



**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): 6/26/2020
 ORM Number: LRH-2018-462-KAN (2020)
 Associated JDs: N/A
 Review Area Location¹: State/Territory: West Virginia City: Charleston County/Parish/Borough: Kanawha
 Center Coordinates of Review Area: Latitude 38.34906 Longitude -81.706075

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)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
2020 UNT 1 P	1650 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	2020 UNT 1 P is a perennial, direct tributary to Davis Creek, an (a)(2) water and direct tributary to the Kanawha River, an (a)(1) TNW, at a location outside of the area of interested (AOI). Through this path, 2020 UNT 1 P contributes surface water flow indirectly to the Kanawha River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Approximately 20 linear feet (lf) of 2020 UNT 1 P within the AOI is conveyed off-site towards Davis Creek through Culvert 1.

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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
2020 UNT 1 I	753	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	2020 UNT 1 I is an intermittent, direct tributary to Davis Creek, an (a)(2) water and direct tributary to the Kanawha River, an (a)(1) TNW, at a location outside of the AOI. 2020 UNT 1 I contributes surface water flow indirectly to the Kanawha River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Approximately 20 lf of 2020 UNT 1 I is conveyed within the AOI through Culvert 5. Up- and downstream flows are maintained on either side of the artificial structure and jurisdiction is not severed.
2020 UNT 5	413	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	2020 UNT 5 is an intermittent, direct tributary to 2020 UNT 1 P, an (a)(2) water, and is an indirect tributary to Davis Creek. Through this path, 2020 UNT 5 contributes surface water flow indirectly to an (a)(1) water, the Kanawha River, within a typical year (reference Section III B of this AJD form). Approximately 20 lf of 2020 UNT 5 is conveyed into the AOI through Culvert 8 and an additional 20 lf is conveyed within the AOI through Culvert 4. Up- and downstream flows are maintained on either side of both artificial structures and jurisdiction is not severed.
2020 UNT 7 P	481	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	2020 UNT 7 P is a perennial, direct tributary to Davis Creek, an (a)(2) water and direct tributary to the Kanawha River, an (a)(1) TNW, at a location outside of the AOI. Through this path, 2020 UNT 7 P contributes surface water flow indirectly to the Kanawha River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Approximately 30 lf of 2020 UNT 7 P is conveyed through a Culvert 1 within the updated AOI and 20 lf of 2020 UNT 7 P is conveyed Culvert 2 within the updated AOI. Up- and downstream flows are maintained on either side of both artificial structures and jurisdiction is not severed at either location.
2020 UNT 7 I	354	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	2020 UNT 7 I is an intermittent, direct tributary to Davis Creek, an (a)(2) water and direct tributary to the Kanawha River, an (a)(1) TNW, at a location outside of the AOI. Through this path, 2020 UNT 7 I contributes surface water flow indirectly to the Kanawha River an (a)(1) TNW, in a typical year (reference Section III B of this AJD form).



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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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
2020 Wetland 1 (2020 W1)	0.1151	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	2020 W1 directly abuts UNT 5, an intermittent direct tributary to 2020 UNT 1 I, an (a)(2) water, as described above. 2020 W1 directly abuts a water identified in 33 CFR 328.3(a)(2).

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
2020 UNT 2	1161	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 2 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 2a	139	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 2a is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 2b	111	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 2b is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 2c	243	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 2c is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 2d	98	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 2d is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 3	371	linear feet	(b)(3) Ephemeral feature, including an ephemeral	2020 UNT 3 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.

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	
		stream, swale, gully, rill, or pool.		
2020 UNT 3a	171	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 3a is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 4	118	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 4 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 6	87	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 6 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 7 E	754	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 7 E is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 7a	420	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 7a is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 7b	93	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 7b is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 UNT 7c	86	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	2020 UNT 7c is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
2020 Roadside Ditch 1	365	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	2020 Roadside Ditch 1 is not an (a)(1) or (a)(2) water nor was it constructed in an (a)(4) water. According to the information provided, this feature is a man-made feature, constructed in uplands and conveys ephemeral flow.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		do not satisfy the conditions of (c)(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: [Wetland Delineation and Stream Identification Report for the West Virginia Regional Technology Park Development \(Revised 22 June 2020\)](#)
This information is sufficient for purposes of this AJD.
Rationale: [The information provided by or on behalf of the applicant accurately reflects the district's conclusions on the AJD](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Aquatic Features Map \(Figure 3\) & Photographs \(Appendix A\); dated 18 December 2017, 22 December 2017, and 17 June 2020](#)
- Corps site visit(s) conducted on: [Date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [LRH-2018-462-KAN \(2018 PJD; dated 8 November 2018\)](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Web Soil Survey Report \(Appendix B\), June 2020](#)
- USFWS NWI maps: [NWI/Soil Map \(Figure 3\), June 2020](#)
- USGS topographic maps: [Site Location Map \(Figure 1\); June 2020](#)

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): A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. Two point-in-time data sources, one for 17 December 2017 and one for 19 June 2020, with a corresponding APT report, were included in the evaluation for the excluded ephemeral streams listed in Section II D (2020-UNT 2, UNT 2a, UNT 2b, UNT 2c, UNT 2d, UNT 3, UNT 3a, UNT 4, UNT 6, UNT 7 E, UNT 7a, UNT 7b, UNT 7c). According to the APT report for December 2017, normal conditions were observed during the wet season with a PSDI Value of 0.78 (incipient wetness) and an ARC score of 10. The antecedent precipitation condition is considered “normal” for that point in time. According to the APT report of June 2020, wetter than normal conditions were observed during the dry season with a PSDI Value of 4.02 (extreme wetness) and an ARC score of 17. The antecedent precipitation condition is considered “wetter than normal” for that



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point in time. In December 2017, during normal conditions of the wet season, little to no flow was observed, supporting the fact that the ephemeral streams do not meet the flow requirements of a jurisdictional tributary. Additionally, during the re-evaluation in June 2020, during wetter than normal conditions in the dry season, little to no flow was observed, supporting the fact that the ephemeral streams do not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral streams listed in Section II D, above, exhibit ephemeral flow, and are not waters of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404. Additionally, it has been determined that 2020 Roadside Ditch #1 is not a water of the United States per 33 CFR 328.3(a)(1) or (2), nor was it constructed in an adjacent wetland, per 33 CFR 328.2 (a)(4), is not considered a water of the United States per 33 CFR 328.3(b)(5), and is not subject to regulation under Section 404.

Additionally, during both December 2017 and June 2020, regular/constant and/or intermittent flow, respectively, was observed in the perennial and intermittent streams in listed above in Section II C (2020 UNT 1 P & I, 2020 UNT 5, and 2020 UNT 7 P & I). It has been determined that the perennial and intermittent streams listed in Section II C, above, exhibit perennial and intermittent flow, and are waters of the United States per 33 CFR 328.3(a)(2) and are subject to regulation under Section 404. Additionally, it has been determined that 2020 Wetland 1 (2020 W1) directly abuts a water identified in 33 CFR 328.3(a)(2). Therefore, 2020 W1 is a water of the United States per 33 CFR 328.3 (a)(4) and is subject to regulation under Section 404.

- C. Additional comments to support AJD:** During a site investigation for the previous determination, LRH-2018-462-KAN (2018 PJD), it was determined the aforementioned excluded waters in Section II D, above, were observed to be ephemeral streams and/or ditches, respectively. Additionally, the waters identified Section II C, above, were observed to be perennial/intermittent direct tributaries to Davis Creek (outside of the AOI), an (a)(2) water, and indirect tributaries to the Kanawha River, an (a)(1) TNW. The previous site investigation was conducted on 11 July 2018. According to the information provided on 22 June 2020, site conditions have not changed. However, the boundaries of the site have increased from 59.2 acre parcel to a 72.9 acre parcel and include 2020 UNT 7 P, I, & E and 2020 UNT 7a, b, & c. Based on the information provided and the APT assessment, the waters in Section II C are waters of the United States under 33 CFR 328.3(a)(2) and (a)(4), respectively, and are subject to regulation under Section 404, however, the waters in Section D are not waters of the United States under 33 CFR 328.3(b)(3) and (b)(5), respectively, and are not subject to regulation under Section 404.