



**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): 9/29/2020

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. The Ohio Department of Transportation (ODOT) has requested an AJD for the Study Areas that include ephemeral streams as depicted on the attached map.

Review Area Location¹: State/Territory: Ohio City: Deerfield and Hamilton Townships

County/Parish/Borough: Warren County

Center Coordinates of Review Area: Latitude 39.352035 Longitude -84.241951

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 |
| 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 |
| Study Area 1 – Stream 2 | 188 | 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), 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 |
| Study Area 2 – Stream 5 | 279 | linear 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 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 |
| Study Area 3 – Stream 6 | 528 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | Stream 6 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 |
| Study Area 4 – Stream 8 | 73 | linear 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 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.

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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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 and study area acreages provided by emails dated 19 August 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The ESR and emails dated 19 August 2020 sufficiently describe the aquatic resources in Study Areas 1-4.](#)

- 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.](#)
- 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 13 August 2020.](#)
- USFWS NWI maps: [Retrieved from ORM database on 13 August 2020.](#)
- 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 and April 2019, https://www.weather.gov/iln/lcd_archive, accessed 27 August 2020. |
| USACE Sources | N/A. |
| State/Local/Tribal Sources | Appendix 3 of the ESR (HHEI forms) |
| 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. Three point-in-time data sources \(22 May 2018, 23 May 2018, and 11 April 2019\), with a corresponding APT report, were included in the evaluation for the excluded ephemeral streams listed in Section II D \(Streams 2, 5, 6, and 8\).](#)

[According to the APT report for 22 and 23 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 11 April 2019, wetter than normal conditions were observed during the wet season with a PDSI Value of 5.2 \(extreme wetness\). The antecedent precipitation condition is considered “wetter than normal” for that point in time.](#)



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C. Additional comments to support AJD:

Stream 2 - On 22 May 2018, during normal conditions of the wet season, there was water flowing in Stream 2 with pools less than 2 inches and an average width of 2.6 feet. The substrates of Stream 2 are predominately sand and silt. Within Study Area 1, Stream 2 is captured in the ditch line of Grandin Road and 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 2 has ephemeral flow.

Stream 5 - On 22 May 2018, during normal conditions of the wet season, the stream was not flowing. The stream channel was moist with isolated pools. Stream 5 an average width of 3 feet and the substrates are predominately sand and silt. Within Study Area 2, Stream 5 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 field observation of lack of flow, stream morphology, and watershed size indicate that Stream 5 has ephemeral flow.

Stream 6 - On 23 May 2018, during normal conditions of the wet season, the stream channel was dry with no flow present. The stream has an average width of 4.3 feet and the substrates are predominately gravel and sand. Within Study Area 3, Stream 6 has a drainage area of 0.01 square-mile. Based on historic precipitation records (NOAA), the Cincinnati, Ohio region received 0.23 inches of precipitation on 22 May 2018 and 0 inches on 23 May 2018, the day of the field observation. The field observation of lack of flow, stream morphology, and watershed size indicate that Stream 6 has ephemeral flow.

Stream 8 - On 11 April 2019, during wetter than normal conditions of the wet season, the stream channel was dry with no flow present. The stream has an average width of 7.5 feet and the substrates are predominately boulder slabs and leaf pack. Within Study Area 4, Stream 8 has a drainage area of 0.01 square-mile. Based on historic precipitation records (NOAA), the Cincinnati, Ohio region received no precipitation the day of the field observation, nor the 2 days prior. The field observation of flow, stream morphology, and watershed size indicate that Stream 8 has ephemeral flow.

This information supports the fact that ephemeral Streams 2, 5, 6, and 8 do not meet the flow requirements of a jurisdictional tributary. It has been determined that the ephemeral streams listed in Section II D, above, 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.