

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 12/9/2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Huntington District, Water Color Estates, for LRH-2006-533-WAB-Grand Lake St. Marys-Adjacent Wetlands 0, 1, 2, 4, 5, and 6

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Ohio** County/parish/borough: **Auglaize** City: **St. Marys**
Center coordinates of site (lat/long in degree decimal format): Lat. **40° 30'25.52"** N, Long. **84°27'10.83"** W.
Universal Transverse Mercator:

Name of nearest waterbody: **Grand Lake St. Marys**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Wabash River**

Name of watershed or Hydrologic Unit Code (HUC): **05120101-020**

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date: **November 3, 2015**
 Field Determination. Date(s): **June 16, 2015**

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Appear to be no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or acres.

Wetlands: **7.204** acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

- Watershed size: acres
- Drainage area: square miles
- Average annual rainfall: inches
- Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are river miles from TNW.
Project waters are river miles from RPW.
Project waters are aerial (straight) miles from TNW.
Project waters are aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵:

(b) General Tributary Characteristics (check all that apply):

- Tributary is:** Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain:.

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: .

Primary tributary substrate composition (check all that apply):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:.

Presence of run/riffle/pool complexes. Explain:.

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for:

Estimate average number of flow events in review area/year:

Describe flow regime:.

Other information on duration and volume: .

Surface flow is: Characteristics: .

Subsurface flow: Explain findings: .

- Dye (or other) test performed: N/A.

Tributary has (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: . | |

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> other (list): | |

(iii) **Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings:.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: **7.024 acres**

Wetland type. Explain: **Wetlands 0, 1, 2, 4, and 6 are forested wetlands and Wetland 5 is a scrub-shrub wetland.**

Wetland quality. Explain: **Wetland 0 is a palustrine forested wetland comprising ~0.526 acre located within the northernmost portion of the 33 acre parcel (Parcel No. K3106304800). This wetland has established within a depression within the 100 year floodplain of the Grand Lake St. Marys and is characterized as being dominated by button bush (*Cephalanthus occidentalis*) and silver maple (*Acer sacharinum*). Coverage of invasive species was sparse. Wetland 0 contains a habitat assemblage that could support a range of amphibians and reptiles and suitable resources for feeding, nesting, and spawning. This wetland achieved a score of 42.5 on the Ohio Rapid Method Assessment (ORAM), making this wetland a category 2 wetland. Ohio Administrative Code Rule 3745-1-54(C)(2) defines Category 2 wetlands as wetlands which "...support moderate wildlife habitat, or hydrological or recreational functions," and as wetlands which are "...dominated by native species but generally without the presence of, or habitat for, rare, threatened or endangered species; and wetlands which are degraded but have a reasonable potential for reestablishing lost wetland functions." Wetland 0 is positioned within the 100 year floodplain of the lake and has a hydrological connection to the lake via overland sheetflow. Flooding and/or ponding from the lake occurs within Wetland 0.**

Wetland 1 is a palustrine forested wetland comprising ~0.54 acre located within the northernmost portion of the 9 acre parcel (Parcel No. K3101803400) within the 100 year floodplain of the Grand Lake St. Marys. This wetland has established within a well-defined depression and is characterized as being dominated by button bush (*Cephalanthus occidentalis*) and American sycamore (*Platanus occidentalis*). Coverage of invasive species was nearly absent. Microtopography included vegetated hummucks/tussucks, amphibian breeding pools, and moderate amounts of coarse woody debris and standing dead greater than 10 inches dbh. Wetland 1 contains a habitat assemblage that could support a range of amphibians and reptiles and suitable resources for feeding, nesting, and spawning. This wetland achieved a score of 48 on the ORAM, making this a category 2 wetland. Wetland 1 is positioned within the 100 year floodplain of the lake and has a hydrological connection to the lake via overland sheetflow. Flooding and/or ponding from the lake occurs within Wetland 1.

Wetland 2 is a palustrine forested wetland comprising ~1.41 acres located to the east and within the same ~ 9 acre parcel as wetland 1 within the 100 year floodplain of the Grand Lake St. Marys. This wetland has established within a depression and is characterized as being dominated by button bush (*Cephalanthus occidentalis*) and green ash (*Fraxinus pennsylvanica*). Coverage of invasive species was nearly absent. The soil exhibited hydric characteristics of a thick dark surface. Microtopography included vegetated hummucks/tussucks, standing dead greater than 10 inches dbh, and moderate amounts of amphibian breeding pools and coarse woody debris. Wetland 2 contains a habitat assemblage that could support a range of amphibians and reptiles and suitable resources

for feeding, nesting, and spawning. This wetland achieved a score of 51 on the ORAM, making this a category 2 wetland. Wetland 2 is positioned within the 100 year floodplain of the lake and has a hydrological connection to the lake via overland sheetflow. Flooding and/or ponding from the lake occurs within Wetland 2.

Wetland 4 is a palustrine forested wetland comprising ~0.266 acre located near the southeastern portion of the same ~ 33 acre parcel as wetland 0 within the 100 year floodplain of the Grand Lake St. Marys. This wetland has established within a depression and is characterized as being dominated by creeping jenny (*Lysimachia nummularia*) and green ash (*Fraxinus pennsylvanica*). Coverage of invasive species was sparse. Microtopography included vegetated hummocks/tussucks. This wetland did not possess quality habitat and achieved a score of 23 on the ORAM, making this a category 1 wetland. Wetland 4 is positioned within the 100 year floodplain of the lake and has a hydrological connection to the lake via overland sheetflow. Flooding and/or ponding from the lake occurs within Wetland 4.

Wetland 5 is a palustrine scrub/shrub wetland comprising ~0.178 acre located approximately 150 feet to west of wetland 4 within the 100 year floodplain of the Grand Lake St. Marys. This wetland is characterized as being dominated by green ash (*Fraxinus pennsylvanica*) and upright sedge (*Carex stricta*). Coverage of invasive species was sparse. This wetland achieved a score of 22 on the ORAM, making this a category 1 wetland. Wetland 5 is positioned within the 100 year floodplain of the lake and has a hydrological connection to the lake via overland sheetflow. Flooding and/or ponding from the lake occurs within Wetland 5.

Wetland 6 is a palustrine forested wetland comprising ~4.28 acres located to the south of Koehn Road within the ~ 6 acre parcel (parcel no. K3101901500). Wetland 6 is characterized as being dominated by silver maple (*Acer saccharinum*) and green ash (*Fraxinus pennsylvanica*). Coverage of invasive species was sparse. Microtopography included amphibian breeding pools, and moderate amounts of coarse woody debris and standing dead greater than 10 inches dbh. Wetland 6 contains a habitat assemblage that could support a range of amphibians and reptiles and suitable resources for feeding, nesting, and spawning. This wetland achieved a score of 68 on the ORAM, making this a category 3 wetland. Wetlands that are assigned to Category 3 have "...superior habitat, or superior hydrological or recreational functions." They are typified by high levels of diversity, a high proportion of native species, and/or high functional values. Category 3 wetlands include wetlands which contain or provide habitat for threatened or endangered species, are high quality mature forested wetlands, vernal pools, bogs, fens, or which are scarce regionally and/or statewide. Flows from Wetland 6 outlet through a pipe under a roadway into an inlet of the Grand Lake St. Marys.

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Explain: **perennial**. Explain. **Grand Lake St. Marys is primarily fed by tributaries flowing from the south. It is an impoundment of Coldwater Creek and Beaver Creek, both of which are perennial flowing relatively permanent waters.**

Surface flow is: **Overland Sheetflow**.

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

- Not directly abutting
 - Discrete wetland hydrologic connection. Explain: **Evidence of many flood events through forested areas provides hydrologic connection for Wetlands 0, 1, 2, 4 and 5.**
 - Ecological connection. Explain: .
 - Separated by berm/barrier. Explain: **Wetlands 4, 5 and 6 are separated by a barrier from the Grand Lake St. Marys.**

(d) Proximity (Relationship) to TNW

Project wetlands are **10-15** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **50 - 100-year (Wetlands 0, 1, 2, 4 and 5) and 100-500-year (Wetland 6)** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): **Wetlands 0, 1 and 2 are located within the riparian buffer of Grand Lake St. Marys.**

Vegetation type/percent cover. Explain: **Wetlands 0, 1, 2, 4, and 6 are forested wetlands and Wetland 5 is a scrub-shrub wetland.** Forested Percent cover is as follows: **80% for Wetland 0, 70% of Wetland 1, 90% of Wetland 2, 75% of Wetland 3, 60% of Wetland 4, 60% of Wetland 5, and 80% of Wetland 6.**

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: **Wetlands 0, 1, 2, and 6 contain habitat assemblages that could support a range of amphibians and reptiles and suitable resources for feeding, nesting, and spawning.**

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **6**

Approximately (**7.024**) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
0 (N)	0.526		
1 (N)	0.540		
2 (N)	1.41		
4 (N)	0.266		
5 (N)	0.178		
5 (N)	4.28		

Summarize overall biological, chemical and physical functions being performed: **Wetlands 0, 1 and 2 are Category 2 wetlands, as determined by the ORAM protocol and support moderate wildlife habitat and hydrological functions, and are dominated by native species. Wetland 0 is semi- to permanently inundated/saturated. Sources of hydrology include precipitation and perennial surface water from Grand Lake St. Marys. Microtopography included coarse woody debris and moderate amounts of amphibian breeding pools. Wetland 1 is regularly inundated/saturated. Sources of hydrology include precipitation and perennial surface water from Grand Lake St. Marys. Microtopography included vegetated hummucks/tussucks, amphibian breeding pools, and moderate amounts of coarse woody debris and standing dead greater than 10 inches dbh.**

Wetland 2 is semi- to permanently inundated/saturated. Sources of hydrology include precipitation and perennial surface water from Grand Lake St. Marys. Microtopography included vegetated hummocks/tussocks, standing dead greater than 10 inches dbh, and moderate amounts of amphibian breeding pools and coarse woody debris. Wetland 4 does not possess quality habitat and achieved a score of 23 on the ORAM, making it a category 1 wetland. Hydrology was indicated by the presence of oxidized rhizospheres along living roots, water stained leaves, and water marks on the base of the tree trunks. This wetland is seasonally saturated in its upper 12 inches. Microtopography included vegetated hummocks/tussocks. Wetland 5 does not possess quality habitat and achieved a score of 22 on the ORAM, making it a Category 1 wetland. Hydrology was indicated by the presence of water stained leaves and water marks on the base of the tree trunks. This wetland is seasonally saturated in its upper 12 inches. Wetland 6 possesses high quality habitat and achieved a score of 68 on the ORAM, making it a category 3 wetland. Hydrology was indicated by the presence of reduced iron, water stained leaves, and water marks on the base of the tree trunks. This wetland is regularly inundated/saturated. Sources of hydrology include precipitation and perennial surface water from Grand Lake St. Marys. Microtopography included amphibian breeding pools, and moderate amounts of coarse woody debris and standing dead greater than 10 inches dbh. These wetlands are characterized by relatively diverse emergent, shrub and tree species. Wetlands 0, 1, 2, 4, 5 and 6 serve to filter sediment and chemicals prior to entry into Grand Lake St. Marys. Wetlands 0, 1, 2, 4 and 5 are situated within the 100 year floodplain and provide flood storage capacity/function.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: **Wetlands 0, 1, 2, 4, 5 and 6 filter nutrients, sedimentation and pollutants prior to discharging into the Grand Lake St. Marys. Wetlands 0, 1, 2, 4, 5 and 6 control non-point source pollution and aid in maintaining and improving water quality of the Grand Lake St. Marys and ultimately the Wabash River, a TNW. Wetlands 0, 1, 2, and 6 provide habitat and lifecycle support**

functions for fish and other species, such as feeding, nesting, spawning, or rearing young. Wetlands 0, 1, 2, 4, 5 and 6 provide more than a minimal or insubstantial effect on the chemical, physical, and biological integrity of the receiving TNW, the Wabash River.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

- TNWs: linear feet width (ft), Or, acres.
 Wetlands adjacent to TNWs: acres.

2. RPWs that flow directly or indirectly into TNWs.

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial.
 Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:.
 Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **7.024** acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain: .
 Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters: .
 Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
 Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
 Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
 Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
 Lakes/ponds: acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
 Lakes/ponds: acres.
 Other non-wetland waters: acres. List type of aquatic resource: .
 Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: **Preliminary Jurisdictional Water Determination/Delineation...Water Color Estates...Southshore Acres, Inc.... and dated 14 August 2015**
 Office concurs with data sheets/delineation report. **Preliminary Jurisdictional Water Determination/Delineation...Water Color Estates...Southshore Acres, Inc.... and dated 14 August 2015 and Southshore Acres - Re-Delineated Wetlands dated 1 October 2015**
 Office does not concur with data sheets/delineation report.
 Data sheets prepared by the Corps: .
 Corps navigable waters' study: .
 U.S. Geological Survey Hydrologic Atlas: .
 USGS NHD data.
 USGS 8 and 12 digit HUC maps.
 U.S. Geological Survey map(s). Cite scale & quad name **7.5 Minute Series, Saint Marys, Ohio Quadrangle, 1994.**

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- USDA Natural Resources Conservation Service Soil Survey. Citation: **Web Soil Survey National Cooperative Soil Survey – Auglaize County, Ohio and Mercer County, Ohio.**
- National wetlands inventory map(s). Cite name: **USFWS NWI maps**
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: **FEMA FIRM Map Number 39011C0090 C Effective Date 6 September 1989**
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **Google Earth 2014, 2012, 2011, 2009, 2006, 2005, and 1994.**
or Other (Name & Date): **Attachment 5 of Preliminary Jurisdictional Water Determination/Delineation...Water Color Estates...Southshore Acres, Inc.... and dated 14 August 2015.**
- Previous determination(s). File no. and date of response letter: **LRL-2005-225 and LRH-2004-1285**
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify):
Mack, John J. 2001. Ohio Rapid Assessment Method for Wetlands, Manual for Using Version 5.0. Ohio EPA Technical Bulletin Wetland/2001-1-1. Ohio Environmental Protection Agency, Division of Surface Water, 401 Wetland Ecology Unit, Columbus, Ohio.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Via a letter dated 15 February 2005, the Louisville District issued an approved jurisdictional determination for Wetlands 0, 4 and 5 (previously identified as Wetlands A, C and B respectively). This determination stated "based on the presence of wetlands that eventually drain into navigable or interstate waters through a tributary system and the use, degradation, or destruction of which could affect interstate or foreign commerce".

Via a letter dated 13 October 2004, the Louisville District issued an approved jurisdictional determination for Wetland 6 (previously identified as Wetlands 1, 2 and 3) on the six acre parcel located south of Koehn Road and made a determination the wetland was adjacent.

Our 2 December 2008 headquarters guidance entitled *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* was followed in the final verification of Clean Water jurisdiction for the subject site. In accordance with the 5 June 2007 Joint Memorandum between the United States Environmental Protection Agency (USEPA) and the Corps and the 28 January 2008 Corps Memorandum regarding coordination on jurisdictional determinations, the determinations described below were coordinated with the USEPA Region 5 and Corps Headquarters on 4 November 2015. No comments were submitted by either the USEPA or Corps Headquarters. Coordination was completed on 25 November 2015.