



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): 2/12/2021  
ORM Number: LRH-2020-671-TUS  
Associated JDs: N/A  
Review Area Location<sup>1</sup>: State/Territory: OH City: Massillon County: Stark  
Center Coordinates of Review Area: 40.772975, -81.527879

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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	350 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 1 (UNT to Tuscarawas River) is an intermittent, indirect tributary to the Tuscarawas River, an (a)(1) water, at a location outside of the review area. Stream 1 contributes intermittent surface water flow indirectly to the Tuscarawas River, an (a)(1) water, in a typical year (reference Section III B of this AJD form).
Stream 2	2,805 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 2 (UNT to Tuscarawas River) is a perennial, indirect tributary to the Tuscarawas River, an (a)(1) water. Stream 2 contributes perennial surface water flow indirectly to the Tuscarawas River, an (a)(1) water, in a typical year (reference Section III B of this AJD form).

<sup>1</sup> Map(s)/Figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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 independent 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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Stream 3	1,280 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 3 (UNT to Tuscarawas River) is an intermittent, indirect tributary to the Tuscarawas River, an (a)(1) water, at a location outside of the review area. Stream 3 contributes intermittent surface water flow indirectly to the Tuscarawas River, an (a)(1) water, in a typical year (reference Section III B of this AJD form).
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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

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Stream 4	410 linear feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Stream 4 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3). Stream 4 is not considered a water of the United States per 33 CFR 328.3(b)(3) and is not subject to regulation under Section 404.
Stream 5	735 linear feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	Stream 5 is an intermittent stream that does not contribute downstream flow to an (a)(1) or (a)(2) water in a typical year (reference Section III B of this AJD form). Stream 5 is not considered a water of the United States per 33 CFR 328.3(b)(1) and is not subject to regulation under Section 404.
Wetland 6	1.47 acres	(b)(1) Non-adjacent wetland.	Wetland 6 does not meet the definition of an adjacent wetland (33 CFR 328.3(c)(1)(i)-(iv)), is not considered a water of the United States per 33 CFR 328.3(b)(1), and is not subject to regulation under Section 404. Reference Section III B of this AJD form.

**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.

<sup>4</sup> 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.

<sup>5</sup> 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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- Information submitted by, or on behalf of, the applicant/consultant: [Wetland and Stream Delineation Report, Massillon Energy Site, 411 Oberlin Ave., Massillon, Ohio prepared by LaBella Associates \(D.P.C.\) and dated September 2020 \(Report, Sept 2020\)](#)  
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: [Appendix C - Photolog \(Report, Sept 2020\)](#); [Aerial imagery on Figure 4 – Delineation Overview Map and Figure 5 – Delineation Survey Delineation Map \(Report, Sept 2020\)](#)
- Corps Site visit(s) conducted on:
- Previous Jurisdictional Determinations (AJDs or PJDs):
- Antecedent Precipitation Tool: [see detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Appendix D – Hydric Soil Map \(Report, Sept 2020\)](#)
- USFWS NWI maps: [Appendix A, Figure 2 – NWI Mapped Resources \(Report, Sept 2020\)](#)
- USGS topographic maps: [Appendix A, Figure 1 – USGS Site Location \(Report, Sept 2020\)](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	<a href="#">N/A.</a>
USDA Sources	<a href="#">N/A.</a>
NOAA Sources	<a href="#">N/A.</a>
USACE Sources	<a href="#">Corps Regulatory GIS Viewers</a>
State/Local/Tribal Sources	<a href="#">N/A.</a>
Other Sources	<a href="#">Appendix A, Figure 3 – FEMA Flood Zones (Report, Sept 2020)</a>
Other Sources	<a href="#">Appendix B – Data Forms (Report, Sept 2020)</a>

**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. Two \(2\) point-in-time data sources dated 13-16 July 2020 and 20-21 August 2020, each with a corresponding antecedent precipitation tool \(APT\) report, are included in the evaluation for the features listed in Section II D, as applicable. According to the APT report for 13-16 July 2020, drier than normal conditions were observed during the WebWIMP dry season with a Palmer Drought Severity Index Value of moderate wetness. The 30-day rolling total for precipitation was below the 30-year normal range. According to the APT report for 20-21 August 2020, drier than normal conditions were observed during the WebWIMP dry season with a Palmer Drought Severity Index value of mild wetness. The 30-day rolling total for precipitation was below the 30-year normal range. The antecedent precipitation condition is considered “drier than normal” for that point in time.](#)

<sup>4</sup> 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.

<sup>5</sup> 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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On 14-16 July 2020, Streams 1, 2 and 3 exhibited evidence of flow within the stream channel during drier than normal APT report conditions. Field indicators of perennial flow were observed in Stream 2, while intermittent flow was observed in Streams 1 and 3, and all included clearly defined bed and bank. Based on the submitted information, Streams 1, 2, and 3 contribute intermittent or perennial flow downstream indirectly to the Tuscarawas River, an (a)(1) water, in a typical year. Therefore, Streams 1, 2, and 3 are (a)(2) waters.

Based on the submitted information, Stream 4 exhibits ephemeral flow. On 16 July 2020, Stream 4 did not exhibit flow within the stream channel which corresponds with the APT report conditions for an ephemeral feature during drier than normal conditions. Therefore, Stream 4 does not provide intermittent or perennial flow downstream to an (a)(1) water in a typical year. Stream 4 is not considered a water of the United States per 33 CFR 328.3(b)(3).

Based on the submitted information, Stream 5 exhibits intermittent flow. On 21 August 2020, Stream 5 exhibited intermittent flow within the stream channel during drier than normal APT report conditions. However, Stream 5 terminates within Wetland 6 and does not provide intermittent or perennial flow downstream to an (a)(1) water in a typical year. The nearest jurisdictional stream is located at least 1,700 feet away (Tuscarawas River), so even during wetter than normal conditions, Stream 5 would not be expected to be inundated by flooding from the Tuscarawas River, an (a)(1) water, in a typical year. Stream 5 is not considered a jurisdictional water of the United States per 33 CFR 328.3(b)(1).

Wetland 6 does not meet the definition of an adjacent wetland, as it does not abut a water identified in 33 CFR 328.3(a)(1), (2), or (3), is not inundated by flooding from a water identified in 33 CFR 328.3(a)(1), (2), or (3) in a typical year, is not physically separated from a water identified in 33 CFR 328.3(a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature, and is not physically separated from a water identified in 33 CFR 328.3(a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure. Wetland 6 is located approximately 1,700 linear feet west from the Tuscarawas River, an a(1) water. Due to the remote location of Wetland 6, even during wetter than normal conditions, it would not be expected to be inundated by flooding from the Tuscarawas River in a typical year. Therefore, Wetland 6 is not a jurisdictional water of the United States per 33 CFR 328.3(b)(1).

**C. Additional comments to support AJD:** According to the National Flood Hazard FEMA map, the site is not located within the 100-year floodplain.

<sup>4</sup> 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.

<sup>5</sup> 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.