



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): 02-DEC-2020

ORM Number: SAC-2020-01138

Associated JDs: N/A

Review Area Location¹:

State: SC City: Johns Island County: Charleston County

Center Coordinates of Review Area: Latitude 32.77989 Longitude -80.106722

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
CL 1	1.47 acres	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide	CL 1 is subject to the ebb and flow of the tide

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
CL 1	1.47 acres	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is subject to the ebb and flow of the tide	CL 1 is subject to the ebb and flow of the tide

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A	N/A	N/A	N/A

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

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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.



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(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
W1	0.04 acre	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	W1 is abutting and contiguous with the (a)(1) water CL 1.
W3	0.08 acre	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year	W3 is the same wetland as W4 (below). The two wetland areas were separated by construction of an unpaved road which has culverts connecting the two wetland portions. These culverts are active during a typical year and thus constitute a direct continuous hydrologic connection that makes W3 and W4 the same wetland. There is a culvert between W3 and CL1 which is active during a typical year and thus constitutes a direct continuous hydrologic connection as the basis for adjacency.
W4	0.18 acre	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year	W4 is the same wetland as W3 (above) and extends beyond the project boundary. The two wetland areas were separated by construction of an unpaved road which has culverts connecting the two wetland portions. These culverts are active during a typical year and thus constitute a direct continuous hydrologic connection that makes W3 and W4 the same wetland. There is a culvert between W3 and CL1 which is active during a typical year and thus constitutes a direct continuous hydrologic connection as the basis for adjacency.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
D1	775 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 ditch does not relocate a tributary, is not constructed in a tributary, and is not constructed in an adjacent wetland. In addition, D1 does not support a flow regime consistent with the tributary definition.
D2	0.02 acre	(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 most closely defined as a ditch/ excavated feature that does not relocate a tributary, is not constructed in a tributary, and there is not sufficient evidence to support the conclusion that it was constructed in an adjacent wetland. In addition, D2 does not support a flow regime consistent with the tributary definition.

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P1	0.09 acre	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	P1 is constructed in an area determined to be uplands by this approved jurisdictional determination and is not an impoundment of a jurisdictional water that meets (c) (6).
W2	0.26 acre	(b)(1) Non-adjacent wetland	This wetland is a closed boundary polygon that is not contiguous or directly abutting an (a)(1)-(a)(3) water. In addition, this wetland does not meet any of the other (a)(4) criteria for adjacency and thus is an excluded water pursuant to (b)(1).

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: *ECS Southeast LLC JD packet received August 20, 2020 which included data forms, Johns Island Topo Map, FEMA-FIRM map, NOAA LiDAR, photographs taken on site, NRCS soils map, and USFWS NWI Map.*

This information is not wholly sufficient for purposes of this AJD.

Rationale: *Site visit was needed as well as an additional data form and historic aerial imagery.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *aerial imagery from 1989, 1994, 2003, 2016, 2020*

Corps Site visit(s) conducted on: *October 27, 2020, October 29, 2020.*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

USDA NRCS Soil Survey: *SAC Regulatory Viewer- NRCS SSURGO Map Service*

USFWS NWI maps: *SAC Regulatory Viewer-USFWS NWI Map Service*

USGS topographic maps: *SAC Regulatory Viewer USGS 7.5 Minute Quad*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	<i>SAC Regulatory Viewer- USGS 3D Elevation Program (#DEP) Map Service, National Hydrography Dataset (NHD)</i>
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

Typical year assessment(s):

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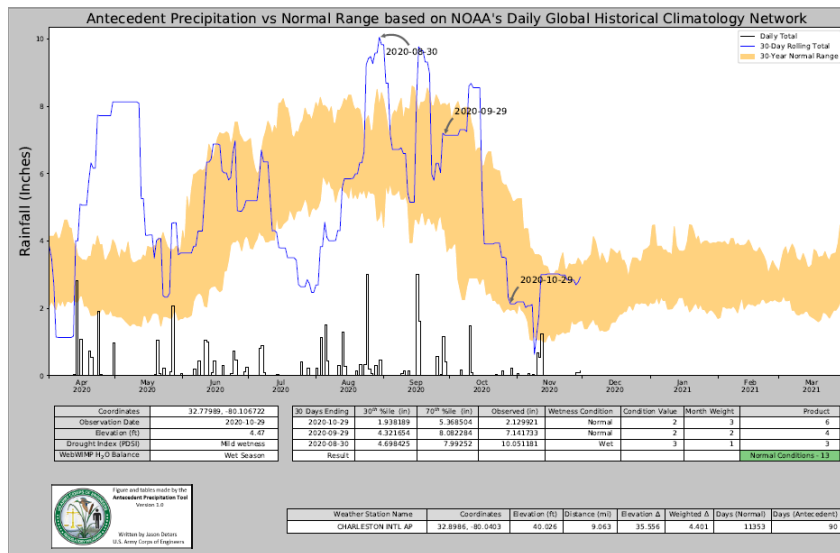
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The Antecedent Precipitation Tool (APT) was utilized to determine whether the site visit dates of October 27, 2020 & October 29, 2020 occurred during a typical year for the purposes of evaluating the existing culvert between W3 and W4 and CL 1 (the (a)(1) water). Based on the results shown in the output below, the site visit occurred during normal conditions (typical year). During the site visit the culvert was observed to be passing flow from between W3 and CL 1 (the (a)(1) water), and thus demonstrating that the culvert does represent a direct hydrologic surface connection as required to meet adjacency criteria.



B. Additional comments to support AJD:

CL 1 is a tidal wetland. W1 is abutting and contiguous with CL 1.

W2 is a naturally occurring wetland with an excavated ditch draining the wetland toward CL1. D1 is a ditch that is running along the property line between the site and the adjacent subdivision. It is not a natural tributary with intermittent or perennial flow and is therefore a (b)(5) ditch. W2 is a (b)(1) wetland as its only hydrologic connection to the (a)(1) water is through the excluded D1 ditch.

P1 is an upland excavated (b)(8) pond with a berm between the OHWM of the pond and D1.

W3 and W4 make up one larger wetland, currently draining to CL1 through an active culvert. At some point in the past, a road/ driveway was constructed through the larger wetland and culverts were

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placed between W4 and W3. W3 also contains a culvert directly connecting to CL1. It is noted that long ago, the site was in agriculture and portions of these wetlands were impacted to allow for surface water to drain. While it is unknown the exact limits of the wetlands when the impacts occurred or when the road was originally constructed, the site conditions (to include a thick muck layer, crayfish burrows, high water table with ponding in areas, and hydrophytic vegetation) indicate that W3 and W4 have been, and continue today, to act as one wetland. These wetlands have a direct hydrologic connection to the tidal water (CL 1) via a very active culvert.

D2 was constructed on both sides of the road/driveway and is comprised of an excavated feature that did not contain standing water, but soils were saturated. Small culverts do connect these features to each other and to W3; however, evidence does not exist as to whether these features were excavated from part of a larger wetland or if they are a direct result of road/ driveway construction and associated drainage. While the soils are hydric, there is no hydrophytic vegetation growing within these small excavated areas and therefore, these roadside features most closely resemble stormwater features and therefore have been determined to be (b)(5) ditches.

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