



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 21, 2020

ORM Number: SAC-2020-00996

Associated JDs: SAC-2014-00791, & SAC-2017-00694

Review Area Location¹: State: SC City: Carolina Forest County: Horry County

Center Coordinates of Review Area: Latitude 33.7528 Longitude -78.8709

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 or describe rationale.
- ☐ 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
Jurisdictional Tributary 1	218 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The onsite tributary has been determined to be a naturally occurring tributary with perennial flow by previous site visits associated with jurisdictional determinations for the tributary, review of aerial photos (1938, 1963, 1994, 2018), Topographic maps, and lidar. (See Section III A for further details). Although the tributary is naturally occurring, portions of the reach have been altered in past years by Silviculture activities and development; specifically, in the area where the project site is located. Within the project site, the tributary has been re-routed/relocated from its natural position within the landscape which flowed west as depicted on the 1938 aerial photo, to flowing due south

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.



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

			to outfall into the Atlantic Intracoastal Waterway (AIWW). The Navigable Waters Protection Rule (NWPR) specifically states: <i>"The alteration or relocation of a tributary does not modify its jurisdictional status as long as it continues to satisfy the flow conditions of this definition (i.e. perennial or intermittent in a typical year)."</i> • <i>The term tributary includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of this definition."</i> Flow of the onsite tributary is determined to be perennial by review of previous JDs, Topo Maps, Aerial photos and 1975 Horry County Drainage Study.
--	--	--	--

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

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

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A	N/A	N/A	N/A

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
N/A	N/A	N/A	N/A

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.

X Information submitted by, or on behalf of, the applicant/consultant: *"Request for Jurisdictional Determination, Carolina Forest Boulevard Tract, on behalf of Kevin Letch, Sembler Florida, dated July 21, 2020.*

This information is sufficient for purposes of this AJD.

Rationale: *Wetland data forms and information included in the original submittal are considered to be a reasonable representation of site conditions at the time of collection.*

Data sheets prepared by the Corps:

X Photographs: *Aerial photograph exhibits 3-5 provided by the S&ME, Inc., in the submittal dated July 21, 2020. Aerial photo sources include ESRI 2018 (Exhibit 3), SCDNR GIS Site 1982 & 1994 (Exhibits 4 & 5). Google Earth 1994, aerial photos 1963 & 1938 found at <https://digital.library.sc.edu/collections/south-carolina-aerial-photograph-indexes-1937-1989/>.* The

Aerial photo dated 1937 depicts a signature of a naturally occurring tributary flowing south then west

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.



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

eventually out falling into the AIWW and Waccamaw River. The aerial photos dated 1963 & 1994 depict the tributary flowing south then west then due south out falling into the AIWW. Between the years of 1937 and 1963, the tributary (Black Creek) was relocated from flowing west and eventually out falling into the Waccamaw River to flow due south to outfall into the AIWW.

- Corps Site visit(s) conducted on: N/A
- ☒ Previous Jurisdictional Determinations (AJDs or PJDs): SAC-2014-00791, & SAC-2017-00694.
- ☒ Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- ☒ USDA NRCS Soil Survey: NRCS / Soil Survey Geographic Database (SSURGO) Map Service dated April 4, 2019, updated March 4, 2020, USDA Soil Survey (Applicant's submittal Exhibit 4) 1982, ESRI Map Service depicts the soil types of Leon fine sand & Rutledge Loamy sand.
- ☒ USFWS NWI maps: USFWS NWI - Wetlands Raster REST Map Service dated May 29, 2012, updated July 17, 2020, USFWS NWI Map (Applicant's submittal Exhibit 5) 1994, USFWS NWI Map Service Maps depict uplands and wetlands.
- ☒ USGS topographic maps: USGS Topographic Map / 75. Minute Index / Hand Quad / 1:24000 (Applicant's submittal Exhibit 2) 1984. Topographic map depicts a solid blue line linear feature that typically represents a tributary with the flow regime of perennial.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS 3D Elevation	3DEPElevation- DEM and 3DEPElevation – Hillshade (LiDAR). LiDAR information depicts descending elevations from the headwaters of the tributary (Black Creek) to both the AIWW and Waccamaw River. Elevations descend both south and west from the project area and the headwaters of the tributary (Black Creek).
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	SAC Regulatory Viewer accessed August 20, 2020
State/Local/Tribal Sources	N/A.
1975 Horry County Drainage Study	The Horry County 1975 Feasibility Study of Requirements For Main Drainage Canals, depicts Black Creek as a Main Drainage feature (M-7) on sheet 15, Area 11..

- B. Typical year assessment(s):** Antecedent Precipitation Tool (APT) data for typical year determination was calculated based on field collection date denoted on wetland determination data forms (July 9, 2020). Output from the APT indicated “wetter than normal” conditions at the time of data collection by the agent (S&ME) with a condition value of 15. APT Output with a condition value greater than 14 indicates “wetter than normal” conditions onsite and may not accurately represent typical year hydrologic conditions. For this assessment, a total of 11 weather stations within an 8 mile radius were used. Although the APT data reveals conditions wetter than normal, the onsite tributary has been

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.

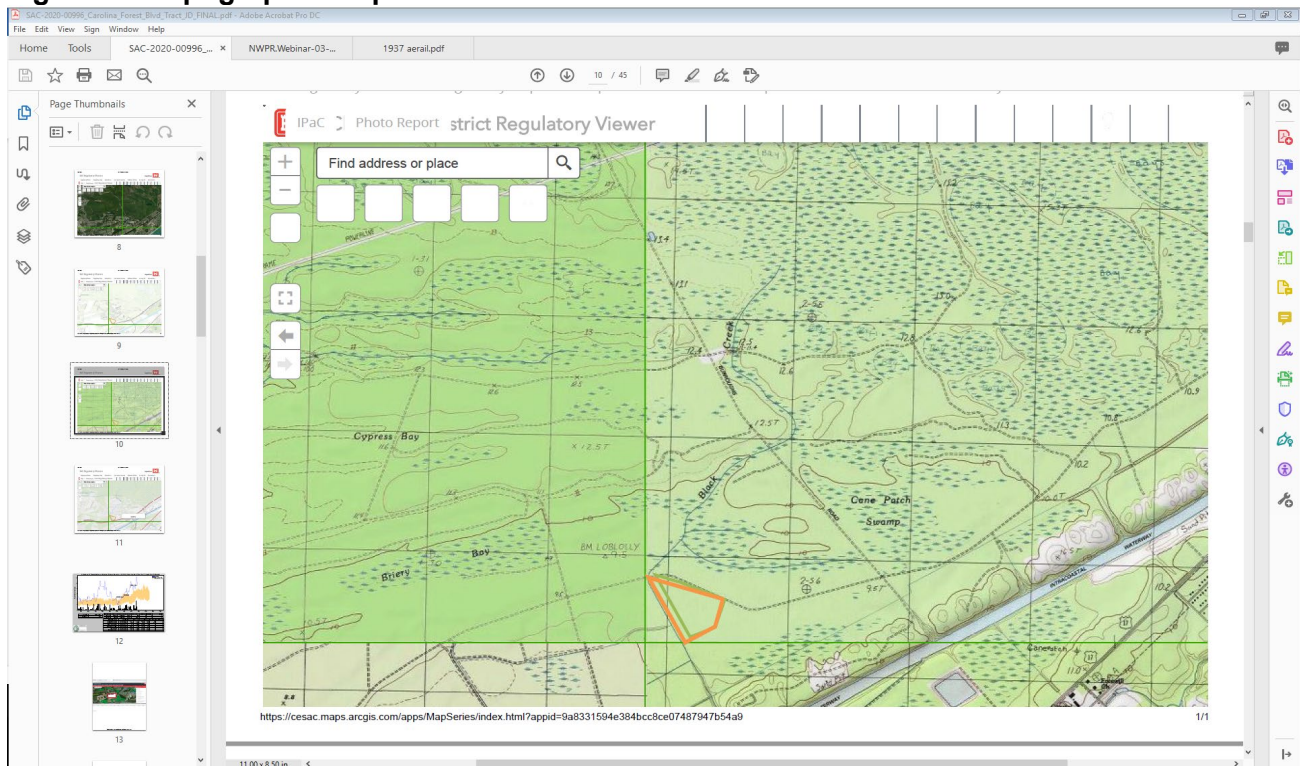


U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

visited by several Corps Project Managers conducting site visits for Jurisdictional Determinations in the adjacent areas and within the project area under varying climatic conditions and all previous Jurisdictional Determinations have documented the tributary with a flow regime of perennial. The onsite tributary has been documented with flowing water observed under drought conditions as well as wetter than normal conditions.

- C. **Additional comments to support AJD:** The project area is an undeveloped 46.60-acre parcel comprised of uplands apart from the onsite jurisdictional tributary (Black Creek). The onsite portions of Black Creek have been re-routed/ relocated due to past Silviculture practices and development within the area. The onsite tributary (Black Creek) outfalls directly into the AIWW and a(1) water.

Figure 1. Topographic Map



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.



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

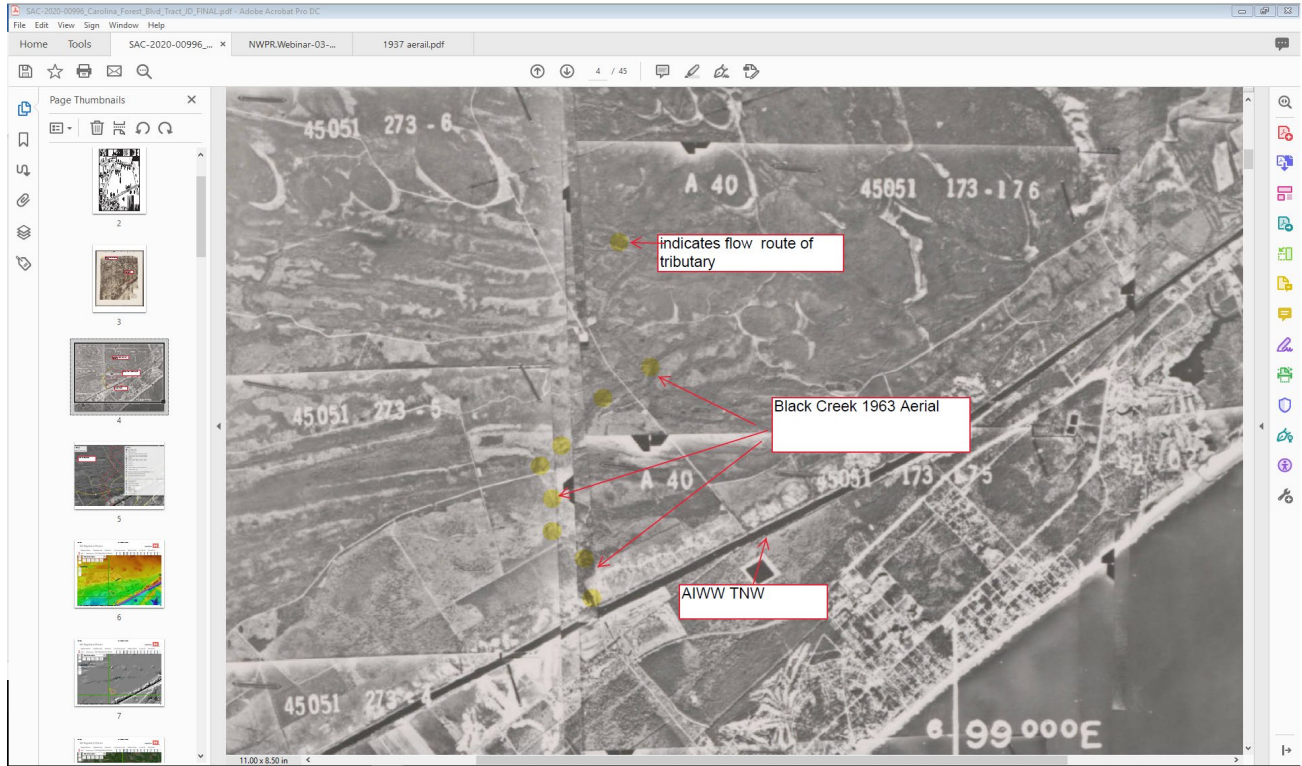


Figure 2: 1967 Aerial photo depicting relocation of the tributary (Black Creek) flowing due south to outfall directly into the AIWW as opposed to the tributary in its natural state (1937 photo below) flowing west paralleling the AIWW then out falling into the newly constructed (at that time) AIWW that merges with Waccamaw River.

Figure 3: 1937 Aerial Photo depicting a “naturally occurring” tributary flowing south then west out falling into the newly constructed AIWW.

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.

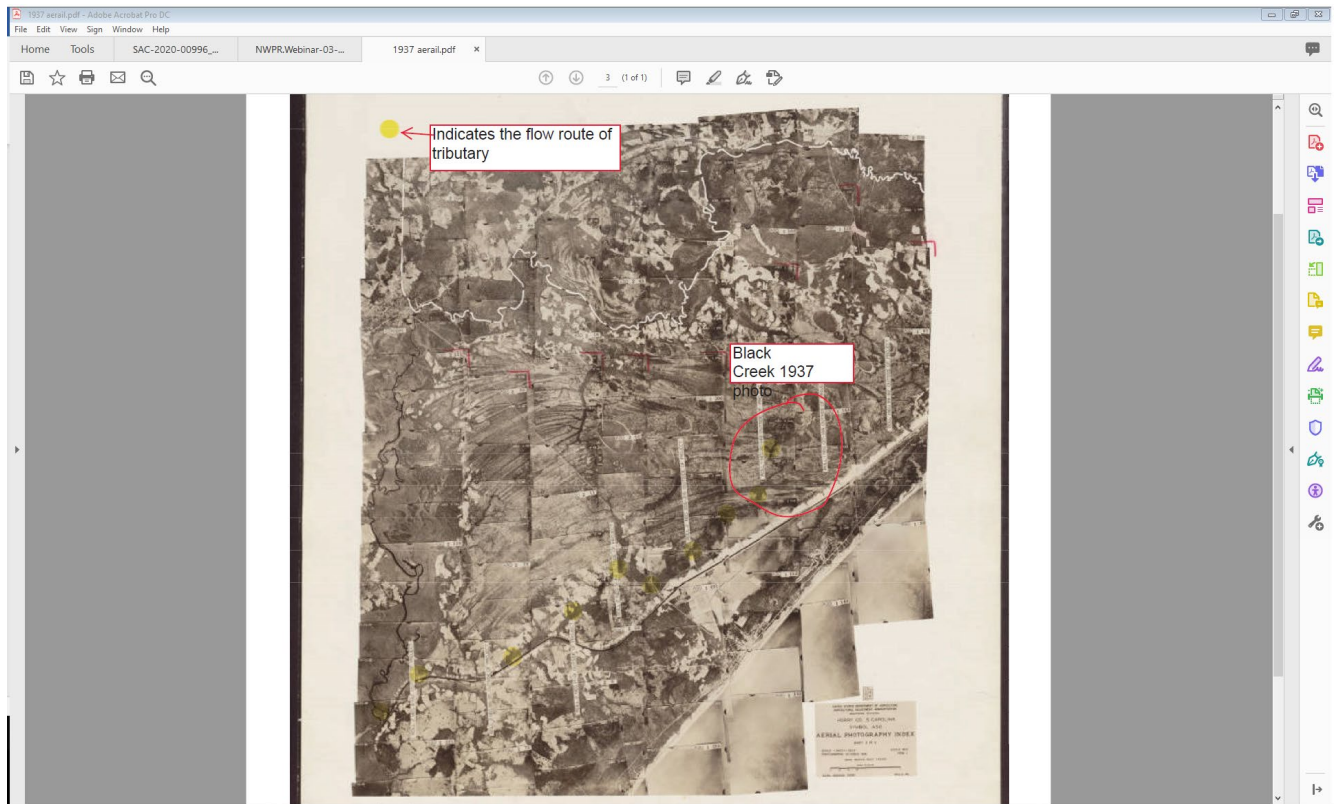
³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where independent upstream or downstream limits or lake borders are established. A stand-alone 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.



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