

**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):**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Huntington District; Universal Development, Hixon Property; LRH-2011-00690-TUS

Wetland 5 (abuts an off-site intermittent seasonal stream)

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Ohio County/parish/borough: Stark City: North Canton

Center coordinates of site (lat/long in degree decimal format): Lat. 40.88424°N, Long. -81.47404°W.

Universal Transverse Mercator:

Name of nearest waterbody: UNT Nimisila Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 05040001

☒ 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: May 15, 2012

☒ Field Determination. Date(s): May 9, 2012

**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 "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):<sup>1</sup>**

☐ TNWs, including territorial seas

☐ Wetlands adjacent to TNWs

☐ Relatively permanent waters<sup>2</sup> (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: linear feet: width (ft) and/or acres.

Wetlands: 1.547 acres.

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

Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: .

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

<sup>2</sup> 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).

<sup>3</sup> 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 waterbody<sup>4</sup> 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: 2580 square miles

Drainage area: 2 square miles

Average annual rainfall: 39.1 inches

Average annual snowfall: 34.61 inches

###### **(ii) Physical Characteristics:**

###### **(a) Relationship with TNW:**

☐ Tributary flows directly into TNW.

☒ Tributary flows through 2 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 **2-5** 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: .

Identify flow route to TNW<sup>5</sup>: Water from Wetland 5 flows into an unnamed tributary, then Willowdale Lake, which is an expansion of Nimisila Creek. Water then flows from Nimisila Creek into the Tuscarawas River (TNW).

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

<sup>5</sup> 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.



Tributary stream order, if known: first order.

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

**Tributary is:** ☒ Natural  
☐ Artificial (man-made). Explain: .  
☒ Manipulated (man-altered). Explain: Based on the aerial photography, it appears that portions of the tributary have been channelized. Wetland 5 on-site extends off-site as part of a larger wetland complex. The tributary originates off-site, so little information was available for the feature. The following is filled out according to observations made on aerial photography as well as typical conditions for this region.

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

Average width: feet

Average depth: feet

Average side slopes: vertical (1:1 or less).

**Primary tributary substrate composition (check all that apply):**

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain:		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary is stable as it does not appear to have moved significantly over the years, based on aerial photographs.

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: The tributary intercepts ground water, and is located at the same elevation as the wetland, so it is expected to flow frequently and for long durations throughout the year. During the site visit, flow was observed through the wetland although it lacked a defined channel. Thus, with the depth of inundation observed throughout the wetland complex located off the project site, the tributary is expected to flow often. The tributary is identified on both the USGS topographic survey and the county soil survey.

Other information on duration and volume: .

Surface flow is: **confined and discrete**. Characteristics: .

Subsurface flow: **unknown**. Explain findings: .

☐ Dye (or other) test performed: .

**Tributary has (check all that apply):**

<input checked="" type="checkbox"/> Bed and banks	
<input checked="" type="checkbox"/> OHWM <sup>6</sup> (check all indicators that apply):	
<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input checked="" type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input checked="" type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input checked="" type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input checked="" type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain:	

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

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.

<sup>6</sup>A 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.

<sup>7</sup>Ibid.

- ☐ tidal gauges  
☐ other (list):

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).  
 Explain: Water is expected to be clear.

Identify specific pollutants, if known: There are no known contaminants, but the tributary is expected to receive runoff from the roadway and some of the adjacent residences.

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

☒ Riparian corridor. Characteristics (type, average width): The stream flows through a wetland and upland corridor for much of its path. The corridor varies greatly from no corridor to several hundred feet in width.

☒ Wetland fringe. Characteristics: In many locations, the stream appears to support abutting wetlands.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: The tributary and abutting wetlands are located within an otherwise developed residential area. Portions of the stream have been manipulated, but much of the riparian buffer remains intact. This may be partially attributable to the wetlands contained within the buffer, and the difficulty in developing such areas. The forested upland and wetland corridor provides a flyway for birds, bats, as well as habitat for many species that may have been displaced by the residential development.

**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: 1.547 acres. The wetland on-site measures 1.547 acres. However, it is part of a much larger wetland complex that is estimated to be 20 acres or greater.

Wetland type. Explain: palustrine forested.

Wetland quality. Explain: high.

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

(b) General Flow Relationship with Non-TNW:

Flow is: **intermittent**. Explain: The unnamed tributary to Nimisila Creek is expected to be intermittent. The stream is identified on the soil survey as well as the USGS topographic maps. The stream receives ground water input and is located at the same elevation as the wetland. Given the depth of inundation within the wetland, the anecdotal evidence provided by the neighbors who have wetland on their property, and the knowledge of the frequent flooding of the roadway and the site, the tributary is expected to be an intermittent, seasonal stream.

Surface flow is: **confined and discrete**

Characteristics: .

Subsurface flow: **unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

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

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **tributary to TNW**.

Estimate approximate location of wetland as within the **2-5 year** 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 is clear.

Identify specific pollutants, if known: There are no known contaminants, but the tributary is expected to receive runoff from the roadway and some of the adjacent residences.

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

☐ Riparian buffer. Characteristics (type, average width): .

☒ Vegetation type/percent cover. Explain: The wetland is composed of forested vegetation, with a few patches of scrub-shrub vegetation.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: wetland 5 extends off-site and is part of a large wetland complex that extends on both sides of Huckleberry Street. The wetland is largely forested, but contains several scrub-shrub patches as well as a few areas of emergent vegetation. The wetland provides high quality, diverse habitat for the area, which has been developed into residential subdivisions.

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

All wetland(s) being considered in the cumulative analysis: **1**

Approximately ( 1.547 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Wetland 5 Y	1.547

(Wetland 5 extends off-site and is part of a larger wetland complex estimated to be 20 acres or greater.)

Summarize overall biological, chemical and physical functions being performed: The wetland provides flood storage for the area. The area experiences frequent flooding, such that Huckleberry Street contains road signs warning of high water, and is often closed following storm events. The neighboring residents explained that the wetlands never dry in the summer. At the time of the site visit, there were several feet of standing water in the wetland. The wetland serves to hold back some of the storm water and slowly release it over time, helping to reduce flooding of the area. The wetlands also filter chemicals and pollutants from the water. The tributary and wetlands provide a diverse habitat for wildlife, both upland and aquatic species alike. The surrounding area has been heavily developed by residential housing. The remaining wetland complex serves as a valuable corridor for wildlife utilizing the area.

**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 foodwebs?
- 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:
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:
4. **Significant nexus findings for wetlands abutting an RPW, as a matter of policy:** Wetland 5 is part of a larger wetland complex that extends on both sides of Huckleberry Street, and is estimated to be 20 acres or greater. The wetland is inundated throughout most of the year, and thereby contributes water to the unnamed intermittent RPW that flows into Willowdale Lake. The wetland serves to capture and retain flood waters for the area. According to the USGS StreamStats website, the watershed for the reach of the unnamed tributary is less than 2 square miles. Although small, this area is known to flood frequently. There are permanent road signs alerting drivers to the fact that Huckleberry Street may be under water and impassable. The wetland helps to reduce flooding of the area by retaining much of the water from the surrounding watershed. By retaining water, it is withheld, reducing downstream flooding. The water is then slowly released via the unnamed tributary. The wetland also filters pollutants and chemicals from the water through plant uptake and sediment settlement. This results in an improvement to quality water discharges downstream. The wetland and stream complex provide a riparian corridor and forested habitat for wildlife. The diverse upland and wetland riparian area are utilized by many different species. The habitat is located in area that is largely developed by residential subdivisions. Jackson Township is a township within the City of Cleveland, and is expanding due to its proximity to the city limits. The presence of wetland habitat and riparian corridors is valuable for the continuation of wildlife. The wetland is not used for interstate commerce. The wetland is located within the range of the Indiana bat. Although it has not been confirmed, given the type of habitat, the presence of dead trees, and the riparian corridor, the wetland is likely to be used by the Indiana bat. The wetland abuts an unnamed tributary, which flows into Willowdale Lake (an expansion of Nimisila Creek). Despite the fact that the wetland is located approximately 10-15 miles downstream from the site, the wetland contributes to the TNW regularly. The wetland complex is inundated throughout most, if not all, of the year. This allows the unnamed tributary to flow frequently and for long durations. The flow of water contributes to the persistence of Willowdale Lake, which in turn discharges into Nimisila Creek and the Tuscarawas River. The elimination of the wetland would affect the flow of water to the TNW. Although the watershed size is small, the contribution of the stream and wetland cumulatively is significant.

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

3. **Non-RPWs<sup>8</sup> 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: linear feet width (ft).  
☐ Other non-wetland waters: acres.  
 Identify type(s) of waters:

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

<sup>8</sup>See Footnote # 3.



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: The wetland complex, including Wetland 5, surrounds the unnamed tributary to Nimisila Creek. This wetland is inundated throughout most of the year, and therefore, contributes water to the stream system for much of the year. Therefore, due to proximity and continued connection to the tributary, the wetland is considered to be abutting. The tributary is believed to flow seasonally based on its position in the landscape. The stream is located at the same elevation as the abutting wetland. The wetland is inundated throughout most of the year, thereby contributing water for much of the year to the stream. The stream is mapped on the soil survey and the USGS topographic map, indicating that it is a more permanent feature. The review area contains only Wetland 5 (1.547 acres). Wetland 5 extends off-site as part of a much larger wetland complex. The tributary originates off-site and continues to form an unnamed tributary to Nimisila Creek.

Provide acreage estimates for jurisdictional wetlands in the review area: **1.547** 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:          acres.

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

☐ 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:          acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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):<sup>10</sup>**

- ☐ 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.

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

<sup>10</sup> 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.



- ☐ 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: .  
☐ 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): linear feet width (ft).  
☐ Lakes/ponds: 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): linear feet, width (ft).  
☐ Lakes/ponds: 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: "Wetland Delineation Report, Hixon Property Residential Development, Jackson Township, Stark County, Ohio," performed by Wallace & Pancher Inc. and dated June 16, 2011."  
☒ 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: North Canton.  
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Stark County Soil Survey.  
☒ National wetlands inventory map(s). Cite name: North Canton.  
☐ State/Local wetland inventory map(s): .  
☐ FEMA/FIRM maps:  
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)  
☒ Photographs: ☒ Aerial (Name & Date): "Wetland Delineation Report, Hixon Property Residential Development, Jackson Township, Stark County, Ohio," performed by Wallace & Pancher Inc. and dated June 16, 2011."  
or ☒ Other (Name & Date): "Wetland Delineation Report, Hixon Property Residential Development, Jackson Township, Stark County, Ohio," performed by Wallace & Pancher Inc. and dated June 16, 2011."  
☐ Previous determination(s). File no. and date of response letter: .  
☐ Applicable/supporting case law: .  
☐ Applicable/supporting scientific literature: .  
☒ Other information (please specify): USGS StreamStats website: <http://water.usgs.gov/osw/streamstats/ssonline.html>

#### **B. ADDITIONAL COMMENTS TO SUPPORT JD:**