



**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): 2/26/2021

ORM Number: LRH-2021-102-SCR-UT to Walnut Creek

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Ohio City: Village of Lithopolis County/Parish/Borough: Fairfield

Center Coordinates of Review Area: Latitude 39.813477 Longitude -82.812812

**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 3                     | 1058        | linear feet     | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.   |
|                              |             |                 | Stream 3 is a perennial, indirect tributary to the Scioto River, an (a)(1) water, at a location outside of the review area. Stream 3 contributes perennial surface water flow indirectly to the Scioto 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 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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|   |             |                 |                                    |      |
|---|-------------|-----------------|------------------------------------|------|
| 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.                               | 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.                               | 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 1   | 968            | 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. |
| Stream 2   | 509            | linear feet            | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | Stream 2 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: [EMH&T, Inc. submitted on behalf of the applicant, the Wagnalls Run Sections 6-9 \(report\) dated January 18, 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: In the report referenced above.](#)
- 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: [Exhibit 3A in report referenced above.](#)
- USFWS NWI maps: [Exhibit 5 in report referenced above.](#)
- USGS topographic maps: [Exhibit 2 in report referenced above.](#)

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

| Data Source (select)         | Name and/or date and other relevant information |
|------------------------------|---|
| <a href="#">USGS Sources</a> | <a href="#">N/A.</a>                            |
| <a href="#">USDA Sources</a> | <a href="#">N/A.</a>                            |

<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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| Data Source (select)       | Name and/or date and other relevant information |
|----------------------------|---|
| NOAA Sources               | N/A.  |
| USACE Sources              | N/A.  |
| State/Local/Tribal Sources | N/A.  |
| Other Sources              | N/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. One point-in-time data sources, one for 9 December 2020, with a corresponding APT report, were included in the evaluation for the excluded ephemeral streams listed in Section II D (Stream 1 and Stream 2). According to the APT report of 9 December 2020, wetter than normal conditions were observed during the wet season with a PSDI Value of 0.76 (incipient wetness) and an ARC score of 11. The antecedent precipitation condition is considered “normal conditions” for that point in time. Additionally, based on the pictures submitted with the Report, during wetter than normal conditions in the wet season, little to no flow was observed, supporting the fact that the ephemeral streams do not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral streams listed in Section II D, above, exhibit ephemeral flow, and are not waters of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404. Stream 3 exhibited flow within the stream channel which corresponds with the APT report conditions. Stream 3 contributes perennial flow downstream indirectly to the Scioto River, an (a)(1) water in a typical year. Therefore, Stream 3 is an (a)(2) water.

**C. Additional comments to support AJD:** The proposed project area is located outside of the 100 year floodplain. See Exhibit 4 – Flood Insurance Rate Map in the Report.