



**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): 10/5/2020
 ORM Number: LRH-2019-33-KAN-Goff Branch
 Associated JDs: No
 Review Area Location¹: State/Territory: West Virginia City: Institute County/Parish/Borough: Kanawha
 Center Coordinates of Review Area: Latitude 39.39129 Longitude -81.77889

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
- 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 |
|-----------|-----------|---------------|----------------------------------|
| N/A. | N/A. | N/A. | N/A. |

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 |
| 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. |

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 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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D. Excluded Waters or Features

| Excluded waters ((b)(1) – (b)(12)): ⁴ | | | | |
|--|----------------|-------------|--|---|
| Exclusion Name | Exclusion Size | | Exclusion ⁵ | Rationale for Exclusion Determination |
| Upper 1 | 78.16 | linear 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). | Upper 1 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Upper 1 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Upper Flume 1 | 43.63 | linear 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). | Upper Flume 1 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Upper Flume 1 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Upper 2 | 208.40 | linear 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). | Upper 2 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Upper 2 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Flume 2 | 33.75 | linear 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). | Flume 2 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Flume 2 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Upper 3 | 75.66 | linear feet | (b)(5) Ditch that is not an (a)(1) or | Upper 3 is a constructed or excavated channel in uplands used to convey water runoff from the |

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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| Excluded waters ((b)(1) – (b)(12)): ⁴ | | | | |
|--|----------------|-------------|--|---|
| Exclusion Name | Exclusion Size | | Exclusion ⁵ | Rationale for Exclusion Determination |
| | | | (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1). | adjacent landfill. Upper 3 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Flume 3 | 36.78 | linear 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). | Flume 3 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Flume 3 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Upper 4 | 110.03 | linear 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). | Upper 4 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Upper 4 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Flume 4 | 45.50 | linear 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). | Flume 4 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Flume 4 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |
| Upper 5 | 89.69 | linear 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). | Upper 5 is a constructed or excavated channel in uplands used to convey water runoff from the adjacent landfill. Upper 5 meets the definition of “ditch” in 33 CFR 328.3(c)(2) and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). |



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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: [Goff Branch Repair Project Construction Plans and Goff Branch Stabilization Project Construction Plans, Proposed Stabilization Work Segments spreadsheet, and Drone and On-site Photographs](#)

This information is sufficient for purposes of this AJD.

Rationale: [The information provided by or on behalf of the requestor accurately reflects the district's conclusions on the aquatic resources within the geographic boundary of the AJD Review Area.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Drone \(3 June 2020\) and On-site Photographs \(28 April 2020\) submitted by Decota Consulting Company on behalf of the requestor.](#)
- 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: [Title\(s\) and/or date\(s\).](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [1:24K Saint Albans, WV Quadrangle](#)

Other data sources used to aid in this determination:

| Data Source (select) | Name and/or date and other relevant information |
|--|--|
| USGS Sources | Other than the USGS map listed above, no other USGS sources were used. |
| 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): [A typical year occurs over a rolling thirty-year period and includes the analysis of precipitation and other climatic variables to establish a normal periodic range \(seasonally or annually\) for a specific geographic region where the aquatic resource occurs. One \(1\) point-in-time data source for 28 April 2020, the date of the site investigation completed by Decota Consulting Company, Inc., with a corresponding Antecedent Precipitation Tool \(APT\) report, was included in the evaluation for the excluded aquatic resources listed in Section II D \(Upper 1, Upper Flume 1, Upper 2, Flume 2, Upper 3, Flume 3, Upper 4, Flume 4, and Upper 5\).](#)

[According to the APT report for 28 April 2020, wetter than normal conditions were observed during the wet season with a Palmer Drought Severity Index Value of 3.4 \(severe wetness\). The antecedent precipitation condition with a score of 16 is considered "wetter than normal" for that point in time. The periodic range used for this typical year assessment was the three \(3\) 30-day periods preceding the observation date at the nearest available weather station at National Weather Service office in Charleston, West Virginia, approximately 6.3 miles southeast of the AJD Review Area within the Kanawha River watershed in HUC-8 05050008. This geographic range is appropriate because it is the same 8-digit HUC as the aquatic resources within the geographic boundary of the AJD Review Area.](#)



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C. Additional comments to support AJD: 33 CFR 328.3(b)(5) - The photographs taken by Decota Consulting Company, Inc., dated 28 April 2020, demonstrate that the aquatic resources listed in Section II D are manmade drainage ditches constructed or excavated in upland to convey water runoff from the adjacent landfill. In the photographs dated 28 April 2020, during wetter than normal conditions of the wet season, little flow was observed in the aquatic resources listed in Section II D, supporting the fact that these ephemeral ditches do not meet the flow requirements of a jurisdictional tributary. It has been determined that the aquatic resources listed in Section II D are ditches constructed or excavated in upland, exhibit ephemeral flow, are not waters of the United States per 33 CFR 328.3(b)(5), and are not subject to regulation under Section 404.