



**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): 11/18/2020
 ORM Number: LRH-2020-00780-OHR
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Ohio City: Way County/Parish/Borough: Monroe
 Center Coordinates of Review Area: Latitude 39.6362 Longitude -81.1909

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 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 1	986 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 1 is an intermittent, direct tributary to Clear Fork Little Muskingum River, an (a)(2) water and a direct tributary to Little Muskingum River, an (a)(2) water and a direct tributary to the Ohio River, an (a)(1) traditional navigable water at locations outside of the AJD Review Area. According to Public Notice LRH-94-40 dated 27 July 1994, the Ohio River is a Section 10 navigable waterway in the Huntington District from River Mile 127.2 to River Mile 438.0. Through this path, Stream 1 contributes surface water flow indirectly to the Ohio River in a typical

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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	(a)(2) Criteria	Rationale for (a)(2) Determination
				year (reference Section III B of this AJD form). Within the AJD Review Area, 1,006 linear feet of Stream 1 are present (1,006 linear feet of open channel, 20 linear feet of culvert). The SR 537 culvert maintains flow between the upstream and downstream sections of Stream 1 and does not sever jurisdiction.
Stream 4	894	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 4 is an perennial, direct tributary to Clear Fork Little Muskingum River, an (a)(2) water and a direct tributary to Little Muskingum River, an (a)(2) water and a direct tributary to the Ohio River, an (a)(1) traditional navigable water at locations outside of the AJD Review Area. According to Public Notice LRH-94-40 dated 27 July 1994, the Ohio River is a Section 10 navigable waterway in the Huntington District from River Mile 127.2 to River Mile 438.0. Through this path, Stream 4 contributes surface water flow indirectly to the Ohio River in a typical year (reference Section III B of this AJD form). Within the AJD Review Area, 1,018 linear feet of Stream 4 are present (1,018 linear feet of open channel, 124 linear feet of culvert). The SR 537 culvert maintains flow between the upstream and downstream sections of Stream 4 and does not sever jurisdiction.
Stream 5	105	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 5 is an perennial, direct tributary to Clear Fork Little Muskingum River, an (a)(2) water and a direct tributary to Little Muskingum River, an (a)(2) water and a direct tributary to the Ohio River, an (a)(1) traditional navigable water at locations outside of the AJD Review Area. According to Public Notice LRH-94-40 dated 27 July 1994, the Ohio River is a Section 10 navigable waterway in the Huntington District from River Mile 127.2 to River Mile 438.0. Through this path, Stream 5 contributes surface water flow indirectly to the Ohio River in a typical year (reference Section III B of this AJD form). Within the AJD Review Area, 105 linear feet of Stream 5 are present (142 linear feet of open channel, 37 linear feet of culvert). The SR 537 culvert maintains flow between the upstream and downstream sections of Stream 5 and does not sever jurisdiction.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.



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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)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.006 acre(s)	(b)(1) Non-adjacent wetland.	Wetland A is physically remote and isolated. It 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. Reference Section III B of this AJD form for typical year assessments.
Wetland B	0.012 acre(s)	(b)(1) Non-adjacent wetland.	Wetland B is physically remote and isolated. It 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. Reference Section III B of this AJD form for typical year assessments.
Stream 2	47 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 2 is an ephemeral stream and meets the definition of “ephemeral” in 33 CFR 328.3(c)(3). Reference Section III B of this AJD form for typical year assessments.
Stream 3	109 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). 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 1 Ecological Survey Report \(ESR\), MOE-537-3.40, PID 107895, 30 September 2020.](#)

This information is sufficient for purposes of this AJD.

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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Rationale: The information provided by or on behalf of the requestor accurately reflects the district's conclusions on the aquatic resources within the geographic boundary of the AJD Review Area.

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Aerial and Other: Appendices 1 and 2 of the ESR for MOE-537-3.40, PID 107895.
- Corps site visit(s) conducted on: 26 October 2020
- 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: Retrieved from ORM database on 17 November 2020.
- USFWS NWI maps: Retrieved from ORM database on 17 November 2020.
- USGS topographic maps: Appendix 1, Figure 2 of the ESR for MOE-537-3.40, PID 107895.

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Other than the USGS map listed above, no other USGS sources were used.
USDA Sources	In addition to the Soil Survey described above, the USDA Soil Survey of Monroe County, Ohio (1974) was used.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Appendix 4 of the ESR (Ohio Rapid Assessment Method for Wetlands (ORAM) forms, Headwater Macroinvertebrate Field Evaluation Index (HMFEI) forms, Primary Headwater Habitat Evaluation (HHEI) forms, and Corps Wetland Data Forms, all completed by requestor).

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 periodic range (seasonally or annually) for a specific geographic region where the aquatic resource occurs. Three (3) point-in-time data sources (12 June 2019, 15 September 2020, and 26 October 2020), with corresponding Antecedent Precipitation Tool (APT) reports, were included in the evaluation for the excluded waters listed in Section II D (Wetland A, Wetland B, Stream 2, and Stream 3).

According to the APT report for 12 June 2019, the date of the majority of the requestor's field work, drier than normal conditions were observed during the dry season with a Palmer Drought Severity Index (PDSI) Value of 5.0 (extreme wetness). The antecedent precipitation condition with a score of 8 is considered "drier than normal" for that point in time.

According to the APT report for 15 September 2020, the date of the requestor's visit to evaluate Stream 5, normal conditions were observed during the dry season with a PDSI Value of 2.2 (moderate wetness). The antecedent precipitation condition with a score of 10 is considered "normal" for that point in time.

According to the APT report for 26 October 2020, the date of the Corps' AJD field review, drier than normal conditions were observed during the wet season with a PDSI Value of 2.2 (moderate wetness). The antecedent precipitation condition with a score of 8 is considered "drier than normal" for that point in time.

The periodic range used for these typical year assessments was the three (3) 30-day periods preceding each observation date at the nearest available weather stations at Newport, Ohio and/or Middlebourne,



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West Virginia. The Newport weather station is 16.85 miles south-southwest of the AJD Review Area at an elevation of 667.98 feet above mean sea level (msl). The Middlebourne weather station is 21.17 miles southeast of the AJD Review Area at an elevation of 761.16 above msl. The AJD Review Area has relief ranging from approximately 740 msl to approximately 1040 msl. The geographic range for the weather stations is appropriate because they are in the same 8-digit Hydrologic Unit Code (HUC-8 # 05030201 – Little Muskingum-Middle Island) as the aquatic resources within the geographic boundary of the AJD Review Area. The geographic range is also appropriate because the weather stations are at elevations similar to the majority of the aquatic resources within the geographic boundary of the AJD Review Area.

C. Additional comments to support AJD: The applicant performed the delineation on 12 June 2019 for most aquatic resources; the applicant delineated Stream 5 on 15 September 2020. The Corps completed an on-site verification of the aquatic resources described below on 26 October 2020.

33 CFR 328.3(a)(2) - During the 12 June 2019 and 26 October 2020 on-site evaluations, water flow was observed in the intermittent stream listed in Section II C (Stream 1) with “drier than normal” conditions. Stream 1 has a drainage area of 0.07 square mile and the stream was dry in the downstream reach beyond the AJD Review Area. Stream 1 scored 75 on the Ohio Environmental Protection Agency (EPA) HHEI form, which is suggestive of perennial flow. However, Stream 1 scored 9 on the Ohio EPA HMFEL form. Because an HMFEL score of <7 indicates an ephemeral stream, the HMFEL score for Stream 1 supports that it has intermittent flow. Stream 1 appears on the USGS quadrangle and the NWI map. It has been determined that Stream 1 listed in Section II C exhibits intermittent flow, is a water of the United States per 33 CFR 328.3(a)(2), and is subject to regulation under Section 404.

33 CFR 328.3(a)(2) - During the 12 June 2019, 15 September 2020, and 26 October 2020 on-site evaluations, water flow was observed in the perennial streams listed in Section II C (Stream 4 and Stream 5) in “drier than normal” and “normal” conditions, respectively. Stream 4 and Stream 5 have drainage areas of 0.20 square mile and 0.71-square mile, respectively, and each stream had flow in the downstream reach beyond the AJD Review Area. Stream 4 scored 85 and 23, respectively, on the HHEI form and the HMFEL form, which strongly supports that Stream 4 has perennial flow. Stream 5 scored 67 on the HHEI form and has a 30% cobble substrate, which supports that Stream 5 has perennial flow. Stream 4 and Stream 5 appear on the USGS quadrangle and the NWI map. It has been determined that Stream 4 and Stream 5 listed in Section II C exhibit perennial flow, are waters of the United States per 33 CFR 328.3(a)(2), and are subject to regulation under Section 404.

33 CFR 328.3(b)(1) - Wetlands A and B are physically remote and isolated, 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.

33 CFR 328.3(b)(3) - During the 12 June 2019 and 26 October 2020 on-site evaluations, no water flow was observed in the ephemeral streams listed in Section II C (Stream 2 and Stream 3) in “drier than normal” conditions. Each stream has a drainage area of <0.05 square mile according to the HHEI form. Stream 2 and Stream 3 scored 31 and 16, respectively. Stream 2 scored higher in comparison to Stream 3 due to a higher variety of stream substrate types. Stream 2 and Stream 3 do not appear on the USGS quadrangle or the NWI map. These data support the fact that the ephemeral streams do not meet the flow requirements of a jurisdictional tributary. It has been determined that Stream 2 and Stream 3 listed in



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Section II D exhibit ephemeral flow, are not waters of the United States per 33 CFR 328.3(b)(3), and are not subject to regulation under Section 404.