



**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): 9/9/2020
 ORM Number: LRH-2020-599-MUS-Unnamed Tributary Lobdell Creek
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Ohio City: Johnstown County/Parish/Borough: Licking
 Center Coordinates of Review Area: Latitude 40.1628 Longitude -82.6758

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
Stream 1	385	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Stream 2	402	linear feet	(a)(2) Intermittent tributary contributes surface water flow to the Muskingum River, an (a)(1) water, within a typical year. Stream 2 drains directly

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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
		surface water flow directly or indirectly to an (a)(1) water in a typical year.	to Stream 1 on-site. Reference Section III D for the typical year assessment.

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
Wetland 1	0.57 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 meets the three (3) indicators of a wetland and directly abuts an (a)(2) water on-site (Stream 2).
Wetland 2	0.03 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 2 meets the three (3) indicators of a wetland and directly abuts an (a)(2) water on-site (Stream 1).

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream 3	268 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 3 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
Wetland 3	0.64 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 3 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 4	0.02 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 4 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 5	0.31 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 5 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and

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 waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Wetland 6	1.15	acre(s)	(b)(1) Non-adjacent wetland. Wetland 6 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier.
Non-Jurisdictional Channel (NJC) 1	2,134	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. NJC 1 is a swale that has formed along an installed drain tile route and meets the definition of “ephemeral” in paragraph (c)(3). Reference Section III D for typical year assessments.
NJC 2	436	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1). NJC 2 is a ditch that has been constructed entirely in uplands for the purpose of drainage around a residential home. NJC 2 is not an (a)(1) or (a)(2) water and is not constructed within an (a)(4) water.

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: [S&ME, Inc., on behalf of Grand Communities, Ltd., submitted a delineation report for the Pepperwood Project dated 24 July 2020.](#)

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: Figure 3: 2019 Aerial Photograph Exhibit and Appendix I: Site Photographs 1-42, dated 19 June 2020](#)
- 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: [Figure 5: Soils Exhibit Map](#)
- USFWS NWI maps: [Figure 6: National Wetlands Inventory Exhibit Map](#)
- USGS topographic maps: [Figure 2: Topographic Exhibit Map](#)

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
USDA Sources	N/A.
NOAA Sources	N/A.



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Data Source (select)	Name and/or date and other relevant information
USACE Sources	ORM Aquatic Resources Layer
State/Local/Tribal Sources	N/A.
Other Sources	Historic Aerial Photos

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 source, dated 19 June 2020, with a corresponding APT report, was included in the evaluation for Streams 1-3. According to the APT report for 19 June 2020, normal conditions were observed during the dry season with a PSDI Value of 2.36 (moderate wetness) and an ARC score of 12 . The antecedent precipitation condition is considered “normal” for that point in time. On 19 June 2020, during normal conditions of the dry season, flow was observed within Streams 1 and 2. The photographs show consistent flow through Stream 1 and a lower flow with pooling in Stream 2. These observations are expected for perennial and intermittent streams in the early part of the dry season when there is moderate wetness. There was no flow or presence of pooling observed within Stream 3, which is characteristic of ephemeral streams provided a recent rainfall event had not occurred. 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 is not subject to regulation under Section 404.

One point-in-time data source from 19 June 2020, with a corresponding APT report, was included in the evaluation for the excluded ephemeral swale listed in Section II.D. (NJC 1). As described above, conditions were normal with moderate wetness in the dry season on 19 June 2020. No flow or defined channel was observed during a site investigation conducted on this date. Based on information from S&ME, Inc., the swale appears to have resulted due to a constructed drain tile. Historic aeriels were referenced and it appears this area was previously upland. A sample point (SP-9) was taken within the swale, and it was determined that the feature did not exhibit wetland characteristics. It has been determined that NJC 1, listed in Section II.D., above, exhibits ephemeral flow, is not a water of the United States per 33 CFR 328.3(b)(3), and is not subject to regulation under Section 404.

C. Additional comments to support AJD: N/A or provide additional discussion as appropriate.