



**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): 4/8/2021

ORM Number: SWL-2021-00101

Associated JDs: N/A.

Review Area Location¹: State/Territory: Arkansas City: Bentonville County/Parish/Borough: Benton

Center Coordinates of Review Area: Latitude 36.30215 Longitude -94.24785

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	
EPH-01 (intermittent reach of channel)	760 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The reach of channel immediately exiting OW-2 (Pond 2) and flowing south to the project boundary supports indicators of intermittent flow, including: mapped on NHD, aerial photographs indicate surface water/flow in multiple years, flow was observed during consultant field visit and Corps site visit during period identified by APT as normal conditions.	

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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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
OW-2 (Pond 2)	0.4	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.	Man-made pond that contributes water downstream into EPH-01 (determined to be an intermittent reach downstream of pond). Therefore, the pond is directly connected to an (a)(2) water.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
WET-B	2	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland feature that directly abuts intermittent reach of EPH-01 (an (a)(2) water). The wetland supported primarily emergent communities, with areas of forested wetlands interspersed.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
OW-1 (Pond 1)	0.2	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).	Man-made pond constructed in uplands. Feature abuts WET-A; however, wetland feature is a non-adjacent wetland and neither WET-A or Pond 1 contribute water directly or indirectly to (a)(1) through (a)(4) waters.
DD-01	708	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).	Man-made ditch constructed in non-adjacent wetlands. Features extends from western project boundary east/southeast into OW-2 (man-made pond). Area surrounding ditch supports non-adjacent wetlands (WET-A).

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	
WET-A (Wetland A)	5.6	acre(s)	(b)(1) Non-adjacent wetland.	Emergent wetland area that is located in uplands and is not connected to (a)(1) - (a)(3) waters. Ditch feature (DD-1) is adjacent, however, this feature is a non-regulated man-made ephemeral ditch (b)(5).
WET-B (Wetland B)	2.2	acre(s)	(b)(1) Non-adjacent wetland.	Non-adjacent wetland that is not connected to nearby (a)(2) - (a)(4) waters. Wetland area is near WET-C and EPH-01; however, it is separated by uplands.
WET-D (Wetland D)	0.2	acre(s)	(b)(1) Non-adjacent wetland.	Forested wetland that is surrounded entirely by uplands.

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: [Delineation of Proposed Morningstar Subdivision Development, Bentonville, Benton County, Arkansas by FTN Associates, Ltd. dated March 17, 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A.](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

☒ Photographs: [Aerial and Other: Aerial photography \(Google Earth 1994-2020; USGS\); photos provided by FTN \(March 2021\); photos collected during Corps site visit \(March 31, 2021\).](#)

☒ Corps site visit(s) conducted on: [March 31, 2021.](#)

☐ 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: [Soil Survey of Benton County, Arkansas \(1977\); Web Soil Survey 3.3](#)

☒ USFWS NWI maps: [Wetland Inventory Mapper.](#)

☒ USGS topographic maps: [Bentonville South, AR \(1970, 1982\); Centerton, AR \(1982\).](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	NHD and Lidar (The National Map)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Antecedent Precipitation Tool (APT), Version 1; ORM layers
State/Local/Tribal Sources	N/A.
Other information (specify)	Weather reporting station KARBENTO46 (accessed using WeatherUnderground website)

B. Typical year assessment(s): [APT was access for the period of the FTN field investigation \(March 9, 2021\) and again for the period corresponding to the Corps site visit \(March 31, 2021\). The March 9, 2021, period \(wet season\) was identified as normal conditions, with slightly above average precipitation in](#)



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December/January, below average for February/March. The period nearest FTN's field investigation was slightly drier than normal (although overall identified as normal conditions). The period near March 31, 2021, (wet season) was identified as normal conditions, although the preceeding month's rainfall was slightly higher than that listed in the 70th percentile (observed was 3.3 inches vs. historical 3.2 inches). Overall, normal conditions were observed during both field investigations.

- C. Additional comments to support AJD:** The wetland delineation conducted by FTN Associates indicated that all features observed were likely non-regulated due to connection by an ephemeral channel and/or a man-made ditch. However, a reach of the channel identified as EPH-01 supports intermittent flow (based on field investigation, APT data, NHD, and aerial photography) and is directly abutting/connected to WET-C (Wetland C) and to OW-2 (man-made pond). Therefore, the intermittent reach of channel (EPH-01), WET-B, and OW-2 would all be regulated due to direct connection to an (a)(2), (a)(3), or (a)(4) water. The feature identified as DD-01, a man-made ephemeral ditch ((b)(5) water), would not be regulated, therefore, WET-A (Wetland A, an emergent wetland) and OW-1 (man-made pond) that abut the ditch would not qualify for jurisdiction under the NWPR. WET-B (non-adjacent, emergent wetland with sparse tree cover interspersed) and WET-C (a forested wetland surrounded by uplands), are non-jursidictional due to non-adjacency to (a)(1) through (a)(3) waters.