



**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): 1/28/2021

ORM Number: LRH-2020-440-OHR-UT to Muddy Creek

Associated JDs: N/A

Review Area Location¹: State/Territory: Ohio City: Green Township County/Parish/Borough: Hamilton

Center Coordinates of Review Area: Latitude 39.13752 Longitude -84.65328

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.

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
Stream 1	528	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.
			Stream 1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.

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: [The applicant submitted information dated 24 July 2020, and 5 January 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The information provided by or on behalf of the applicant accurately reflects the district’s conclusions on the AJD.](#)

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

Photographs: [Other: Site Photographs and Site Video Walk received 9 July 2020, and 5 January 2021.](#)

Corps site visit(s) conducted on: [N/A](#)

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: [Corps ORM Layer.](#)

USFWS NWI maps: [Corps ORM Layer.](#)

USGS topographic maps: [Ohio 1:24K - Addyston](#)

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.
CorpsMap ORM Map Layers	N/A
State/Local/Tribal Sources	N/A.
Other Sources	Historic Aerial Photos, Topographic Maps, and Video.

B. Typical year assessment(s): [A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range \(seasonally or annually\) for a specific geographic region where the aquatic resource occurs. One point-in-time data sources, one for 9 July 2020, with a corresponding APT report, were included in the evaluation for the](#)

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 ephemeral stream listed in Section II D (Stream 1). According to the APT report of July 2020, wetter than normal conditions were observed during the dry season with a PSDI Value of 1.71 (mild wetness) and an ARC score of 12. The antecedent precipitation condition is considered “normal conditions” for that point in time. Additionally, during the based on the pictures submitted with the Report, during wetter than normal conditions in the dry season, little to no flow was observed, supporting the fact that the ephemeral stream does not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral stream listed in Section II D, above, exhibits ephemeral flow, and is not a water of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404.

C. Additional comments to support AJD: The proposed project area is located outside of the 100 year floodplain.