



**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): 8/18/2020  
 ORM Number: SAJ-2016-01568 (NPR-JED)  
 Associated JDs: SAJ-2016-01568 dated 2 July 2018  
 Review Area Location<sup>1</sup>: State/Territory: Florida City: Brandon County/Parish/Borough: Hillsborough  
 Center Coordinates of Review Area: Latitude 27.928054 Longitude -82.355556

**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
Delaney Creek (Surface water-1/Surface water-2 within review area)	2,174 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Delaney Creek satisfies the definition of a jurisdictional tributary provided in 328.3(c)(12) for the following reasons:  Delaney Creek contributes surface water directly to Hillsborough Bay, an (a)(1) water. Hillsborough Bay is a tidally-influenced embayment of the Gulf of Mexico. An examination of both aerial photos and NHD flow data revealed that Delaney Creek contributes surface water to Hillsborough Bay.

<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 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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			<p>The Corps examined USGS stream gauge data in conjunction with USDA typical rainfall data which revealed that in a typical year Delaney Creek exhibits, at minimum, intermittent seasonal flow. The Corps noted that USGS stream gauge data indicates that from 2009 to 2018 Delaney Creek flowed continuously during the wet season, and that the gauge height data demonstrated that there was water present in the creek year round except for the dry season of 2009 and 2017. The gauge height recorded an elevation of zero in the dry season of 2009 and 2017. The Corps utilized the antecedent precipitation tool for both 1 April 2009 and 1 April 2017. The 2009 analysis revealed that for 90 days prior to analysis atypical drier than normal rainfall had occurred, and moderate drought conditions persisted at the project site. The 2017 analysis revealed that the project site had received normal rainfall for the 90 days preceding the APT analysis. However, at the point of analysis in 2019, the project site was experiencing severe drought conditions. Thus, the Corps determined that Delaney Creek flows at least intermittently, if not perennially, during typical years, and that during a typical year water is present in the creek channel year round.</p> <p>Therefore, the Corps determined that Delaney Creek meets the definition of a 328.3(a)(2) tributary as defined in 328.3(c)(12). Delaney Creek contributes surface water via at least intermittent flow directly to Hillsborough Bay, an (a)(1) tidal water, in a typical year. Thus, Delaney Creek is a jurisdictional tributary as defined by 328.3(a)(2).</p>

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
SW1	1.42 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The Corps determined that SW1 satisfies the requirements of a 328.3(a)(4) jurisdictional adjacent wetland. SW1 directly touches Delaney Creek. The Corps determined that Delaney Creek is a jurisdictional tributary pursuant to 328.3(a)(2). 328.3(c)(1)(I) states that a wetland is adjacent for jurisdictional purposes when a wetland abuts an



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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			(a)(2) water/tributary. Abut means directly touching. SW1 directly touches Delaney Creek. Therefore, the Corps determined that SW1 is a jurisdictional adjacent wetland pursuant to 328.3(a)(4).

**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
Pond A	0.38	acre(s)	(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).	Pond A is a water-filled depression constructed or excavated in upland likely incidental to road construction activity in the vicinity of the review area for the purpose of obtaining fill, sand, or gravel. Historic aerial photos of the review area dated 23 March 1957 depict an upland signature in the eventual location of this pond. Furthermore, the pond is not an impoundment of a jurisdictional water. Thus, this water is properly excluded from Corps jurisdiction pursuant to 33 CFR §328.3(b)(8).
Pond B	3.03		(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).	Pond B is a water-filled depression constructed or excavated in upland likely incidental to road construction activity in the vicinity of the review area for the purpose of obtaining fill, sand, or gravel. Historic aerial photos of the review area dated 23 March 1957 depict an upland signature in the eventual location of this pond. Furthermore, the pond is not an impoundment of a jurisdictional water. Thus, this water is properly excluded from Corps jurisdiction pursuant to 33 CFR §328.3(b)(8).

<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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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Pond N	0.30	(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).	Pond N is a water-filled depression constructed or excavated in upland likely incidental to road construction activity in the vicinity of the review area for the purpose of obtaining fill, sand, or gravel. Historic aerial photos of the review area dated 23 March 1957 depict an upland signature in the eventual location of this pond. Furthermore, the pond is not an impoundment of a jurisdictional water. Thus, this water is properly excluded from Corps jurisdiction pursuant to 33 CFR §328.3(b)(8).
Pond E	11.80	(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).	Pond E is a water-filled depression constructed or excavated in upland likely incidental to road construction activity in the vicinity of the review area for the purpose of obtaining fill, sand, or gravel. Historic aerial photos of the review area dated 23 March 1957 depict an upland signature in the eventual location of this pond. Furthermore, the pond is not an impoundment of a jurisdictional water. Thus, this water is properly excluded from Corps jurisdiction pursuant to 33 CFR §328.3(b)(8).
Ditch 1	2.18	(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	The Corps examined aerial photos, site photos provided by the applicant, and antecedent rainfall data compiled in the previous AJD for the site and determined that Ditch 1 is dug entirely in uplands and exhibits ephemeral flow in response to precipitation events. Ditch 1 does not satisfy the definition of a 328.3(a)(1) or (2) water. In



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ditch 2	0.092	(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)	The Corps examined aerial photos, site photos provided by the applicant, and antecedent rainfall data compiled in the previous AJD for the site and determined that Ditch 2 is dug entirely in uplands and exhibits ephemeral flow in response to precipitation events. Ditch 2 does not satisfy the definition of a 328.3(a)(1) or (2) water. In addition, Ditch 2 would not satisfy the definition of an (a)(4) water defined in 328.3(c)(1). In light of these facts, the Corps determined that Ditch 2 is a (b)(5) excluded water.
Ditch 3	0.52	(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)	The Corps examined aerial photos, site photos provided by the applicant, and antecedent rainfall data compiled in the previous AJD for the site and determined that Ditch 3 is dug entirely in uplands and exhibits ephemeral flow in response to precipitation events. Ditch 3 does not satisfy the definition of a 328.3(a)(1) or (2) water. In addition, Ditch 3 would not satisfy the definition of an (a)(4) water defined in 328.3(c)(1). In light of these facts, the Corps determined that Ditch 3 is a (b)(5) excluded water.
Ditch 4	0.45	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an	The Corps examined aerial photos, site photos provided by the applicant, and antecedent rainfall data compiled in the previous AJD for the site and determined that Ditch 4 is dug entirely in uplands and



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetlands H (0.29ac.), I (0.11 ac.) J (0.06 ac.) K (0.35 ac.) L (0.18 ac.) M (0.03 ac.)	1.002 (total)		(a)(4) water that do not satisfy the conditions of (c)(1)	exhibits ephemeral flow in response to precipitation events. Ditch 4 does not satisfy the definition of a 328.3(a)(1) or (2) water. In addition, Ditch 4 would not satisfy the definition of an (a)(4) water defined in 328.3(c)(1). In light of these facts, the Corps determined that Ditch 4 is a (b)(5) excluded water.
Wetland F (1.88ac.), Wetland G (1.60ac.)	3.48ac. (total)		(b)(1) Non-adjacent wetland	<p>The Corps determined that none of these wetlands would satisfy any definition provided in 328.3(a)(1-4) for a jurisdictional wetland. Review of aerial photos demonstrates that these wetlands are naturally separated from Delaney Creek via uplands with no barriers of any kind in between. There is no evidence that these wetlands are inundated by flood waters from Delaney Creek at any time. Thus, the Corps determined that none of these wetlands would satisfy the definition of a jurisdictional adjacent wetland stated in 328.3(a)(c)(1).</p> <p>The Corps determined that neither wetland F nor wetland G would satisfy any definition provided in 328.3(a)(1-4) for an adjacent jurisdictional wetland. Historically, Wetlands F and G were naturally separated from Delaney Creek (a2 water) by uplands with no barrier, natural or manmade, in between. In the 1957 aerial it is apparent that Ditch 1 was dug, and Wetlands F and G abut Ditch 1 for drainage purposes. The Corps determined that Ditch 1 is a non-jurisdictional b5 excluded water. Furthermore, the Corps determined that neither Wetland F nor Wetland G receive inundation from Delaney Creek in a typical year. Thus, the Corps determined that these wetlands do not abut an (a1),(a2), or (a3) water; these wetlands do not receive flood inundation from an (a1), (a2), or (a3) water</p>



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			during a typical year; and there is no barrier, manmade or otherwise, between Delaney Creek and these wetlands. Therefore, the Corps determined that Wetlands F and G are excluded waters pursuant to 328.3(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: [Application submitted 26 June 2020](#)  
This information **is and is not** sufficient for purposes of this AJD.  
Rationale: [The initial application submittal did not include the necessary antecedent precipitation data to complete a typical year analysis. The Corps generated this information for this determination and added this information to the administrative record.](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Site photos provided in the application. Reference the administrative record. 1957 aerial photo available at <http://ufdc.ufl.edu/UF00071755/00014/168x?coord=27.92770884248992,-82.35498419666191>; 1968 aerial photo available at: <http://ufdc.ufl.edu/UF00071755/00019/55x?coord=27.92770884248992,-82.35498419666191>; Google Earth Image Dated 11 JAN 2017; Google Earth Image dated 25 NOV 2019](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [Previous Approved Jurisdictional Determination of the review area completed 2 July 2018 under file number SAJ-2016-01568 included in the AR.](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Included in the application. Reference the AR.](#)
- USFWS NWI maps: [Included in the application. Reference the AR.](#)
- USGS topographic maps: [Included in the application. Reference the AR.](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	<a href="#">USGS staff gauge 02301750 data available at: <a href="https://nwis.waterdata.usgs.gov/fl/nwis/uv?cb_00060=on&amp;cb_00065=on&amp;format=gif_defa04-01&amp;end_date=2018-04-01">https://nwis.waterdata.usgs.gov/fl/nwis/uv?cb_00060=on&amp;cb_00065=on&amp;format=gif_defa04-01&amp;end_date=2018-04-01</a></a>
USDA Sources	N/A



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Data Source (select)	Name and/or date and other relevant information
NOAA Sources	N/A.
USACE Sources	USACE Antecedent Precipitation Tool
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** See Section IIC above for the APT data discussion. The APT sheets are included in the administrative record.

**C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.