



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-JUN-2021  
ORM Number: NAO-2021-00216  
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)  
Review Area Location<sup>1</sup>:  
State/Territory: VA City: County/Parish/Borough: Hampton City  
Center Coordinates of Review Area: Latitude 37.018645 Longitude -76.379198

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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
WETLAND D	0.09 acres	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an	This wetland is a permittee responsible compensatory mitigation site that was constructed to offset losses

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

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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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		artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year	within the project area and does not satisfy any of the excluded feature definitions. Portions of the entire contiguous wetland (Wetland D, E, F) were constructed in a tributary. This wetland satisfies the definition of an Adjacent Wetland [(c)(1)]. This wetland is separated from downstream waters by artificial barriers (uplands, berms, and roads). This wetland has a direct hydrologic surface water connection to downstream waters during a typical year through two outfalls located at the northern section of the wetland and on the eastern portion of the wetland where the tributary was previously located. Surface water flowing through these outfalls enter the City of Hampton's stormwater system which drains to an unnamed tributary to Newmarket Creek (TNW) to the north.
WETLAND E	0.33 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	This wetland is a permittee responsible compensatory mitigation site that was constructed to offset losses within the project area and does not satisfy any of the excluded feature definitions. Portions of the entire contiguous wetland (Wetland D, E, F) were constructed in a tributary. This wetland satisfies the definition of an Adjacent Wetland [(c)(1)]. This wetland is separated from downstream waters by artificial barriers (uplands, berms, and roads). This wetland has a direct hydrologic surface water connection to downstream waters during a typical year through two outfalls located at the northern section of the wetland and on the eastern portion of the wetland where the tributary was previously located. Surface water flowing through these outfalls enter the City of Hampton's stormwater system which drains to an unnamed tributary to Newmarket Creek (TNW) to the north.
WETLAND F	0.26 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	This wetland is a permittee responsible compensatory mitigation site that was constructed to offset losses within the project area and does not satisfy any of the excluded feature definitions. Portions of the entire contiguous wetland (Wetland D, E, F) were constructed in a tributary. This wetland satisfies the definition of an Adjacent Wetland [(c)(1)]. This wetland is separated from downstream waters by artificial barriers (uplands, berms, and roads). This wetland has a direct hydrologic surface water connection to downstream waters during a typical year through two outfalls located at the northern section of the wetland and on the eastern portion of the wetland where the tributary was previously located. Surface water flowing through these outfalls enter the City of Hampton's stormwater system which drains to an unnamed tributary to Newmarket Creek (TNW) to the north.

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

<sup>2</sup> 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.

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<sup>4</sup> 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.

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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
SWALE 1	400 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 concrete lined ditch does not satisfy the definition of a Tributary [(c)(12)]. This ditch was not excavated from adjacent wetlands, was not excavated in a tributary and does not relocate a tributary. This ditch exhibits ephemeral flow in response to precipitation.
SWALE 2	490 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 concrete lined ditch does not satisfy the definition of a Tributary [(c)(12)]. This ditch was not excavated from adjacent wetlands, was not excavated in a tributary and does not relocate a tributary. This ditch exhibits ephemeral flow in response to precipitation.
SWALE 3	420 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 concrete lined ditch does not satisfy the definition of a Tributary [(c)(12)]. This ditch was not excavated from adjacent wetlands, was not excavated in a tributary and does not relocate a tributary. This ditch exhibits ephemeral flow in response to precipitation.
WETLAND A	0.05 acres	(b)(1) Non-adjacent wetland	This wetland does not satisfy the definition of an Adjacent Wetland [(c)(1)]. This wetland is located at the head of SWALE 1 (ditch) which is not a tributary and therefore cannot serve as a connection to downstream waters.
WETLAND B	0.09 acres	(b)(1) Non-adjacent wetland	This wetland does not satisfy the definition of an Adjacent Wetland [(c)(1)]. This wetland developed along the edge of SWALE 3 (ditch) which is not a tributary and therefore cannot serve as a connection to downstream waters.
WETLAND C	0.05 acres	(b)(1) Non-adjacent wetland	This wetland does not satisfy the definition of an Adjacent Wetland [(c)(1)]. This wetland is surrounded entirely by upland.
FOREBAY 1	0.26 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	This aquatic resource was constructed in uplands to receive stormwater from Swale 3 and convey the stormwater into the constructed wetland.
FOREBAY 2	0.18 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	This aquatic resource was constructed in uplands to receive stormwater from Swale 2 and convey the stormwater into the constructed wetland.
FOREBAY 3	0.18 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	This aquatic resource was constructed in uplands to receive stormwater from Swale 1 and convey the stormwater into the constructed wetland.

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

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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: *Wetland Delineation Report December 18, 2020*

This information is sufficient for purposes of this AJD.

Rationale: *N/A*

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

Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*

Corps Site visit(s) conducted on: *Date(s).*

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: *Web Soil Survey.*

USFWS NWI maps: *NWI mapper*

USGS topographic maps: *Vicinity Map.*

**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	Site Improvement Plan (Johnson Baird and Associates 1996) shows detail plans for the on-site PRM.

**B. Typical year assessment(s):** *N/A*

**C. Additional comments to support AJD:** *N/A*

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