



®

Regulatory Program



®

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): **SEP 12 2019**

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAN-2018-01344-ESW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New Jersey County/parish/borough: Union City: Linden

Center coordinates of site (lat/long in degree decimal format): Lat. 40.625743, Long. -74.209084.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled USACE Wetland Location Survey.

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: August 26, 2019.

Office (Desk) and Field Determination. Office/Desk Dates: Field Date(s):

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: USACE Wetland Location Survey dated July 22, 2016, revised on July 11, 2019.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date:

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date: USCG Topographic Map.

USDA NRCS Soil Survey. Citation: SSURGO Soils Map.

USFWS National Wetlands Inventory maps. Citation: NWI Wetlands Map.

State/Local wetland inventory maps. Citation: NJDEP Wetlands and Streams Map.

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: or Other. Citation: Site Photographs.

LiDAR data/maps. Citation:

Previous JDs. File no. and date of JD letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): NJDEP Tidelands Map.

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

(a)(3): The territorial seas.

- **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

Bordering/Contiguous.
Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:**Check all that apply.**

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: While all delineated wetlands on-site are located partly or entirely within the 1,500 linear foot boundary of the High Tide Line as measured from the Arthur Kill, Wetland F is located beyond the 1,000 linear foot boundary that determines USACE jurisdictional limits in New Jersey. Wetland F is considered an assumed water, and is regulated by the New Jersey State Department of Environmental Protection in accordance with the Memorandum of Agreement between the State of New Jersey and the Department of the Army, dated March 4, 1993.

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

SEP 12 2019

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
Arthur Kill	The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act	The Arthur Kill is a tidally influenced (subject to the ebb and flow of the tide) navigable waterbody that includes a high tide line on the eastern boundary of the review area.
Morses Creek	Waters have historically, are currently, and/or are susceptible for commercial navigation, including commercial waterborne recreation.	Morses Creek was historically used for navigation prior to the installation of a dam downstream of the review area. The banks of Morses Creek includes an Ordinary High Water Mark. On January 6, 1938, the U.S. Army Corps of Engineers issued a letter stating that this waterway is unnavigable and is not subject to Sections 9 and 10 of the Rivers and Harbors Act. See attached case specific documentation.

Table 2. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Wetland A	Arthur Kill	Wetland A is a freshwater palustrine emergent wetland that drains offsite into the Arthur Kill. Wetland A is located approximately 400 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.
Wetland B	Arthur Kill	Wetland B is a freshwater palustrine emergent wetland that drains offsite into the Arthur Kill. Wetland B is located approximately 170 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region.

		<p>The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.</p> <p>Wetland C is a freshwater palustrine emergent wetland that drains into Wetland A, which drains offsite into the Arthur Kill. Wetland C is located approximately 300 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.</p>
Wetland C	Arthur Kill	<p>Wetland D is a freshwater palustrine emergent wetland that drains into Wetland B, which drains offsite into the Arthur Kill. Wetland D is located approximately 650 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.</p>
Wetland D	Arthur Kill	<p>Wetland E is a freshwater palustrine emergent wetland that drains into Wetland A and then Wetland B, which drains offsite into the Arthur Kill. Wetland E is located approximately 680 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.</p>
Wetland E	Arthur Kill	<p>Wetland F is a freshwater palustrine emergent wetland that drains into Morses Creek, which then flows offsite into the Arthur Kill. Wetland F is located approximately 1,200 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images.</p>
Wetland F	Morses Creek	<p>Wetland F is a freshwater palustrine emergent wetland that drains into Morses Creek, which then flows offsite into the Arthur Kill. Wetland F is located approximately 1,200 linear feet from the High Tide Line of the Arthur Kill. This wetland is a neighboring adjacent wetland within 1,500 linear feet of the High Tide Line of an (a)(1) water, the Arthur Kill. The limits of jurisdiction were established through the application of the 1987 Manual and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region. The 1,500 linear foot boundary was established from the NHD data set and visual indications on aerial images. However, since Morses creek is unregulated and not subject to the ebb and flow of the tide, and Wetland F is beyond the 1,000 linear foot boundary as measured from the Arthur Kill [(A)(1) water] in New Jersey, Wetland F is not considered within Section 404 jurisdiction of the Clean Water Act administered by the U.S. Army Corps of Engineers. New Jersey State Department of Environmental Protection is responsible for administering the Section 404 program in New Jersey beyond the 1,000 foot linear foot boundary from the High Tide Line in accordance with the Memorandum of Agreement between the State of New Jersey and the Department of the Army, dated March 4, 1993.</p>

SEP 12 2019

NAN-2018-01344-ESW Aquatic Resource Upload Sheet

Waters_Name	State	Cowardin Code	Hgm Code	Meas Type	Amount	Units	Waters_Type	Latitude	Longitude	Local Waterway
2018-01344 Wetland A	NJ	PEM-PALUSTRINE, EMERGENT		AREA	1.664	ACRES	A6N3HWWB	40.62459	-74.208	Arthur Kill
2018-01344 Wetland B	NJ	PEM-PALUSTRINE, EMERGENT		AREA	0.397	ACRES	A6N3HWWB	40.62534	-74.20715	Arthur Kill
2018-01344 Wetland C	NJ	PEM-PALUSTRINE, EMERGENT		AREA	1.063	ACRES	A6N3HWWB	40.62456	-74.20865	Arthur Kill
2018-01344 Wetland D	NJ	PEM-PALUSTRINE, EMERGENT		AREA	0.3	ACRES	A6N3HWWB	40.6261	-74.20886	Arthur Kill
2018-01344 Wetland E	NJ	PEM-PALUSTRINE, EMERGENT		AREA	3.338	ACRES	A6N3HWWB	40.62658	-74.21154	Arthur Kill
2018-01344 Wetland F	NJ	PEM-PALUSTRINE, EMERGENT		AREA	0.358	ACRES	A6N3HWWB	40.62773	-74.21139	Arthur Kill

SEP 12 2019