



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): 17-JUL-2020

ORM Number: SAC-2015-01552

Associated JDs: N/A

Review Area Location¹:

State/Territory: SC City: Charleston County: Berkeley County

Center Coordinates of Review Area: Latitude 32.9141 Longitude -79.9137

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 |
|---------------------|-------------|---|---|
| Estuarine Wetland 1 | 40.12 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 | Estuarine Wetland 1 is tidal salt marsh and is subject to the ebb and flow of the tide. Estuarine Wetlands 1 and 2 are both part of a much larger tidal salt marsh system that extends offsite and is associated with Yellow House Creek, which is a Traditional Navigable Water. |
| Estuarine Wetland 2 | 8.87 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 | Estuarine Wetland 2 is tidal salt marsh and is subject to the ebb and flow of the tide. Estuarine Wetlands 1 and 2 are both part of a much larger tidal salt marsh system that extends offsite and is associated with Yellow House Creek, which is a Traditional Navigable Water. |

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 |
|---------------------|-------------|---|---|
| Estuarine Wetland 1 | 40.12 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 | Estuarine Wetland 1 is tidal salt marsh and is subject to the ebb and flow of the tide. Estuarine Wetlands 1 and 2 are both part of a much larger tidal salt marsh system that extends offsite and is associated with Yellow House Creek, which is a Traditional Navigable Water. |
| Estuarine Wetland 2 | 8.87 acres | (a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act - RHA Tidal water is | Estuarine Wetland 2 is tidal salt marsh and is subject to the ebb and flow of the tide. Estuarine Wetlands 1 and 2 are both part of a much larger tidal salt marsh system |

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.



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| | | | |
|--|--|---|---|
| | | subject to the ebb and flow of the tide | that extends offsite and is associated with Yellow House Creek, which is a Traditional Navigable Water. |
|--|--|---|---|

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 |
|----------------------|-------------|--|---|
| Freshwater Wetland 1 | 16 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Freshwater Wetland 1 abuts Estuarine Wetland 1, which is an a(1) water. It is also part of a larger freshwater wetland system that extends offsite. |
| Freshwater Wetland 2 | 9.13 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Freshwater Wetland 2 abuts Estuarine Wetland 2, which is an a(1) water. It is also part of a larger freshwater wetland system that extends offsite. |
| Freshwater Wetland 3 | 0.11 acre | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Freshwater Wetland 3 is part of a larger freshwater wetland system that extends offsite and abuts the tidal salt marsh system associated with Yellow House Creek, which is an a(1) water. Estuarine Wetlands 1 and 2 are part of this tidal salt marsh system. |
| Freshwater Wetland 5 | 1.44 acres | (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 | Freshwater Wetland 5 is part of a larger freshwater wetland system that extends offsite and abuts the tidal salt marsh system associated with Martin Creek and/or Yellow House Creek, which are both a(1) waters. Based on our site inspection and our review of aerial photographs, LiDAR data, and NWIs, there appears to be a direct hydrologic surface connection under Jack Primus Road that meets the criteria in 33 CFR 328.3(c)(iv). According to the APT results the site visit was conducted during normal conditions. |
| Freshwater Wetland 4 | 0.01 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 | Freshwater Wetland 4 is part of a much larger freshwater wetland system that extends offsite and abuts the tidal salt marsh system associated with Martin Creek and/or Yellow House Creek, which are both a(1) waters. Based on our site inspection and our review of aerial photographs, LiDAR data, and NWIs, there appears to be a direct hydrologic surface connection under Jack Primus Road that meets the criteria in 33 CFR 328.3(c)(iv). According to the APT results the site visit was conducted during normal conditions. |

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
|----------------|----------------|------------------------|---------------------------------------|
| | | | |

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|-----|-----|-----|-----|
| 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: *Jack Primus Tract (Site Location Map, Infrared Aerials, USGS Topographic Map, National Wetland Inventory Map, NRCS Soils Data, Photographs of the Upland and Wetland Data Points, Wetland Determination Data Forms - Atlantic and Gulf Coastal Plain Region, dated December 3, 2019)*
This information is and is not sufficient for purposes of this AJD.
Rationale: *N/A or describe rationale for insufficiency (including partial insufficiency).*

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

X Photographs: Infrared aerials, 1994, 1999, 2006 (from consultant)

X Corps Site visit(s) conducted on: June 23, 2020

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

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

X USDA NRCS Soil Survey: USDA NRCS Soils Data (from consultant).

X USFWS NWI maps: North Charleston Quad (from Regulatory Viewer).

X USGS topographic maps: North Charleston Quad, 1979 (from consultant).

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 | N/A. |
| Other Sources | N/A. |

B. Typical year assessment(s): Antecedent Precipitation Tool (APT) data for typical year determination was calculated for the date the site was visited by the consultant (12/03/2019) and the date the site was visited by the Corps (06/23/2020). Although the delineation was conducted during the wet season and the Corps' site inspection was conducted during the dry season, both dates were considered to be normal conditions (see attached). Therefore, observations that were made by the consultant and Corps during both of these site inspections were made during normal conditions.

C. Additional comments to support AJD: As described in Sections II.B and II.C, Estuarine Wetlands 1 and 2 (48.99 acres) are identified as Traditional Navigable Waters (TNWs) because they are both subject to the ebb and flow of the tide. Both of these wetland systems are tidal salt marsh associated with Yellow House Creek. Freshwater Wetlands 1, 2, and 3 (25.24 acres) are identified as (a)(4)

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waters because each of these freshwater wetlands abuts tidal salt marsh associated with Yellow House Creek (either Estuarine Wetlands 1 and 2, or a portion of the much larger tidal salt marsh that extends outside the review area). Freshwater Wetlands 4 and 5 (1.45 acres) are also identified as (a)(4) waters based on (c)(iv)); however, they are a portion of a much larger palustrine forested wetland system that extends all the way across the Cainhoy Peninsula. This freshwater wetland system abuts the tidal salt marsh associated with Yellow House Creek approximately 0.5 mile northeast of the project site and the tidal salt marsh associated with Martins Creek approximately 1.3 miles east of the project site. A typical year assessment was conducted because artificial structures (existing roads) bisect this wetland system in several locations. As described in Section III.B of this document, normal conditions existed when the consultant delineated the project site and when the Corps reviewed the wetland delineation. Based on our site inspection and our review of aerial photographs, LiDAR data (see attached), and NWIs, during a typical year there appears to be a direct hydrologic surface connection (through a culvert under Jack Primus Road) to the portion of this much larger freshwater wetland system that abuts Martins Creek.

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