



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): 19 October 2020

ORM Number: LRH-2018-00294-OHR

Associated JDs: N/A

Review Area Location¹:

State/Territory: OH City: Green County/Parish/Borough: Adams County

Center Coordinates of Review Area: Latitude 38.652227 Longitude -83.337528

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

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

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 10_NWPR	435 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 10 is an intermittent, direct tributary to the Ohio River, an (a)(1) water, at a location outside of the review area. Stream 10 contributes intermittent surface water flow directly to the Ohio River in a typical year (reference Section III B of this AJD form). Stream 10 includes one (1) culvert located within the review area. Up- and downstream flows are maintained on either side of the artificial structures and jurisdiction is not severed.
Stream 11_NWPR	446 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 11 is an intermittent, direct tributary to the Ohio River, an (a)(1) water, at a location outside of the review area. Stream 10 contributes intermittent surface water flow directly to the Ohio River in a typical year (reference Section III B of this AJD form). Stream 11 contains two (2) culverts located within the review area. Up- and downstream flows are maintained on either side of the artificial structures and jurisdiction is not severed.
Stream 6_NWPR	1813 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a	Stream 6 is a perennial, direct tributary to the Ohio River, an (a)(1) water, at a location outside of the review area. Stream 6 contributes perennial surface

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 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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		typical year	water flow directly to the Ohio River in a typical year (reference Section III B of this AJD form). Stream 6 contains one (1) culvert located within the review area. Up- and downstream flows are maintained on either side of the artificial structures and jurisdiction is not severed.
Stream 7_NWPR	492 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 7 is an intermittent, direct tributary to the Ohio River, an (a)(1) water, at a location outside of the review area. Stream 7 contributes intermittent surface water flow directly to the Ohio River in a typical year (reference Section III B of this AJD form). Stream 7 contains one (1) culvert located within the review area. Up- and downstream flows are maintained on either side of the artificial structures and jurisdiction is not severed.

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
Wetland A_NWPR	0.05 acre	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature	Wetland A is physically separated from the Ohio River, an (a)(1) water, only by a natural berm, bank, dune, or similar natural feature.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Channel 1_NWPR	85 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 1 is an erosional feature in the landscape and does not contribute flow to an (a)(1)-(a)(2) water.
Channel 2_NWPR	1223 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Channel 2 is an erosional feature in the landscape and does not contribute flow to an (a)(1)-(a)(2) water.
Ditch 1_NWPR	3360 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 that do not satisfy the conditions of (c)(1)	Ditch 1 is a ditch with ephemeral flow that was excavated in uplands. Ditch 1 does not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland.
Stream 12_NWPR	109 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 12 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 13_NWPR	193 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 13 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 14_NWPR	75 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 14 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 1_NWPR	55 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 B of this AJD form for typical year assessments.
Stream 2_NWPR	63 feet	(b)(3) Ephemeral feature, including	Stream 2 is an ephemeral stream and meets the

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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		an ephemeral stream, swale, gully, rill, or pool	definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 3_NWPR	139 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 3 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 4_NWPR	24 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 4 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 5_NWPR	16 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 5 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 8_NWPR	50 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 8 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 9_NWPR	46 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 8 is an ephemeral stream and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 1_NWPR	124 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 1 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 2_NWPR	145 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 2 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 3_NWPR	53 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 3 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 4_NWPR	333 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 4 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 5_NWPR	187 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 5 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 6_NWPR	211 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 6 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 7_NWPR	308 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 7 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Swale 8_NWPR	63 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Swale 8 is an erosional feature in the landscape and meets the definition of "ephemeral" in paragraph (c)(3). Reference Section III B of this AJD form for typical year assessments.
Wetland B_NWPR	0.04 acre	(b)(1) Non-adjacent wetland	Wetland B does not meet the definition of an adjacent wetland (33 CFR 328.3(c)(1)(i)-(iv)).

III. SUPPORTING INFORMATION

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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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: [Preliminary Jurisdictional Waters Determination Report, Razor Project, Green Township, Adams County, Ohio dated 22 March 2018 and Revised Preliminary Jurisdictional Waters Determination Map dated 11 May 2018](#)

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: *(NA, aerial, other, aerial and other)* [Appendix A – Site Photographs \(JD, Mar 2018\), Figure 3, 3-1, 3-2 – Preliminary Jurisdictional Waters Determination Index Maps \(JD, Mar 2018\), and Figure 3-1 Revised Preliminary Jurisdictional Waters Determination Map \(JD, May 2018\)](#)

Corps Site visit(s) conducted on: *Date(s).*

Previous Jurisdictional Determinations (AJDs or PJDs): [LRH-2018-294-OHR AJD dated 15 May 2018 and LRH-2018-294-OHR PJD dated 15 May 2018](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [Figure 2 – Background Environmental Data Map \(JD, Mar 2018\)](#)

USFWS NWI maps: [Figure 2 – Background Environmental Data Map \(JD, Mar 2018\)](#)

USGS topographic maps: [Figure 1 – Site Location Map](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	NHD, Huntington District Regulatory Viewers
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Appendix B – Wetland Determination Data Forms and Appendix C – ORAM Forms (JD, Mar 2018)
Other Sources	FEMA National Flood Hazard Layer, Huntington District Regulatory Viewers

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 6 February 2018 and 7 May 2018, with a corresponding antecedent precipitation tool \(APT\) report, are included in the evaluation for the excluded features listed in Section II D. According to the APT report for 6 February 2018, drier than normal conditions with an antecedent precipitation condition score of 9 was observed during the WebWIMP wet season with a Palmer Drought Severity Index Value of moderate wetness. The 30-day rolling total for precipitation was](#)

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within the normal rolling thirty year period. According to the APT report for 7 May 2018, normal conditions with an antecedent precipitation condition score of 13 was observed during the WebWIMP wet season with a Palmer Drought Severity Index Value of mild wetness. The 30-day rolling total for precipitation was within the normal rolling thirty year period. On the 6 February 2018, Stream 6, 7, 10, and 11 exhibited flow within the stream channels. Stream 6 is depicted on the NWI map and the NHD. Stream 6 includes a clearly defined bed and bank, coarse bed material (bolder slabs, boulders, cobble, and gravel), and moderate sinuosity. Based on the submitted information, Stream 6 contributes perennial flow downstream directly to the Ohio River, an (a)(1) water. Therefore, Stream 6 is an (a)(2) water. Streams 7, 10, and 11 are not depicted on the NWI and NHD maps. However, Streams 7, 10, and 11 include a clearly defined bed and bank, silt bed material, and no sinuosity. On 6 February 2018 during drier than normal conditions, Streams 7, 10, and 11 all exhibited flow. Based on the submitted information, Stream 7, 10, and 11 exhibit intermittent flow. Streams 7, 10, and 11 contribute intermittent flow downstream directly to the Ohio River, an (a)(1) water. Therefore, Streams 7, 10, and 11 are (a)(2) waters. Wetland A is physically separated from the Ohio River, an (a)(1) water, only by a natural berm, bank, dune, or similar natural feature. Therefore, Wetland A is an (a)(4) water. Based on the Preliminary Jurisdictional Waters Determination Report, Razor Project, Green Township, Adams County, Ohio dated 22 March 2018, Streams 1-5 and 8-9 exhibit ephemeral flow and were flowing on 6 February 2018. Based upon the West Union, Ohio weather station data, approximately 0.28 inch of rain accumulated on 6 February 2018. Therefore, it would be expected ephemeral streams would exhibit flow on 6 February 2018. Streams 12-14 exhibit ephemeral flow and were not flowing on 6 February 2018. Streams 1-5, 8-9, and 12-14 do not contain clearly defined bed and banks and predominately exhibited leaf pack substrate. Streams 1-5, 8-9, and 12-14 meets the definition of “ephemeral” in paragraph (c)(3). Therefore, Streams 1-5, 8-9, and 12-14 are not considered waters of the United States per 33 CFR 328.3(b)(3). No culverts or other means of connectivity could be located to connect Channel 1 to the Ohio River or Channel 2 to Stream 14. Channel 1 and Channel 2 do not convey flow to any water of the United States within a typical year. Therefore, Channel 1 and Channel 2 are not considered waters of the United States per 33 CFR 328.3(b)(3). Ditch 1 is a roadside ditch that was constructed in uplands. It has been determined that Ditch 1 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). Swales 1-9 are erosional features in the landscape and meet the definition of “ephemeral” in paragraph (c)(3). Therefore, Swales 1-8 are not considered waters of the United States per 33 CFR 328.3(b)(3). Wetland B 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. Therefore, Wetland B is not a jurisdictional water of the United States per 33 CFR 328.3(b)(1).

C. Additional comments to support AJD: N/A or provide additional discussion as appropriate.

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.