



**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): 4/1/2021
 ORM Number: LRH-2021-00206-SCR-Mill Run
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Ohio City: Delaware County/Parish/Borough: Delaware
 Center Coordinates of Review Area: Latitude 40.292630 Longitude -83.027521

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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Mill Run (Stream 1)	340	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Mill Run is a perennial tributary to the Scioto River, an (a)(1) navigable water, at a location outside of the JD review area, in a typical year (reference Section III B of this AJD form).

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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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)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Pond 2	1.45	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Pond 2 is an artificial man-made structure that was constructed in uplands, is not an impoundment of an (a)(1)-(a)(3) water, is not a jurisdictional water of the United States per 33 CFR 328.3(b)(8), and is not subject to regulation under Section 404.
Wetland A	0.073	acre(s)	(b)(1) Non-adjacent wetland.	It has been determined that 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	0.109	acre(s)	(b)(1) Non-adjacent wetland.	It has been determined that 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.
Wetland C	0.101	acre(s)	(b)(1) Non-adjacent wetland.	It has been determined that Wetland C 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.

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
Wetland D	0.134	acre(s)	(b)(1) Non-adjacent wetland.	It has been determined that Wetland D 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 E	0.031	acre(s)	(b)(1) Non-adjacent wetland.	It has been determined that Wetland E 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: [Pre-construction Notification and Approved Jurisdictional Determination Request for the Byxbe Parkway Project in Brown Township, Delaware County, Ohio dated 8 December 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: HistoricalAerials.com \(2017, 2015, 2013, 2011, 2010, 2009, 2008, 2006, 2004, 2002, 1988, 1980, and 1959\).](#)
- Corps site visit(s) conducted on: [N/A](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)
- Antecedent Precipitation Tool: [*provide detailed discussion in Section III.B.*](#)
- USDA NRCS Soil Survey: [N/A](#)
- USFWS NWI maps: [N/A](#)
- USGS topographic maps: [USGS Topographic Map \(Byxbe Parkway, March 2021\)](#)

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	N/A
State/Local/Tribal Sources	N/A
Other Sources	Field Data Sheets (USACE Wetland Determination Data Forms and ORAM Functional Assessment Forms) in referenced report.



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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. One (1) point-in-time data source, 23 June 2020 (Dry Season), with a corresponding antecedent precipitation tool (APT) report, were included in the evaluation for the features on-site, as applicable. The APT was utilized to determine typical year for point-in-time data sources. Stream flow was assessed on 23 June 2020. Based on the APT, 23 June 2020 is included during the WebWIMP dry season and has a Palmer Drought Severity Index of normal. The 30-day rolling total for precipitation was higher than the 30-year normal range. Therefore, site conditions are higher than the typical year conditions. Stream 1 included a clearly defined bed and bank, coarse bed material (cobble and gravel), and consisted of water at various locations. Based on the submitted information, Stream 1 contributes perennial flow downstream, indirectly to the Scioto River, an (a)(1) water, in a typical year. Therefore, Stream 1 is an (a)(2) water.
- C. Additional comments to support AJD:** Wetland A, Wetland B, Wetland C, Wetland D, and Wetland E do not meet the definition of adjacent wetlands (33 CFR 328.3(c)(1)(i)-(iv)) and are not considered waters of the United States per 33 CFR 328.3(b)(1). Based on aerial imagery, Pond 2 is an artificial man-made structure that was constructed in uplands, is not an impoundment of an (a)(1)-(a)(3) water, and is not a jurisdictional water of the United States per 33 CFR 328.3(b)(8). The project is not located within the FEMA 100-year floodplain.