



**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): 4/28/2021

ORM Number: LRH-2016-00738-OHR

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Parkersburg County/Parish/Borough: Wood

Center Coordinates of Review Area: Latitude 39.3115 Longitude -81.4868

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): within the AJD Boundary			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 7	259.38 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 7 is a direct perennial tributary to Big Run. Big Run is a direct tributary to the Ohio River, an (a)(1) TNW. Through this path, Stream 7 contributes surface water flow indirectly to the Ohio River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Stream 7 was observed to have flowing water during the July 20, 2020 site visit conducted by the authorized agent. Stream flow was driven by surface and groundwater inputs. Approximately 770 linear feet of Stream 7 are enclosed in a culvert.

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): within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				This 770 linear feet would not be part of the (a)(2) tributary. Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."

Tributaries ((a)(2) waters): within the AJD Boundary				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 9	106.01	Linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 9 is an indirect intermittent tributary to Big Run. Big Run is a direct tributary to the Ohio River, an (a)(1) TNW. Through this path, Stream 9 contributes surface water flow indirectly to the Ohio River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Stream 9 was observed to have intermittent flow during the July 20, 2020 site visit conducted by the authorized agent. Stream flow was driven by surface and groundwater inputs. Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."

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
Pond	1.05	acre(s)	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The pond is an impoundment of Stream 7, an (a)(2) water. Based on information obtained from the West Virginia Division of Highways, three (3) 42-inch diameter culverts are located at the northwest corner of the pond (off-site). The culverts convey surface water to an indirect tributary to Big Run, an (a)(2) water. Big Run is a direct tributary to the Ohio River, an (a)(1) TNW. Through this path, the Pond contributes surface water flow indirectly to the Ohio River, an (a)(1) TNW, in a typical year (reference Section III B of this AJD form). Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	0.14	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 physically abuts the on-site Pond, an (a)(3) impoundment to an (a)(2) perennial tributary. Section III B of this AJD form for typical year assessments. Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."



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Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 2	0.14	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 2 physically abuts Stream 7, a perennial (a)(2) tributary. Section III B of this AJD form for typical year assessments. Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stream 1	183.26	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 1 is an ephemeral stream and meets the definition of "ephemeral" in paragraph 33 CFR 328.3 (c)(3). Reference Section III B of this AJD form for typical year assessments. Refer to the enclosed map entitled "Pope Properties Emerson Commons Aquatic Assessment Proposed AJD Revision."
Stream 2	34.72	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for Stream 1
Stream 3	80.03	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for Stream 1
Stream 4	62.08	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	See Rationale for Stream 1
Stream 5	232	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Rationale for Stream 1
Stream 8	106.45	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	See Rationale for Stream 1

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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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: “Revised Aquatic Resource Assessment, Emerson Commons Development, Emerson Commons, Blvd, Parkersburg, Wood County, West Virginia” (dated 13 August 2020; 2020 Delineation Report), the Pope Properties Emerson Commons Aquatic Resource Assessment Proposed AJD Revision received on 4 March 2021, and the wetland data sheets for Wetlands 1 and 2 received on 4 March, 2021. The aforementioned submittals were received by Terradon Corporation on behalf of Pope Properties, LLC. The “Construction Plan WV Route 68 STA. 15+00 to STA. 114+00 obtained through the West Virginia Division of Highways.

This information is sufficient for purposes of this AJD.

Rationale: The information provided 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: N/A
- Photographs: Aerial and Other: Aerial maps accessed through Digital Globe dated 2020-12-13, 2019-03-26, 2016-11-06 – dates are those listed in Digital Globe)
- Corps site visit(s) conducted on: N/A
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: “Custom Soil Resource Report Map for Wood and Wirt Counties, West Virginia” provided in the August 2020 Delineation Report
- USFWS NWI maps: Huntington District Regulatory Viewer – NWI Mapping
- USGS topographic maps: Huntington District Regulatory Viewer

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset (NHD) accessed in the Huntington District Regulatory Viewer
USDA Sources	Other than the Web Soil Survey Report listed above, no other USDA sources were used.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	National Flood Hazard Layer accessed in the Huntington District Regulatory Viewer; Historic Topographic Maps dated 1927, 1938, 1948, 1959, 1962, 1967, 1976, 1987, 1991, 1998, 2014, and 2016, accessed from historicaerials.com

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 resources occur. One (1) point-in-time data source, 20 July 2020, with a corresponding APT report, was included in the evaluation for the excluded ephemeral Streams 1, 2, 3, 4, 5, 6 and 8 as listed in Section II D. The APT data was also included in the evaluation of the (a)(2), (a)(3), and (a)(4) waters, as listed in Section II C and III C. The (a)(2), (a)(3), and (a)(4) waters, as listed in Section II C and III C, contribute flow, directly or indirectly, to an (a)(1) water, the



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Ohio River, in a typical year. According to the APT report for 20 July 2020, normal conditions were observed during the dry season with a Palmer Drought Severity Index (PDSI) of severe wetness. The antecedent precipitation condition with a score of 12 is considered “normal” for that point in time. The periodic range used for this typical assessment was the three (3) 30-day periods preceding the observation date and the nearest available weather stations (Parkersburg Wood CO AP, Vienna 0.7 WNW, Parkersburg, and Marietta Lock 1) within the Upper Ohio-Little Kanawha River watershed in the Hydrologic Unit Code (HUC) 050030201. 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.

C. Additional comments to support AJD:

33 CFR 328.3(a)(2) – During normal conditions of the dry season (July 2020), Streams 7 and 9, as listed in Section II C, demonstrated regular or intermittent flow, meeting the requirements of jurisdictional tributaries. These waters contribute flow, directly or indirectly, to an (a)(1) water, the Ohio River, in a typical year. It has been determined that the perennial and intermittent waters listed in Section II C of this AJD form are waters of the United States under 33 CFR 328.3(a)(2) and are subject to regulation under Section 404 of the Clean Water Act (Section 404).

33 CFR 328.3(a)(3) – During the normal conditions of the dry season, the Pond, was a standing body of open water meeting the requirements of a jurisdictional (a)(3) impoundment. This water contributes flow indirectly to an (a)(1) water, the Ohio River, in a typical year. It has been determined that the Pond listed in Section II C of this AJD form is a water of the United States under 33 CFR 328.3(a)(3) and is subject to regulation under Section 404.

33 CFR 328.3(a)(4) – Wetland 1 and Wetland 2 directly abut perennial (Stream 7) or an impoundment of Stream 7, (a)(2) and (a)(3) waters, respectively, as evidenced by the submitted wetland delineation report, aerial photography, and 3DEPElevation mapping. It has been determined that Wetland 1 and Wetland 2, listed in Section II C of this AJD form, are waters of the United States per 33 CFR 328.3(a)(4) and are subject to regulation under Section 404.

33 CFR 328.3(b)(3) - In July 2020, during normal conditions of the dry season, no flow was observed by the authorized agents, Terradon Corporation, in Streams 1, 2, 3, 4, 5, 6, and 8 supporting the determination that the ephemeral streams do not meet the flow requirements of jurisdictional tributaries. It has been determined that the ephemeral streams listed in Section II D above exhibit ephemeral flow, are not waters of the United States. per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404 of the Clean Water Act (Section 404).