ditch, the soils in the bottom of the feature were saturated. The site visit occurred during the dry season during mild drought conditions when most seasonal aquatic features are expected to be dry (see III.B). This observation suggests that Tributary 1 has an intermittent flow regime, flowing during wet times of year and more than in direct response to precipitation.

33 CFR 328.3(c)(12) states that a tributary must have intermittent or perennial flow and contribute surface water flow to an (a)(1) water directly or indirectly through one or more (a)(2) through (a)(4) waters. Furthermore, a ditch may be considered an (a)(2) tributary if it was constructed within an adjacent wetland so long as the ditch is intermittent or perennial. Guidance provided by Corps Headquarters also states that an intermittent or perennial ditch that is constructed in a previously adjacent wetland that no longer exists will maintain its jurisdictional status. Because Tributary 1 was constructed entirely in a former adjacent wetland, shows the requisite flow regime, and contributes surface water flow indirectly to an (a)(1) water (see discussion for Wetland 2), it qualifies as an (a)(2) tributary.

Wetlands 3 and 3a:

Wetlands 3 and 3a are located on the north east boundary of the review area. These wetlands were previously one feature but have been split by a road that bisects the feature. No culverts travel under the road, and there was no evidence of surface flows during the Corps site visit that would connect Wetland 3a to Wetland 3. Therefore, wetland 3a is a non-adjacent wetland and is not jurisdictional under the Navigable Waters Protection rule.

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REGULATORY PROGRAM
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Regarding Wetland 3, this feature is directly abutting Tributary 2 (discussed above), which originates within the wetlands and connects to Wetland 2. Since Tributary 1 is an (a)(2) tributary, Wetland 3 meets the (c)(1) adjacency criteria and qualifies as an (a)(4) adjacent wetland.

Wetland 4:

Wetland 4 is an 0.4-acre forested freshwater wetland located on the southwest portion of the site. This feature is drained through Ditch 2 to Wetland 1 (discussed above). However, prior to the construction of Ditch 2, it is likely that the wetland areas connected during wet times of year based on topography. Since Ditch 2 is a (b)(5) excluded water and Wetland 4 is not adjacent to any other jurisdictional feature, as defined in (c)(1), Wetland 4 is a (b)(1) excluded feature under the Navigable Waters Protection Rule.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD form.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps Districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.