



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT  
201 W 8<sup>TH</sup> STREET SUITE 350  
PUEBLO, CO 81003-3040

August 13, 2021

Regulatory Division

SUBJECT: Jurisdictional Determination – Action No. SPA-2007-00582, Solace Apartments Channel Improvements

Dane Olmstead  
Jackson Dearborn Partners  
404 S Wells Street, Suite 400  
Chicago, IL 60607

Dear Mr. Olmstead:

This letter responds to your request for a jurisdictional determination (JD) for property located at latitude 38.84814, longitude -104.71816, in El Paso County, Colorado (enclosure 1). We have assigned Action No. SPA-2007-00582 to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we have determined that the site does not contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The attached JD form describes the area that was evaluated and determined to contain no waters of the United States (enclosure 2). If you intend to conduct work that could result in a discharge of dredged or fill material into waters of the United States, please contact this office for a determination of Department of the Army permit requirements and refer to Action No. SPA-2007-00582.

The basis for this approved JD (attached) is that the project site contains an ephemeral stream that is determined to be nonjurisdictional. A copy of this JD is also available at <http://www.spa.usace.army.mil/reg/JD>. This approved JD is valid for 5 years unless new information warrants revision of the determination before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (enclosure 3). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPDPDS-O, Attn: Tom Cavanaugh, Administrative Appeal Review Officer, P.O. Box 36023, 450 Golden Gate Avenue, San Francisco, CA 94102 within 60 days of the date of this notice. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.

If you have any questions, please contact Kraig Jashinsky at (719) 439-7281 or by email at [Kraig.A.Jashinsky@usace.army.mil](mailto:Kraig.A.Jashinsky@usace.army.mil). At your convenience, please complete

a Customer Service Survey online available at  
<https://regulatory.ops.usace.army.mil/customer-service-survey/>.

Sincerely,

Kara Hellige  
Chief, Southern Colorado Branch

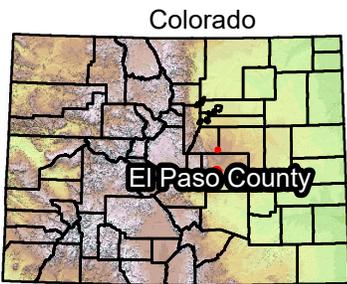
Enclosures

cc.

Mr. Daniel Maynard, Bristlecone Ecology, LLC, [dmaynard@bristleconeecology.com](mailto:dmaynard@bristleconeecology.com)  
Colorado Department of Public Health and Environment, [cdphe.wqstorm@state.co.us](mailto:cdphe.wqstorm@state.co.us)



NAIP Imagery, 2019



- Drain
- Drainage Basin
- Concrete Channel
- RipRap
- Other Site Features
- Project Area
- Ordinary High Water Mark (0.317 acres)



### Solace Apartments

Site Layout





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): 8/13/2021

ORM Number: SPA-2007-00582

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: CO City: Colorado Springs County: El Paso

Center Coordinates of Review Area: Latitude 38.84814 Longitude -104.718167

**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
N/A	N/A	N/A	N/A

<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 and 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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**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
Sand Creek Center Tributary	1350 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The stream is excluded due to being ephemeral in nature under the Navigable Waters Protection Rule – Excluded Waters (b)(2)

**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: Solace Apartments AJD Request 07-14-2021  
This information is sufficient for purposes of this AJD.  
Rationale: Information found be sufficient in addition to internal review.
- Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: Included in original AJD submission, and aerial images from 2006, 2011, 2015, 2017, 2018, 2019, and 2020
- Corps Site visit(s) conducted on: *Date(s)*.
- Previous Jurisdictional Determinations (AJDs or PJDs): SPA-2007-00582 10/3/2007 Jurisdictional
- Antecedent Precipitation Tool: Performed by applicant. Additional information found below. *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s)*.
- USFWS NWI maps: *Title(s) and/or date(s)*.
- USGS topographic maps: *Title(s) and/or date(s)*.

**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):** The agent conducted an Antecedent Precipitation Tool analysis, which indicated that the 12-digit HUC overall experienced wetter than normal conditions during the dates sampled, despite the region as a whole experiencing conditions ranging from ‘Incipient Drought’ to ‘Severe Drought’. In addition, the results indicated that for the days sampled, Sand Creek Center

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<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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Tributary experienced normal conditions for 51% of the days, wetter than normal conditions for 46% of the days, and drier than normal conditions for 3% of the days.

- C. Additional comments to support AJD:** Waters determined to be ephemeral in nature based on on-site observations on February 22nd and April 2nd, 2021 and a review of aerial images for 2006, 2011, 2015, 2017, 2018, 2019, and 2020 identifies that the surface water within the channel flows or pools only in direct response to precipitation.

<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>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.

**NOTIFICATION OF  
ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Dane Olmstead		File Number: SPA-2007-00582	Date: August 13, 2021
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

**ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

**OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the DISTRICT ENGINEER within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the DISTRICT ENGINEER will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the DISTRICT ENGINEER will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

**ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT ENGINEER for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

**APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER (address on reverse). This form must be received by the DIVISION ENGINEER within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER. This form must be received by the DIVISION (not district) ENGINEER within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

**ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

**APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) ENGINEER (address on reverse). This form must be received by the DIVISION ENGINEER within 60 days of the date of this notice. Exception: JD appeals based on new information must be submitted to the DISTRICT ENGINEER within 60 days of the date of this notice.

**EXCEPTION:** Appeals of Approved Jurisdictional Determinations based on new information must be submitted to the District engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

**DISTRICT ENGINEER**  
Albuquerque District, Corps of Engineers  
Attn: Kelly Allen, Regulatory Division Chief  
4101 Jefferson Plaza NE  
Albuquerque, New Mexico 87109-3435  
Phone: 505-342-3216, Fax: 505-342-3668  
[Kelly.E.Allen@usace.army.mil](mailto:Kelly.E.Allen@usace.army.mil)

If you only have questions regarding the appeal process you may also contact:

**DIVISION ENGINEER**  
Army Engineer Division, South Pacific, CESPD-PDS-O, 2052B  
Attn: Tom Cavanaugh, Administrative Appeal Review Officer  
P.O. Box 36023, 450 Golden Gate Ave.  
San Francisco, CA 94102  
Phone: 415-503-6574, Fax: 415-503-6646  
[thomas.j.cavanaugh@usace.army.mil](mailto:thomas.j.cavanaugh@usace.army.mil)

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:
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