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): 5/28/2021
ORM Number: SWL-2019-00025
Associated JDs: None
Review Area Location[1]: State/Territory: Arkansas City: Bentonville County/Parish/Borough: Benton
Center Coordinates of Review Area: Latitude 36.310927° Longitude -94.252331°

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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Intermittent Tributary to Osage Creek	587	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The Intermittent Tributary has a well-defined channel that contained continuously-flowing surface water during USACE's November 10, 2020 field inspection, but did not contain continuously-flowing surface water during the applicant agent's September 27, 2016 delineation. The continuous flow of surface water during USACE's field inspection was not in direct response to precipitation. The tributary indirectly contributes surface water flow to the Illinois River (an (a)(1) water) emptying first into Little Osage Creek (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.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				perennial (a)(2) tributary) which flows into Osage Creek (a perennial (a)(2) tributary) which connects to the Illinois River which turns into an (a)(1) water (traditionally navigable) northeast of Tahlequah, OK at River Mile 75.7. See III. Supporting Information below for details.

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
N/A.	N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Non-adjacent Wetland	0.26	acre(s)	(b)(1) Non-adjacent wetland.	The Non-Adjacent Wetland exhibits the requisite type of vegetation, soils, and hydrology necessary to be classified as a wetland and is in what appears to be a manmade depression (possibly a farm pond) surrounded by uplands. There are no direct hydrologic connections, whether by channel, natural or artificial feature, or by flood in a typical year, between the wetland and an (a)(1), (2), or (3) water. See III. Supporting Information below for details.
Ephemeral Channel	470	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Although portions of the ephemeral feature have a fairly-defined channel, the channel did not contain flowing surface water or pooling during either USACE's November 10, 2020 field inspection or the applicant's agent's field delineation. The Ephemeral Channel only contains flowing water or pooling in response to a precipitation event. See III. Supporting Information below for details.

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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.

[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.

☒ Information submitted by, or on behalf of, the applicant/consultant: Delineation of Potential Section 404 Issures of the Proposed Project Aurora, Bentonville, Benton County, Arkansas (September 30, 2016) prepared by FTN Associates, Ltd.

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: Representative Photos from the September 30, 2016 Delineation report; Aerial photographs from Google Earth (accessed on 11/5/20), DigitalGlobe (accessed on 11/5/20), and HistoricAerials.com (accessed on 11/5/20)

☒ Corps site visit(s) conducted on: November 10, 2020

☐ 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: Web Soil Survey (accessed on 11/5/20) indicated several soil types across the proposed subdivision development area (see 5/27/21 copy of query results)

☒ USFWS NWI maps: National Wetland Inventory (NWI) data viewed on the USFWS Wetlands Mapper (accessed on 11/5/20)

☒ USGS topographic maps: Centerton, AR 7.5 minute topographic quadrangles from 1971, 2011, 2014, 2017, and 2020

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) and LiDAR data from USGS National Map Viewer (accessed on 11/5/20)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	GIS data available on USACE Little Rock District network
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): According to the Antecedent Precipitation Tool (APT) analysis of the applicant agent's September 27, 2016 field delineation date, wetness conditions for the Centerton and Bentonville area were drier than normal, which would account for the lack of surface flow water in the Intermittent Tributary and Ephemeral Channel. Additionally, no precipitation is recorded on September 27, 2016 in the nearby Gravette and Fayetteville weather stations. The APT analysis of USACE's November 10, 2020 field inspection date indicates normal wetness conditions. USACE observed continuously-flowing surface water in the Intermittent Tributary while the Ephemeral Channel did not contain water. Light rain fell on November 10, 2020.

C. Additional comments to support AJD: The reviewed USGS topographic maps, USGS NHD data, USFWS NWI data depict the Intermittent Tributary and Ephemeral Channel as intermittent streams. Additionally, the Non-Adjacent Wetland is depticted as an isolated pond on the same reviewed datasources. The topographic maps from 2011 through 2020, the USGS NHD data, and the USFWS NWI data show an additional intermittent stream flowing westward across the subdivision development area in more-or-less an east-west orientation. The channel is depicted crossing just north of the Non-Adjacent Wetland and is faintly visible in most aerials and in the LiDAR data. The stream channel was not observed

during the 2016 delineation or was indistinguishable in the improved pasture landscape prevalent across proposed subdivision development area at the time. Subdivision construction was already underway when USACE conducted the 2020 field inspection, and the additional intermittent stream was not observed then either. Although topographic maps, NHD, and NWI data show the delineated Ephemeral Channel as intermittent and also depict the additional intermittent stream north of the delineated Non-Adjacent Wetland, field observations from both the 2016 and 2020 field visits indicate that the Ephemeral Channel is indeed ephemeral and that the additional intermittent stream is either no longer present or so minimal or slight that it can no longer be distinguished as a stream channel.

Aerial photographs also support the intermittent and ephemeral stream classifications. Although difficult to see given the obscuring trees, when visible in aerial photographs, there is never any visible water in the Ephemeral Channel. Some aerial photographs show possible water in and greater distinction of the additional intermittent stream channel, but by 2010 it is all but indistinguishable as a stream channel. Representative photographs from the applicant agent's delineation and USACE's field inspection also support the stream and wetland classifications described herein.

There are a few minor discrepancies between the length and area of the aquatic resources provided by the applicant's agent and what was measured by USACE. For example, the applicant's agent reported mapping approximately 724 linear feet of the Intermittent Stream and 0.21 acres for the Non-Adjacent Wetland, while USACE documented approximately 587 linear feet of the Intermittent Stream within the project area and measured the Non-Adjacent Wetland at approximately 0.26 acres. Given that the Non-Adjacent Wetland is non-jurisdictional, fill material discharges into it are not an issue. Proposed discharges into the Intermittent Tributary would be limited to two locations for stormwater outfalls.

This jurisdictional determination is specific to an approximately 77-acre property located in Centerton, Benton County, Arkansas. The property lies Scoggins Road between Rainbow Farm Road and Morning Star Road. The area of the delineation is mapped on the Centeron, AR U.S. Geological Survey (USGS) 7.5 minute topographic quadrangle. The legal description is NW ¼ of section 23, T. 19 N., R. 31 W. Coordinates of the approximate property center are 36.310927° N, -94.252331° W. The property is located in the Illinois watershed ([HUC_8] 11110103), a watershed of approximately 757.73 square miles. The review area contains one jurisdictional intermittent stream (Intermittent Tributary) and two non-jurisdictional features (Ephemeral Channel and Non-Adjacent Wetland). The entire property is located within a FEMA Flood Zone X (unshaded) indicating 500-year floodplain of minimal flood hazard.

PREPARED BY:

James D. Beers

Digitally signed by James D. Beers
Date: 2021.05.28 19:06:14 -05'00'

James Beers
Archaeologist & Regulatory Project Manager