



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): 3/22/2021  
 ORM Number: LRH-2021-00130-SCR  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>:  
 State/Territory: OH City: Plain Township County/Parish/Borough: Franklin County  
 Center Coordinates of Review Area: Latitude 40.109652 Longitude -82.793948

**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 |
|-------------|-------------|-----------------|------------------------------------|
| 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                                |

**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   |
|--------------------|----------------|--|---|
| Agricultural Ditch | 983 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 | Based on the submitted information, the Agricultural Ditch exhibits an ephemeral flow. Agricultural Ditch is not considered a water of the United States per 33 CFR |

<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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|           |            |  |  |
|-----------|------------|--|--|
|           |            | that do not satisfy the conditions of (c)(1) | 328.3(b)(5).   |
| Wetland A | 0.26 acres | (b)(1) Non-adjacent wetland                  | Wetland A 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. |
| Wetland B | 0.04 acres | (b)(1) Non-adjacent wetland                  | Wetland B 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. |

**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: *Title(s) and date(s)*.  
*Delineation of Waters of the United States, Alto Real Estate, LLC dated 8 February 2021 and completed by EMH&T, Inc. (JD, Feb 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: *(aerial and other) Title(s) and/or date(s)*. *Exhibit 6 – Delineation Map and Photographs (JD, Feb 2021), Google Earth Aerial Imagery (1995, 2002, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2014, 2015, 2016, 2017, 2018, and 2019), and Historicaerials.com (1953, 1957, 1959, 1965, 1971, and 1980)*
- 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: *Title(s) and/or date(s)*. *Exhibit 3 – Soil Survey Map (JD, Feb 2021)*
- USFWS NWI maps: *Title(s) and/or date(s)*. *Exhibit 5 – National Wetland Inventory Map (JD, Feb 2021)*
- USGS topographic maps: *Title(s) and/or date(s)*. *Exhibit 1 – Location Map and Exhibit 2 – USGS Map (JD, Feb 2021)*

**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.   |
| USACE Sources              | <a href="#">Huntington District Regulatory GIS Viewer</a>  |
| State/Local/Tribal Sources | N/A.   |
| Other Sources              | <a href="#">Exhibit 4 – Flood Insurance Rate Map, Appendix B – USACE Wetland and Upland Data Forms and Appendix C – ORAM Data Forms (JD, Feb 2021)</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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- 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 14 May 2020 and 22 January 2021, with corresponding antecedent precipitation tool (APT) reports, are included in the evaluation for the excluded features listed in Section II D. According to the APT report for 14 May 2020, wetter than normal conditions with an antecedent precipitation condition score of 15 was observed during the WebWIMP wet season with a Palmer Drought Severity Index Value of severe wetness. The 30-day rolling total for precipitation was above the normal rolling thirty year period. Based on historic precipitation data, the JD review area received 0.49 inches of rain on 14 May 2020. According to the APT report for the 22 January 2021, normal conditions with an antecedent precipitation score of 13 was observed during the WebWIMP wet season with a Palmer Drought Severity Index Value of incipient drought. Based on the site evaluation completed on 14 May 2020, Agricultural Ditch exhibited ephemeral flow which is consistent with the APT report and historic precipitation data. Ephemeral flow would have been expected on 14 May 2020. It has been determined that the Agricultural Ditch is not a water of the United States per 33 CFR 328.3(a)(1) or (2), was not constructed in an adjacent wetland per 33 CFR 328.2 (a)(4), and is not considered a water of the United States per 33 CFR 328.3(b)(5). Wetlands A and B do not abut a water identified in 33 CFR 328.3(a)(1), (2), or (3), are not inundated by flooding from a water identified in 33 CFR 328.3(a)(1), (2), or (3) in a typical year, are 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 are 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. Therefore, Wetlands A and B are not jurisdictional waters 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 a flood hazard area.

<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.