



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): January 7, 2021

ORM Number: SAC-2003-41136

Associated JDs: Approved JD SAC-2005-41222-3JI issued on November 1, 2010

Review Area Location¹:

State/Territory: SC City: Murrells Inlet County: Horry County

Center Coordinates of Review Area: Latitude 33.572684 Longitude -79.032701

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
N/A	N/A	N/A	N/A

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

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.

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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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Excluded Waters #1	4.54 acres	(b)(1) Non-adjacent wetland	Excluded Water 1 (wetland) does not abut and is not inundated by an (a)(1)-(3) water. Additionally, this wetland is physically separated from an (a)(2) water by multiple physical, man-made barriers (residential lots, roads, etc.) and uplands. Excluded Wetland 1 is completely surrounded by uplands and lacks a direct or indirect surface connection to (a)(1)-(3) waters. The USGS TNM-National Hydrology Dataset updated July 2020, NWIs, and USGS topographic maps depict flow from the wetland, east towards Murrells Inlet. However, site visits conducted in association with the 2010 and 2014 AJDs revealed that this feature does not exist on site and water does not leave the wetland to the east. The only documented connection between this wetland and an (a)(2) water is through a series of stormwater ponds and an upland excavated roadside drainage ditches. A ditch can not render an otherwise isolated wetland an adjacent wetland unless the ditch itself is a tributary, which in this case it is not. This wetland is part of a larger wetland system that continues offsite and was the subject of a 2009 lawsuit filed in the United States District Court for the District of South Carolina by the South Carolina Coastal Conservation League. As a result, all potential hydrologic connections associated with this wetland have been thoroughly reviewed and documented. See DEPARTMENT OF THE ARMY MEMORANDUM TO ASSERT JURISDICTION FOR SAC-2005-41222-3JI (f.k.a. 87-2005-0575-3 / Spectre LLC) Charleston District, Spectre Site, dated November 1, 2010, located in the file.

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 and Verification,” dated September 17, 2020, submitted by the Southern Palmetto Environmental on behalf of Mr. Archie Howell for the “Harrison Tract (15.17 +/- acres)”. 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: *N/A*
- Photographs: Site photos titled “Representative Photos of the Site / Harrison Site,” and dated

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September 16, 2020, submitted by Southern Palmetto Environmental. Aerial photographs provided by the Southern Palmetto Environmental, in the submittal dated September 17, 2020. All photos depict an undeveloped wooded tract of land. USGS National Map 3D Elevation Program (3DEP) published August 13, 2020.

- Corps Site visit(s) conducted on: No site visit was conducted in association with this request. However, information obtained and documented in association with site visits conducted on March 7, 2005, May 16, 2005, December 2, 2008, September 23, 2009, December 9, 2009, and July 17, 2014 was utilized, see previous determinations under SAC-2003-41136 and SAC-2005-41222-3JI.
- Previous Jurisdictional Determinations (AJDs or PJDs): Approved JD SAC-2003-41136 issued on August 6, 2014 and Delineation Concurrence Letter SAC-2003-41136 issued on January 23, 2020.
- Antecedent Precipitation Tool: Wetter than normal conditions. Detailed discussion provided in Section III.B.
- USDA NRCS Soil Survey: NRCS Soil Survey Geographic Database (SSURGO) created 4 Apr 2019 and updated 26 Aug 2020. ESRI Map Service depicts the soil types as Pocomoke Fine Sandy Loam, Leon Fine Sand and Centenary Fine Sand.
- USFWS NWI maps: USFWS NWI Map Service dated May 29, 2012, updated July 17, 2020.
- USGS topographic maps: USGS 7.5 Minute Index (Conway Quad). Topographic map depicts vegetated uplands that contain wetlands surrounded on all sides by uplands. A solid blue line feature is depicted leaving the site to the south/east, however, multiple site visit have determined that this feature does not exist on site.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Topographic Maps, 3DEPElevation- Slope and 3DEPElevation – Hillshade /LiDAR overlays, National Hydrography Dataset.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	SAC Regulatory Viewer Accessed on January 6, 2021
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

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 (September 16, 2020). Output from the APT indicated “wetter than normal” conditions at the time of data collection by the agent (Southern Palmetto Environmental) with a condition value of 19. 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 10 weather stations within an 18-mile radius were

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used. Although wetter than normal conditions were indicated by the APT, these findings would not affect the wetland boundary or the jurisdictional status.

- C. Additional comments to support AJD:** The area in review contains 15.17 acres and includes 4.54 acres of excluded waters. The delineated boundary of the wetland was verified in Approved JD SAC-2003-41136 issued on August 6, 2014 and Delineation Concurrence Letter SAC-2003-41136 issued on January 23, 2020. The location of the wetland line for this tract is not in question. The focus of this determination is the jurisdictional status of the delineated wetland in accordance with the definition of Waters of the United States in Corps regulations at 33 C.F.R. §328.3, as revised by the Navigable Waters Protection Rule: "Definition of Waters of the United States," 85 Fed. Reg. 22250 (April 21, 2020), which became effective on June 22, 2020. Excluded Waters 1 is encompassed entirely by uplands and lacks a direct surface connection to (a)(1)-(3) waters. Excluded Waters 1 continues offsite to the north and west where it is physically separated from the nearest (a)(1)-(3) water by uplands, roads and a series of ditches. While the continuation of the wetland does drain into an off-site ditch, the drainage network does not meet the criteria of an (a)(1)-(3) water. Since Excluded Waters 1 does not abut an (a)(1)-(3) water, is not inundated by an (a)(1)-(3) water and is physically separated by more than a single artificial barrier, it is determined to be non-jurisdictional. This wetland was the subject of a 2009 lawsuit filed in the United States District Court for the District of South Carolina by the South Carolina Coastal Conservation League. As a result, all potential hydrologic connections associated with this wetland have been thoroughly reviewed and documented. See DEPARTMENT OF THE ARMY MEMORANDUM TO ASSERT JURISDICTION FOR SAC-2005-41222-3JI (f.k.a. 87-2005-0575-3 / Spectre LLC) Charleston District, Spectre Site, dated November 1, 2010, located in the file.

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