



**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): 2/9/2021

ORM Number: LRH-2020-831-OHR-UNT to Pine Creek

Associated JDs: N/A

Review Area Location¹: State/Territory: Ohio City: Wheelersburg County/Parish/Borough: Scioto

Center Coordinates of Review Area: Latitude 38.694683 Longitude -82.830471

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
N/A.	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.	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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral Stream 1	75	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral Stream 1 is an ephemeral stream and meets the definition of “ephemeral” in paragraph (c)(3), is not considered a water of the United States per 33 CFR 323.8(b)(3), and is not subject to regulation under Section 404.
Ephemeral Stream 2	75	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Ephemeral Stream 2 is an ephemeral feature and meets the definition of “ephemeral” in paragraph (c)(3), is not considered a water of the United States per 33 CFR 323.8(b)(3), and is not subject to regulation under Section 404.
Wetland 1	0.223	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Wetland 1 does not contribute surface water flow directly or indirectly to an (a)(1) water, is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year, is not an impoundment of a (a)(1)-(a)(3) water, and is not subject to regulation under Section 404.
Wetland 2	0.352	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Wetland 2 does not contribute surface water flow directly or indirectly to an (a)(1) water, is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year, is not an impoundment of a (a)(1)-(a)(3) water, and is not subject to regulation under Section 404.
Wetland 3	0.019	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 3 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 4	0.044	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 4 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

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
				33 CFR 328.3(b)(1), and is not subject to regulation under Section 404.
Wetland 5	0.014	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 5 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 6	0.093	acre(s)	(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.
Wetland 7	0.054	acre(s)	(b)(1) Non-adjacent wetland	Wetland 7 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 8	0.015	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 8 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: [Jurisdictional Determination Request, Wheelersburg Solar Array, Scioto, Ohio dated 8 January 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: Photographs \(Wheelersburg Solar Array, January 2021\), HistoricalAerials.com \(2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2004, 1995, 1983, 1967, 1966, 1960, and 1952\).](#)
- 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: [Figure 4 - Soil Survey Map \(NRCS Soil Survey Map\) \(Wheelersburg Solar Array, January 2021\)](#)
- USFWS NWI maps: [Figure 6 - National Wetlands Inventory \(NWI\) Map \(Wheelersburg Solar Array, January 2021\)](#)
- USGS topographic maps: [Figure 1 – Site Location Map \(Wheelersburg Solar Array, January 2021\)](#)

Other data sources used to aid in this determination:



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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	Appendix A - Field Data Sheets (USACE Wetland Determination Data Forms) in referenced report.

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, 29 October 2009 (Wet Season) and 15 December 2020 (Wet Season), with corresponding antecedent precipitation tool (APT) reports, 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 29 October 2009. Based on the APT, 29 October 2009 is included during the WebWIMP wet season and has a Palmer Drought Severity Index of moderate wetness. The 30-day rolling total for precipitation was within the 30-year normal range. Therefore, site conditions were considered to be normal. Even at normal conditions, a hydrological surface connection between Pine Creek, an (a)(2) water, and Wetland 3-Wetland 8 was not observed. Wetland 3-Wetland 8 do not contribute flow to an (a)(1) water and are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Therefore, Wetland 3-Wetland 8 do not meet the definition of adjacent wetlands (33 CFR 328.3(c)(1)(i)-(iv)), are not considered waters of the United States per 33 CFR 328.3(b)(1), and are not subject to regulation under Section 404. Additionally, Wetland 1 and Wetland 2 are agricultural ponds that do not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year, are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year, and are not impoundments of a (a)(1)-(a)(3) water.

C. Additional comments to support AJD: Portions of the JD review area are located within the FEMA 100-year floodplain. Wetlands are not considered adjacent simply because a hydrologic connection between a jurisdictional water and a wetland is possible by flooding once every 100 years. After a review of aerial imagery, it has been determined no indicators are visible of inundation by flooding from Pine Creek to the on-site wetlands.