

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 1/3/2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVR; IDALS Indiana West AML, 2016-30

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Iowa County/parish/borough: Marion City: Attica
Center coordinates of site (lat/long in degree decimal format): Lat. 41.203° N, Long. -93.002° W.
Universal Transverse Mercator: 499807.98, 4561298.84

Name of nearest water body: Unnamed Tributary to North Cedar Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Des Moines River

Name of watershed or Hydrologic Unit Code (HUC): 07100009

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: 1/3/2017
 Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 2,200 linear feet Intermittent stream, .56 acres open water (pond)
Wetlands: 1.13 Acres

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **Pond 4 (2.71 acres) is located in the South East corner of the project area and shows no connection to any other WUS as it appears to be a deep scour remnant from mining operations on aerial maps, ground photos and lidar. Defined in Section 3C below.**

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 674 acres

Drainage area: 46 acres

Average annual rainfall: 32-34 inches

Average annual snowfall: 30 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through tributaries before entering TNW.

Project waters are 10-15 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 10-15 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵: Waters leave the project site traveling South via an unknown tributary to the North Cedar Creek, Intersects with Cedar Creek & after 10+ miles the waterway connects with the Des Moines River which is a TNW.

Tributary stream order, if known:.

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: The streams are located within an old strip mine on the Northern portions however as the streams leave the property they return to their natural pre-mining state.

Tributary properties with respect to top of bank (estimate):

Average width: 10 feet (lidar determination)

Average depth: 1-2 feet

Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: .
 Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Most of the tributaries length have been converted to a roadside ditch, however the upper portion of the streams is exhibiting steep to undercut banks showing a matted or absent vegetation and sediment sorting (ascertained from provided pictures).

Presence of run/riffle/pool complexes. Explain: No mention in the delineation.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: seasonal.

Other information on duration and volume: .

Surface flow is: **Discrete and confined.** Characteristics: channelized and visible.

Subsurface flow: **No.** Explain findings:

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list): .
 Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Not identified in the delineation but the ponds that discharge into them have brown/grey water with moderate turbidity which would lead us to expect somewhat clear yet silty water.

Identify specific pollutants, if known: mine remnants such as iron and limestone

(iv) Biological Characteristics. Channel supports (check all that apply):

Riparian corridor. Characteristics (type, average width):

Wetland fringe. Characteristics: Habitat for: invertebrates and amphibians

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: While fish and other species were not identified as present when the site investigation was completed it should be expected that due to the streams intermittent nature and depth macro-invertebrates, amphibians and other micro-invertebrate species should be expected to reside in the stream and its corridor.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: 1.13 (cumulative) acres

Wetland type. Explain: Emergent, Wet Meadow

Wetland quality. Explain: Poor, Wetlands are located in an old strip mine.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Seasonal flow.

Surface flow is: **Ephemeral**

Characteristics: Surface drainage connections can be seen on Lidar and aerial photo's extending from the identified wetlands into the ponds and waterways, which terminate in a RPW, unnamed tributary to North Cedar Creek which eventually becomes North Cedar Creek, then Cedar Creek and eventually connects with the Des Moines River a TNW.

Subsurface flow: **No**. Explain findings: The wetlands are connected to the NON-RPWs onsite via overland flow.

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection.

Ecological connection. Explain:

Separated by berm/barrier/man-made structures. Explain

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Water clarity stated as brown/grey in regards to the ponds so the presence of silt and other potential contaminants is presumed present in the wetlands as well.

Identify specific pollutants, if known: None identified however this area should be expected to exhibit high levels of iron, acidity, silt and manganese due to the mining activity previously completed onsite.

(iii) Biological Characteristics. Wetland supports (check all that apply):

Riparian buffer. Characteristics (type, average width):

Vegetation type/percent cover. Explain: Nearly 100% cover in wetlands by primarily FAC, FACW and Obligate vegetation.

Habitat for:

Federally Listed species. Explain findings: None observed.

Fish/spawn areas. Explain findings: No standing water observed.

- Other environmentally-sensitive species. Explain findings: No environmentally sensitive species observed.
- Aquatic/wildlife diversity. Explain findings: Aquatic wildlife not observed.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: WL-1 (.10 acres), WL-2 (.21 acres), WL-3 (.13 acres), WL-4 (.02 acres), WL-5 (.11 acres), WL-6 (.08 acres), WL-7 (.3 acres).

List and describe (Emergent, scrub/shrub, forested) the wetlands: Emergent.

Approximately 1.13 acres and are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
WL-1 N	.10 acres	WL-2 Y	.21 acres
WL-3 Y	.13 acres	WL-4 N	.02 acres
WL-5 N	.11 acres	WL-6 N	.08 acres
WL-7 N	.30 acres		

Summarize overall biological, chemical and physical functions being performed: The wetlands provide some storm water detention, sediment detainment, and pollution control. Small invertebrates and amphibians would be expected to prosper in such a wetland however none were specifically observed during the field visit. Sediment detainment is a general function of any similar wetland and while it wasn't described as observed during the wetland delineation by Terracon it is presumed to be occurring. The functions/benefits in regards to pollution are the filtration of the remnants of mine spoils including Iron and limestone.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- a. Terracon has identified three intermittent tributaries (Drainage 1, 2, and 3) that travel from the identified wetlands and ponds into the unnamed tributary to North Cedar Creek after they leave the project area. The tributaries total 2,200 linear feet and exhibit an OHWM with a natural line impressed on the bank, presence of litter and debris, vegetation matted down, sediment sorting and scour. The descriptions of the drainage ways did not define these characteristics they were observed in the ground photos provided in the delineation. These streams appear to exhibit a 1-2 foot deep channel with varying widths. Once the streams leave the property they directly connect with an unnamed tributary to North Cedar Creek. This terminates into North Cedar Creek, which becomes Cedar Creek which shortly thereafter empties into the Des Moines River, a TNW. The wetlands identified as Wetland 1, 2, 3, 4, 5, 6 and 7 in the wetland delineation report provided by Terracon total 1.13 acres in area. The ponds identified in the delineation report total .56 acres in area (Attachment #1).
 - b. The relevant reach for this wetland complex extends from the wetlands through the ponds and streams which connect with the the non-navigable, permanent waterway identified as an Unnamed Tributary to North Cedar Creek. This tributary empties into North Cedar Creek, which becomes Cedar Creek and eventually the Des Moines River. We have determined that the point where the intermittent streams identified in the delineation as drainage way 1 and 3 connect with the unnamed tributary to North Cedar Creek, defines the extent of our review area due to the guidance on page 41 of the USACE Jurisdictional Determination Form Instructional Guidebook with very similar conditions. In researching historical aerial photography the Corps has found that the non-rpw's identified on-site have had a direct connection to the relatively permanent waterway, unnamed tributary to North Cedar Creek for at least 20+ years on aerial photography and the stream identified as an unnamed tributary to North Cedar Creek appears to be present pre and post-mine construction in the 1960's.
 - c. We have determined that the evaluated wetlands 1, 2, 3, 4, 5, 6 and 7; and ponds 1, 2, 3 and 5 as identified by Terracon (and any other wetlands similarly situated in the watershed) possess significant flood storage capacity due to the relatively small size of their drainage area (approximately 1.69 acres cumulatively, ~60 acres drainage area). They do have a significant nexus due to the fact that they are the only wetlands and ponds present in their immediate drainage area of the review area and there are very few present in the immediate watershed of the unnamed tributary to North Cedar Creek. The Des Moines River watershed has seen an increase to the frequency of flooding in the area due to a lack of riparian corridors in the TNW watershed.
 - d. The physical hydrological connection between the wetlands, ponds and the downstream TNW are dependent on the amount of precipitation that accumulates on the drainage area, as overland flow is the primary form of hydrologic connection. We (Corps) has calculated that the drainage area for the wetlands is about 60 acres using the USGS topographic map and the reported conditions in the delineation by Terracon. They identify that the stream was observed exhibiting a slow flow in connection with the unnamed tributary to North Cedar Creek. The overland hydrologic connection between the waterways and eventually the downstream RPW identified as the unnamed tributary to North Cedar Creek is discrete. The wetlands are connected to the on-site intermittent streams through overland flow such as upland swales and other abutting wetlands/ponds. The wetlands would only be expected to exhibit a direct connection during high precipitation events.
 - e. Contaminants (silt, iron, manganese, highly acidic soil) entering the evaluated wetlands due to the previous mining activities and from overland flow in the drainage area are filtered out by the wetlands and ponds prior to reaching the perennial stream (unnamed tributary to North Cedar Creek) in which it flows for approximately 1 mile before emptying into North Cedar Creek which eventually disperses into Cedar Creek, and then the Des Moines River which is a TNW. A general function of any such wetland is the filtration of contaminants which are present due to the neighboring activities. It can be reasonably assumed that the contaminants attached to the sediment particles released by erosion in the abandoned high wall are being filtered. This wetland/stream complex provides a much needed filter to prevent contaminants and sediments from entering the watershed. The tributaries exhibited flow during the observation period, the month of December 2015 shows above average rainfall as determined using the WETS tables, while the consultants were on site. Due to its proximity to previous mining activities and the spoils resulting in them the streams provide a direct pathway for pollutants such as iron, manganese, highly acidic soil and suspended sediment to the downstream TNW.
 - f. In reference to the same reasons just cited, organic carbon derived from detritus decomposition, and nutrients within the evaluated wetlands are likely to reach the down slope RPW, and in turn the down slope TNW. These organic carbons are used by downstream organisms as a source of food which increases the overall food chain in the Des Moines River. Due to the hydrologic connection, this provides a benefit to the biological food webs within the RPW and TNW. It has been identified by the IA DNR that the Des Moines River has a biological impairment and must be monitored due to high TMDL values. State and Federal endangered mussel habitat is known to occur downstream of where the RPW discharges into the TNW. They are specifically vulnerable to an increase of sediment in the water and the chemicals that they ingest while filtering the water they live in. The wetlands provide a biological significant nexus to the TNW by filtering out these contaminants that would otherwise enter the TNW and adversely affect the biological integrity of downstream TNW's.
 - g. Based on the above, we have determined that the wetlands identified as Wetlands 1, 2, 3, 4, 5, 6 and 7 (totaling 1.13 acres) as well as the intermittent streams drainage way 1, 2 and 3(totaling 2,200 linear feet) and the ponds 1, 2, 3 and 5 (totaling .56 acres) as described in Terracons's wetland delineation report possess more than a speculative capacity to

provide a substantial or measurable effect on the biological, chemical and physical integrity of the proximate TNW (Des Moines River).

- h. The Pond identified as Pond 5 does not exhibit a significant nexus to downstream TNW's. It is a man-made pond that has very high steep banks. The rim of the pond appears (pictures provided by applicant and on LIDAR) to be higher than the surrounding area and no discrete connections could be observed when looking at historical aerial photographs nor on LIDAR maps, it is therefore non-jurisdictional as it does not possess a significant nexus to the downstream TNW.

- 3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

- 1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
- Wetlands adjacent to TNWs: acres.

- 2. **RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:.
- Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters:.
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

- 3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: **2,200** linear feet 6-10 average width (ft).
 - Other non-wetland waters: **.56** acres.
- Identify type(s) of waters: **Ponds 1, 2, 3 and 5.**

- 4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:.
 - Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

- 5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area:

- 6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

⁸See Footnote # 3.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **1.13** acres (Wetlands 1, 2, 3, 4, 5, 6 and 7).

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: .
 Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .
 Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
 Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: See (3.) (C.) above: **Pond 4.**
 Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams):.
 Lakes/ponds: 2.71 acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: acres

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams):
 Lakes/ponds: 2.71 acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: acres

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

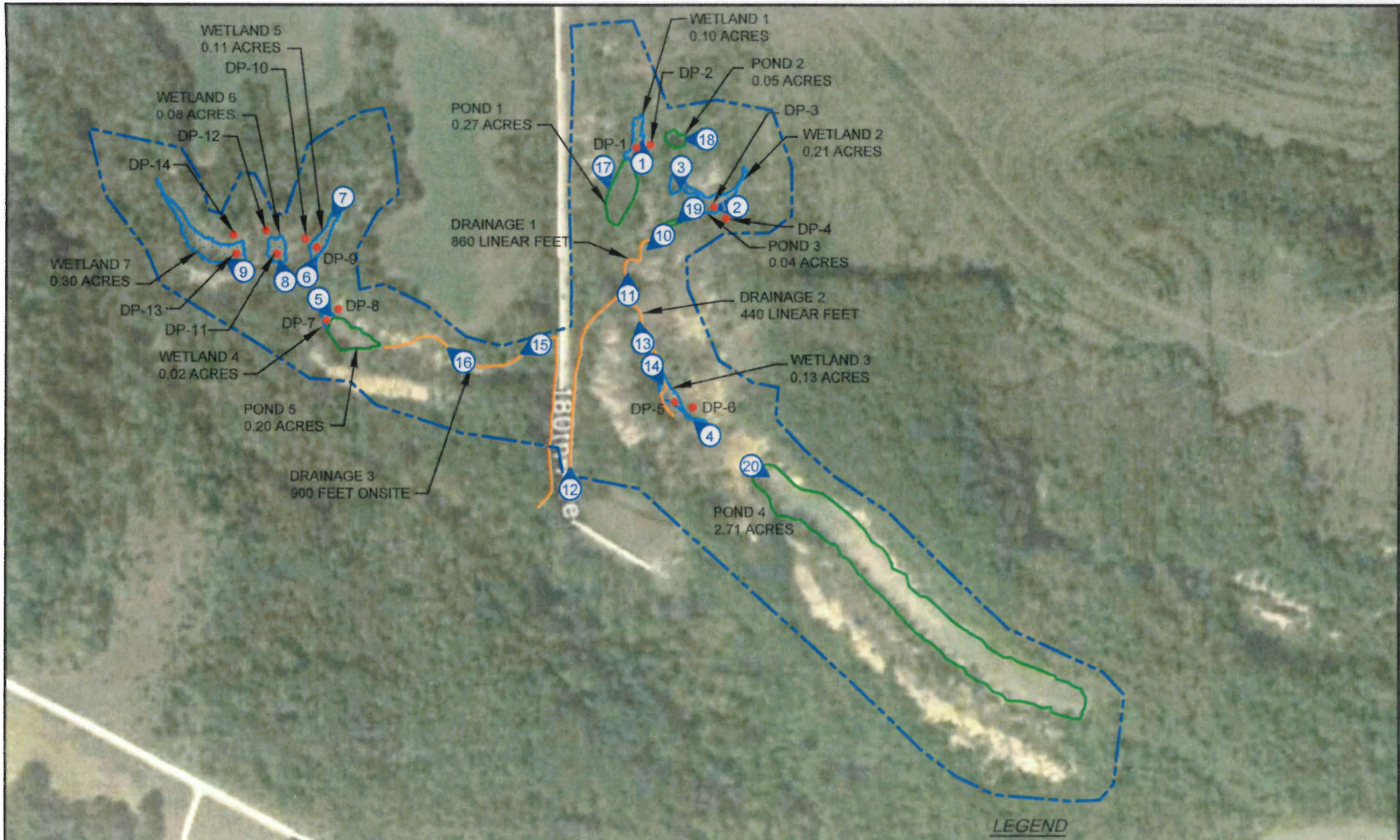
- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Materials submitted with application by Terracon in a wetland delineation report.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

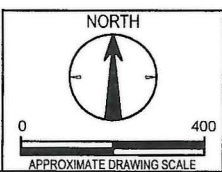
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000; Attica, IA (Exhibit 1, delineation report).
- USDA Natural Resources Conservation Service Soil Survey. Citation: Exhibit 3, delineation report.
- National wetlands inventory map(s). Cite name: Exhibit 2, delineation report
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 1930, 1950, 1960, 1970, 1980, 1990, 2002, 2004, 2006, 2008, 2010, 2013 and 2014 (&CIR).
- or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): Attachment 1: Wetland Location Map (Exhibit 5, delineation report), Attachment 2-4: Lidar of wetland drainage area

B. ADDITIONAL COMMENTS TO SUPPORT JD:



LEGEND

- BOUNDARY OF ASSESSED AREA
- WETLAND AREA
- DATA POINT LOCATION
- PHOTO LOCATION & DIRECTION
- DRAINAGE
- OPEN WATER



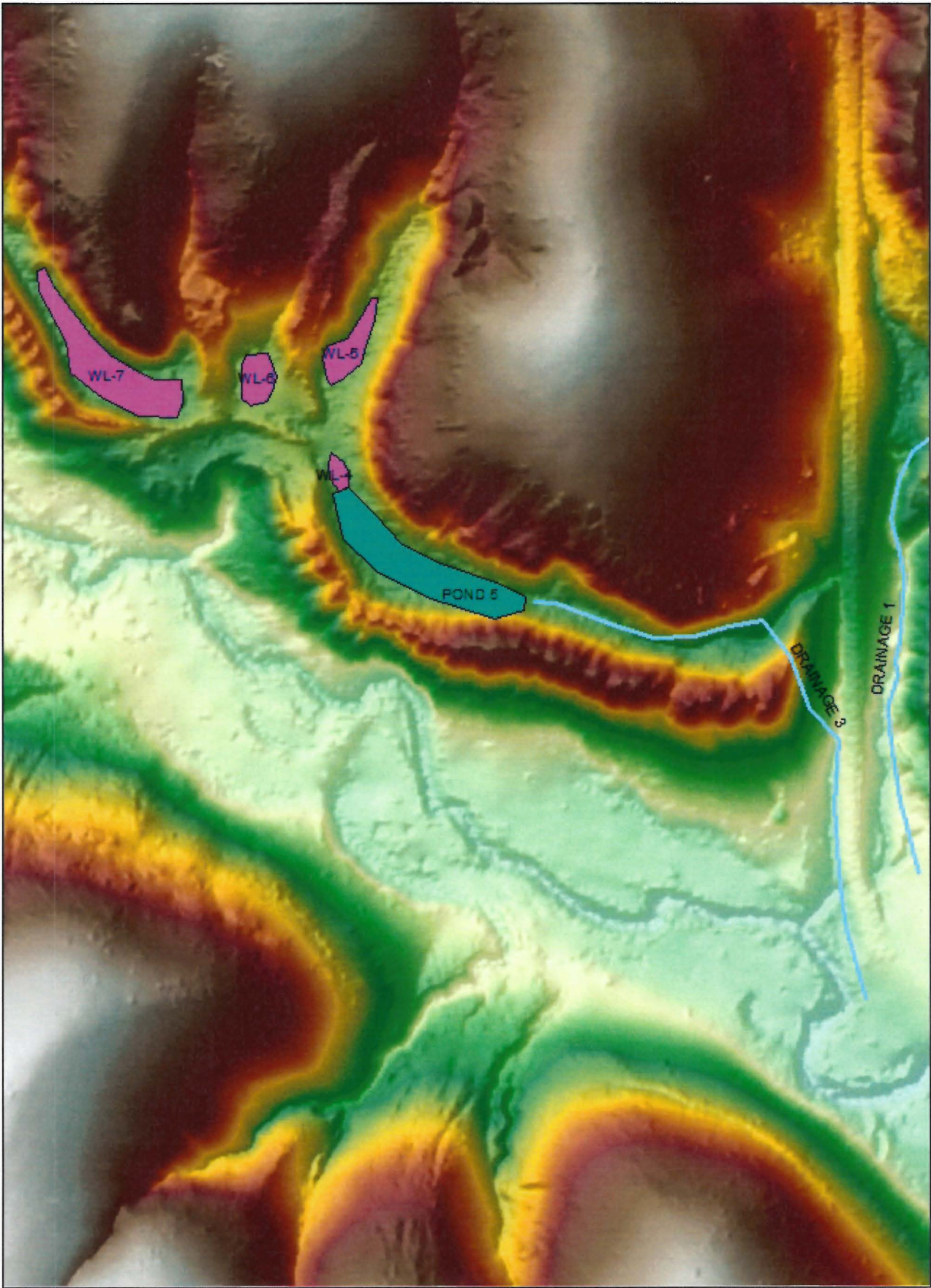
Project No.	Date:
08157126	12/4/15
Project Mngr:	Drawn By:
ACC	NGD
File Name:	
08157126-01.dwg	
Layout Name:	
E5	

Terracon
 Consulting Engineers and Scientists
 600 SW 7TH STREET DES MOINES, IOWA 50309
 PH. (515) 244-3184 FAX. (515) 244-5249

WETLANDS DELINEATION MAP
 INDIANA WEST AML SITE IA-139
 SHIVE HATTERY INC.
 180th AVENUE
 MARION COUNTY, IOWA

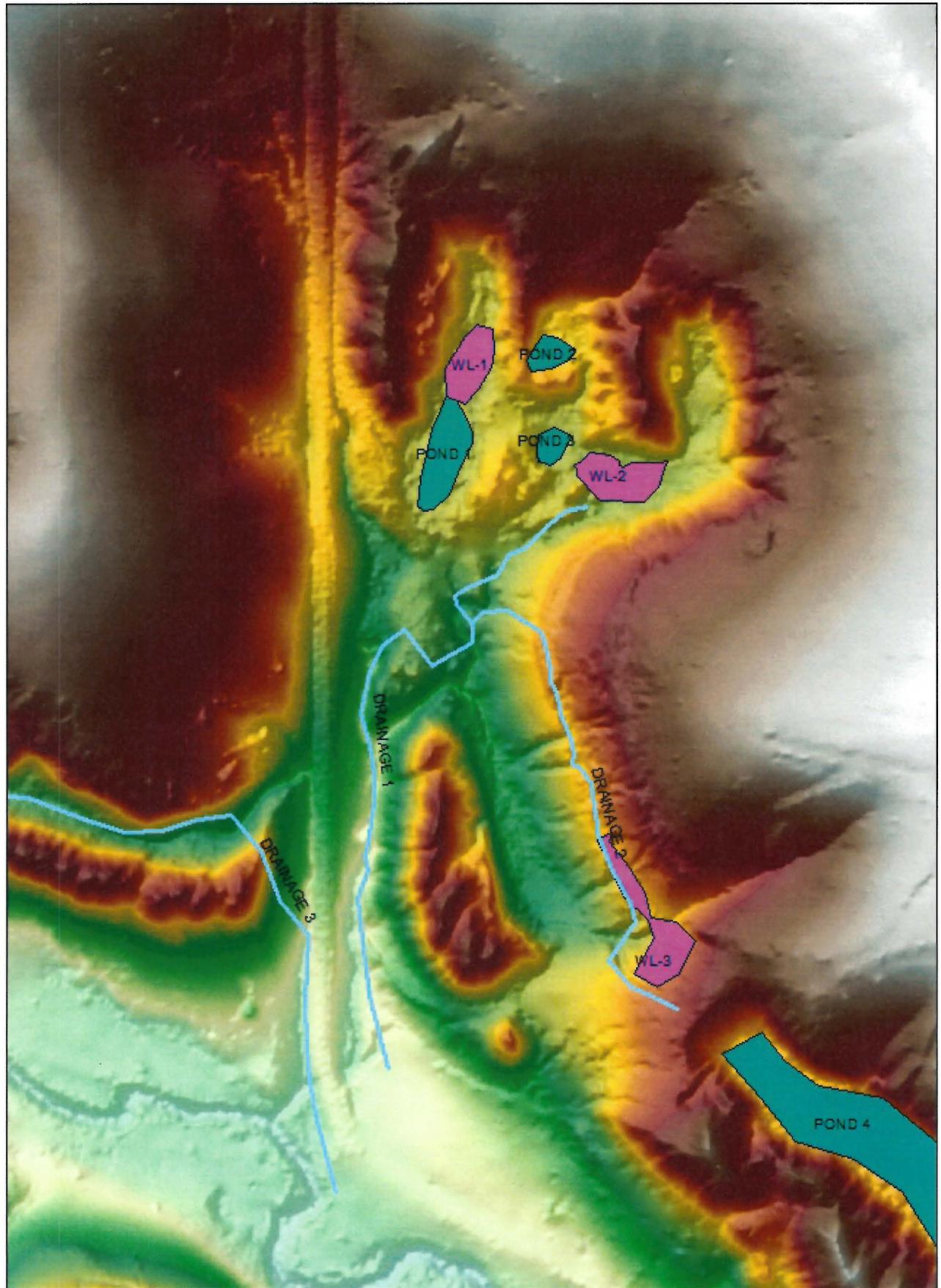
EXHIBIT
5

2016-30 Figure 2



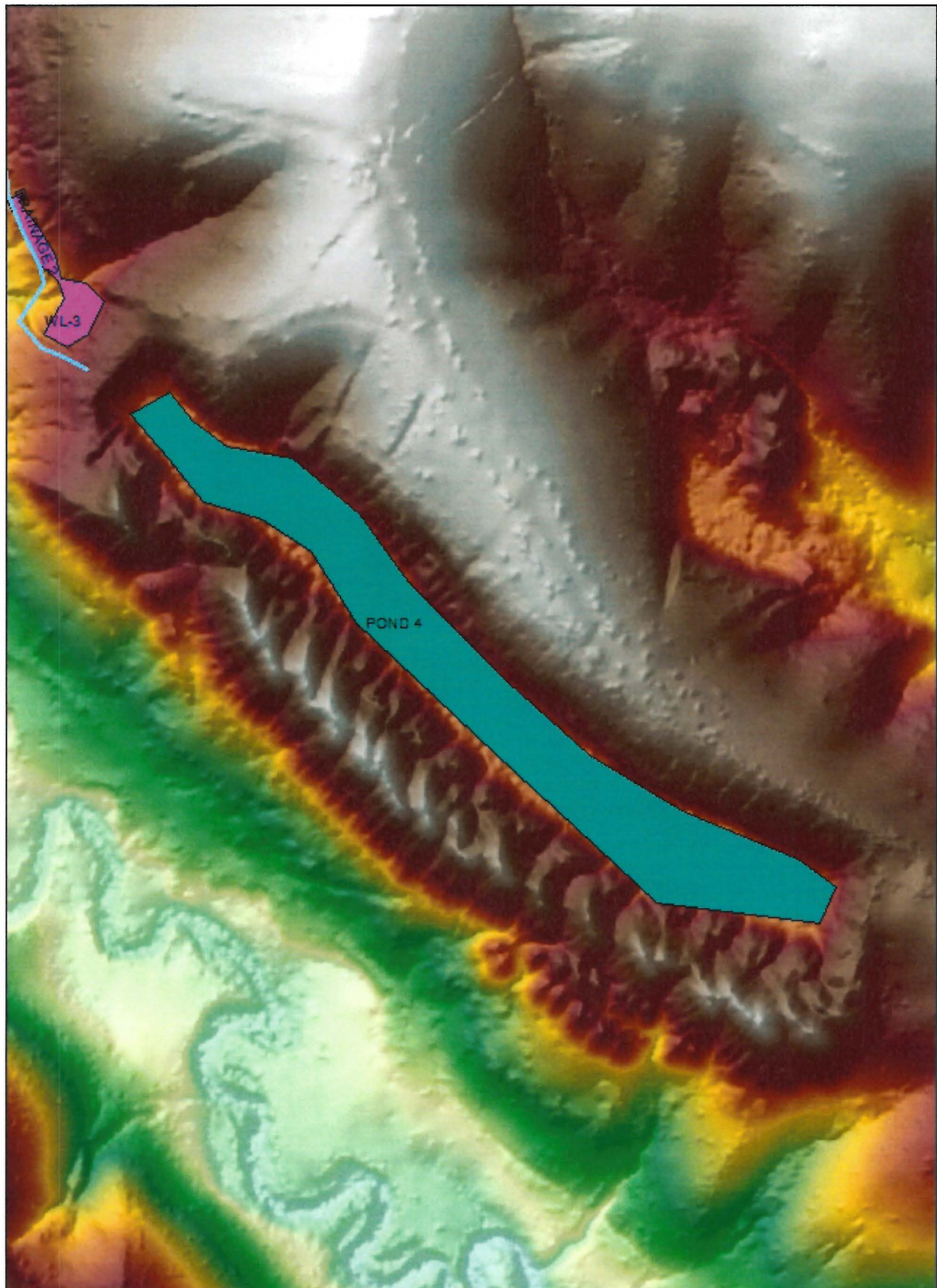
0 0.025 0.05 0.1 Miles

2016-30 Figure 3



0 0.025 0.05 0.1 Miles

2016-30 Figure 4



0 0.025 0.05 0.1 Miles