



**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): 1/27/2021

ORM Number: LRH-2020-00246-LMR

Associated JDs: A Preliminary Jurisdictional Determination (PJD) was completed for this project (LRH-2020-00246-LMR) by letter dated 28 May 2020. An Approved Jurisdictional Determination (AJD) was completed for Streams 2, 5, 6, and 8 by letter dated 29 September 2020. The Ohio Department of Transportation (ODOT) has requested an AJD for the study area that includes ephemeral Stream 3 as depicted on the attached map.

Review Area Location¹: State/Territory: Ohio City: Hamilton Township County/Parish/Borough: Warren County

Center Coordinates of Review Area: Latitude 39.35081 Longitude -84.24061

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
- 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 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.

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
Stream 3	458	linear 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 33 CFR 328.3(c)(3), is not considered a water of the United States per 33 CFR 328.3(a)(1)-(a)(3), and is not subject to regulation under Section 404. Reference Section III B of this AJD form 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: [The Ohio Department of Transportation, Level 2 Ecological Survey Report \(ESR\) for WAR-CR282-0.97 King Avenue Bridge, PID 106724 dated 18 October 2019; and mapping, site condition descriptions, photographs, and study area acreages provided by emails dated 14 and 19 January 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The ESR and emails dated 14 and 19 January 2021 sufficiently describe the aquatic resource in the Stream 3 Study Area.](#)

Data sheets prepared by the Corps: [NA](#)

Photographs: [Aerial and Other: Appendices 1 and 2 of the ESR for WAR-CR282-0.97 King Avenue Bridge, PID 106724 and photos received by email on 19 January 2021.](#)

Corps site visit(s) conducted on: [Date\(s\).](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [PJD for LRH-2020-00246-LMR completed 28 May 2020.](#)

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

USDA NRCS Soil Survey: [Retrieved from ORM database on 21 January 2021.](#)

USFWS NWI maps: [Retrieved from ORM database on 21 January 2021.](#)

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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USGS topographic maps: [Appendix 1, Figure 1.1 of the ESR for WAR-CR282-0.97 King Avenue Bridge, PID 106724.](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset
USDA Sources	Other than the Soil Survey described above, no other USDA sources were used.
NOAA Sources	National Weather Service, Archived Climate Data for May 2018, https://www.weather.gov/iln/lcd_archive , accessed 21 January 2021.
USACE Sources	N/A.
State/Local/Tribal Sources	Appendix 3 of the ESR (HHEI form).
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. Two point-in-time data sources (22 May 2018 and 18 January 2021), with a corresponding APT report, were included in the evaluation for the excluded ephemeral stream listed in Section II D (Stream 3).

According to the APT report for 22 May 2018, normal conditions were observed during the wet season with a Palmer Drought Severity Index (PDSI) Value of 2.08 (moderate wetness). The antecedent precipitation condition is considered “normal” for that point in time.

According to the APT report for 18 January 2021, PDSI values were unable to be calculated. The antecedent precipitation condition is considered “normal” for that point in time during the wet season.

C. Additional comments to support AJD:

On 22 May 2018, during normal conditions of the wet season, there was water flowing in Stream 3 with pool depths averaging 23 inches and an average width of 4.3 feet. The substrates of Stream 3 in the forested area east of the construction limits are predominately gravel and sand with smaller portions of cobble, silt, and leaf pack/woody debris. Within the study area, Stream 3 flows through a forested area on the east side of Grandin Road. The stream flows west until reaching the vegetated ditch line of Grandin Road where it turns north. After flowing out of the ditch, Stream 3 flows over the gravel surface of a parking lot before reaching a culvert that flows into the Little Miami River.

Stream 3 has a drainage area of 0.01 square-mile. Based on historic precipitation records (NOAA), the Cincinnati, Ohio region received 0.62 inches of precipitation on 21 May 2018 and 0.23 inches on 22 May 2018, the day of the field observation. The stream morphology, location, and watershed size indicate that Stream 3 has ephemeral flow in a typical year.

This information supports the fact that ephemeral Stream 3 does not meet the flow requirements of a jurisdictional tributary. It has been determined that Stream 3 exhibits ephemeral flow, is not a water of the U.S. per 33 CFR 328.3(b)(3), and is not subject to regulation under Section 404.



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