



**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): 9/18/2020

ORM Number: CELRP-RG-S 2019-00232

Associated JDs: N/A

Review Area Location¹: State/Territory: West Virginia City: Elkins County/Parish/Borough: Randolph County

Center Coordinates of Review Area: Latitude 38.918709 Longitude -79.856698

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
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
Wetland 2	0.064 acre(s)	(b)(1) Non-adjacent wetland.	The final rule describes adjacent wetlands that can be physically separated from another a(1)-a(3) water by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection to the a(1) – a(3) water in a typical year. In this case, Wetland 2 does is physically separated by a berm that surrounds the entire junkyard and is non-adjacent due to the lack of outfall within the berm. As documented in their NPDES Permit No. WV0116955, the berm is to be inspected regularly ensuring that no...”point source of storm water [is] to leave the site without being a permitted outfall.” The boundary of this wetland is physically surrounded by upland, and overland flow that could occur from here would eventually be directed into the treatment channel.
Pond 1	0.085 acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Pond 1 lacks a surficial connection to another water (jurisdictional or otherwise). Similar to Wetland 2, Pond 1 is physically surrounded by upland area, and where overland flow would occur, the berm surrounding the junkyard would restrict potential flows from exiting the site from anywhere but through the treatment channel. Pond 1 lacks the ability to contribute surface water flow directly or indirectly to a downstream jurisdictional water.
Proposed treatment channel	300 linear feet	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	An extension to the existing treatment channel is visible in submitted photographs as an excavated ditch in upland. This channel appears to convey stormwater into the water treatment structure and is excluded as a feature of the existing stormwater control system.

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: Potesta Report dated 5 June 2020; 28 Aug. 2020 JD boundary map; 14 Sept. 2020 photographs from Barry Bledsoe.

This information is sufficient for purposes of this AJD.

Rationale: The Report included a wetland delineation & stream identification report and photographs of areas around the site (additional photographs were received later as well). The JD boundary map helped us to see which aquatic features were within the review area. Information received

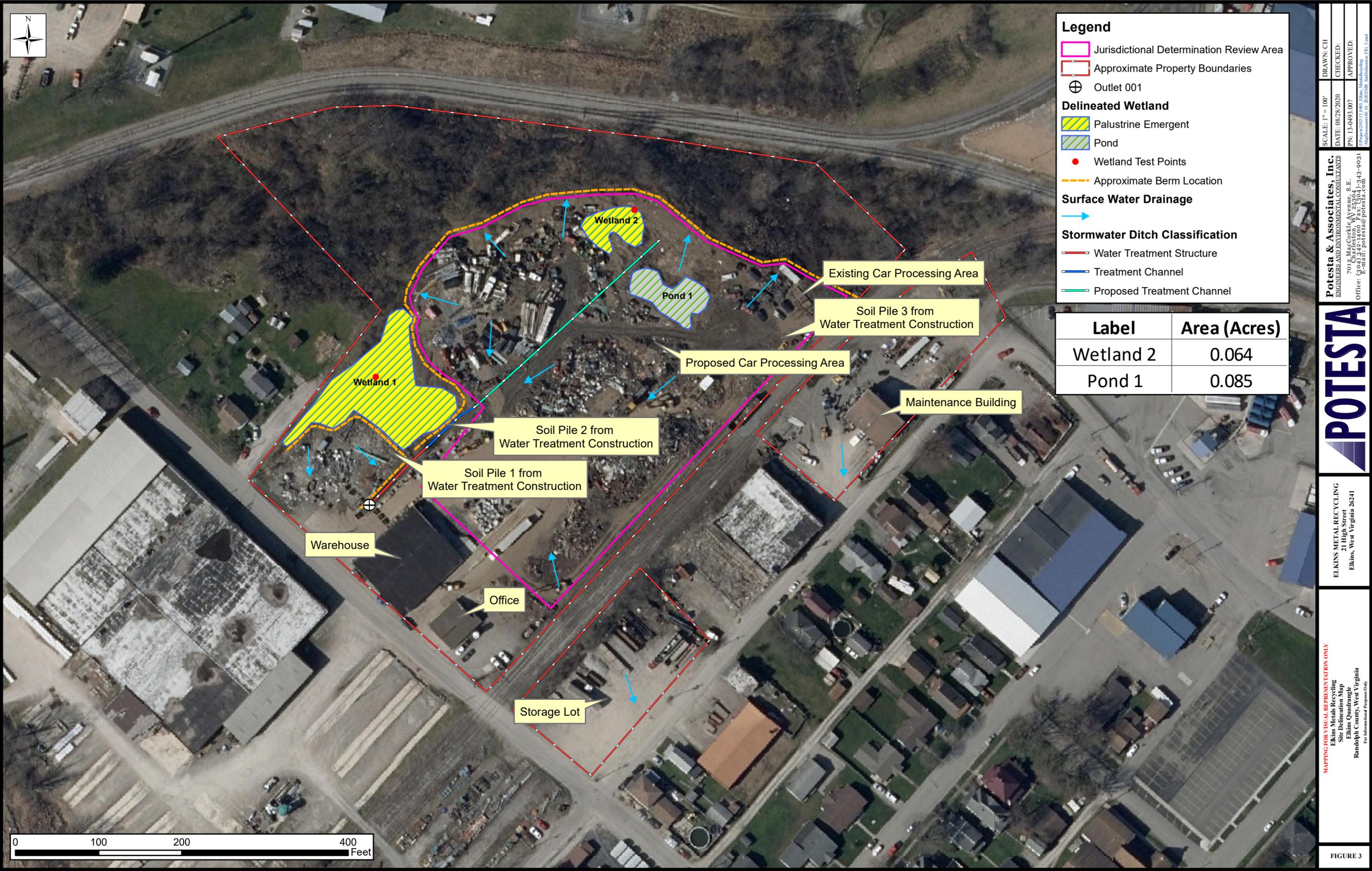
- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Other: Photographs from 5 Potesta Report; Barry Bledsoe photographs – wetland 2 & proposed treatment channel
- Corps site visit(s) conducted on: Date(s).
- Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: 3 June 2020; custom soil report with Potesta Report
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: Title(s) and/or date(s).

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): N/A

C. Additional comments to support AJD: Run-off that would occur within the JD review area appears to be contained by the existing berm that directs flow into either Wetland 2, Pond 1, or into the water treatment structure via the treatment channel. Wetland 2 & Pond 1 do not have a surficial connection nor would they have a nexus via overland flow or flooding in a typical year to an “a(1-3)” jurisdictional water and are excluded. The water treatment channel is categorically excluded as it is stormwater control feature.



Legend

- Jurisdictional Determination Review Area
- Approximate Property Boundaries
- ⊕ Outlet 001

Delineated Wetland

- Palustrine Emergent
- Pond

- Wetland Test Points
- Approximate Berm Location

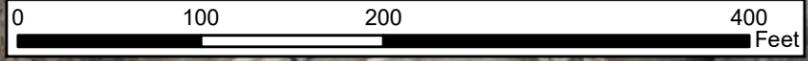
Surface Water Drainage

-

Stormwater Ditch Classification

- Water Treatment Structure
- Treatment Channel
- Proposed Treatment Channel

Label	Area (Acres)
Wetland 2	0.064
Pond 1	0.085



SCALE: 1" = 100'
 DATE: 08/28/2020
 PLS: 13-0493.007
 Project: 2013.0991_Elkins_Metals_Recycling
 Map Documents: 06_01_2020_DATE_SiteDelineation_P03_1.mxd

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ELKINS METAL RECYCLING
 21 High Street
 Elkins, West Virginia 26241

MAPPING FOR VISUAL REPRESENTATION ONLY
 Elkins Metals Recycling
 Site Delineation Map
 Elkins Quadrangle
 Randolph County, West Virginia
 For Informational Purposes Only

FIGURE 3