

**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):** 1-9-12 JBS

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Huntington District, Prospect Park, Navarre; 2011-00016-TUS

**Ephemeral Stream 1/6 (non-RPW) Relevant Reach 1, abutting Wetlands D and G, and adjacent Wetland H**  
(Streams 1 and 6 were assessed together since they are the same stream although labeled separately on the delineation map.)

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Ohio County/parish/borough: Stark City: Navarre  
Center coordinates of site (lat/long in degree decimal format): Lat. 40.73623°N, Long. 81.50451°W.  
Universal Transverse Mercator:

Name of nearest waterbody: UNT Fohl Creek

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

Name of watershed or Hydrologic Unit Code (HUC): 05040001

- 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: 9/30/11  
 Field Determination. Date(s): 5/5/11, 7/25/11, 8/18/11

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There are 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):<sup>1</sup>**

- TNWs, including territorial seas  
 Wetlands adjacent to TNWs  
 Relatively permanent waters<sup>2</sup> (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: 1,024 linear feet: 3 width (ft) and/or acres.  
Wetlands: 0.9 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Wetland Delineation Manual**  
Elevation of established OHWM (if known): .

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

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

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

<sup>2</sup> 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).

<sup>3</sup> 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 waterbody<sup>4</sup> 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: 2580 sq. miles

Drainage area: 80 acres

Average annual rainfall: 39.1 inches

Average annual snowfall: 34.61 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 1 tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW<sup>5</sup>: Water flows from Stream 1/6 Relevant Reach 1 flows into Stream 1/6 Relevant Reach 2, and then into Fohl Creek, which flows into the Tuscarawas River (TNW).

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

<sup>5</sup> 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.

Tributary stream order, if known: first.

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

Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: Stream 1/6 are the same stream feature. However, the

segment labeled Stream 6 has been altered by current agricultural practices. The stream contains a defined bed and bank for most of its path. However, it has been disturbed regularly, causing a discontinuous OHW. The continued use of heavy farm equipment including discing and plowing apparatuses has removed the stream definition in some locations. The stream has reformed defined banks and an OHW where flow is concentrated. However, where flow has been disturbed due to the flattening or redistribution of land from farm equipment, water tends to fan out into larger flow patterns and the stream loses definition for short lengths. Should the farming manipulations cease for a season or for a year, the stream is expected to recover its bed and bank entirely. At present, though, segments of stream are lacking definition. This is a manipulated, man-altered state that does not change the designation of the stream. Where the stream is unaltered (where it is labeled as Stream 1) the channel maintains a well defined bed and bank and forested corridor. Off-site, riparian wetlands are found along the stream channel. Stream 1/6 flows to the north and enters Fohl Creek off-site.

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

Average width: 3 feet

Average depth: 1 feet

Average side slopes: vertical (1:1 or less).

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The tributary has fairly stable banks. The tributary is continually altered by farming activity, so the banks are not allowed the opportunity to erode greatly. The stream banks are either devoid of vegetation or cultivated with corn crops. When storm events occur, the water erodes the banks of the stream, creating a better defined channel.

Presence of run/riffle/pool complexes. Explain: none.

Tributary geometry: relatively straight

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: ephemeral flow

Estimate average number of flow events in review area/year: 11-20

Describe flow regime: Stream 1/6 is an ephemeral channel that flows following storm events. Wetland G forms the headwaters to the wetland and could provide a small quantity of ground water contribution. However, the stream is only expected to flow throughout the entire length when wetland G releases excess storm water and as it slowly releases the water over the days following storm events.

Other information on duration and volume:

Surface flow is: confined and discrete. Characteristics:

Subsurface flow: unknown. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

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

Discontinuous OHWM.<sup>7</sup> Explain: The continued use of heavy farm equipment including discing and plowing mechanisms has removed the stream definition in some locations. The stream has reformed defined banks and an OHW where flow is

<sup>6</sup>A 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.

<sup>7</sup>Ibid.

concentrated. However, where flow has been disturbed due to the flattening or redistribution of land from farm equipment, water tends to fan out into larger flow patterns and the stream loses definition for short lengths. Should the farming manipulations cease for a season or for a year, the stream is expected to recover its bed and bank entirely.

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: Water is clear and lacks an oily sheen. The water is expected to transport higher levels of nutrients due to the current farming practices on-site that are undertaken through the stream channel. During and following storm events, the stream is expected to carry elevated levels of nitrogen and phosphorous as a result of fertilizer use as well as chemicals typically used for pesticides and herbicides. Additionally, because of the continued disturbance to the stream by farm equipment, the stream carries a heavier sediment load as it reshapes and reforms its channel through the loose, plowed soil surface.

Identify specific pollutants, if known: .

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

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: Wetland D has formed around the stream channel and wetland H has formed adjacent to the stream.
- 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: 0.9 acres

Wetland type. Explain: The wetlands are emergent and scrub-shrub areas.

Wetland quality. Explain: Wetland G is a good quality emergent and scrub-shrub wetland. Wetlands D and H are more susceptible to agricultural disturbance and thus, are of poorer quality.

Project wetlands cross or serve as state boundaries. Explain:

**(b) General Flow Relationship with Non-TNW:**

Flow is: ephemeral flow. Explain: The stream could receive a small amount of ground water contribution from wetland G. However, the predominant flow regime is ephemeral and largely the result of storm events.

Surface flow is: discrete and confined

Characteristics: Stream 1/6 contains a clearly defined bed and bank where it hasn't been destroyed by agricultural manipulation. The stream is altered by the use of farm equipment and periodically lacks a defined OHW.

Subsurface flow: unknown. Explain findings:

Dye (or other) test performed:

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Wetland H is located adjacent to Stream 1/6. The wetland is located within approximately 10 feet of the stream and descends in elevation towards the stream even though a channel is not present to directly connect the wetland to the stream.

Ecological connection. Explain:

Separated by berm/barrier. Explain:

**(d) Proximity (Relationship) to TNW**

Project wetlands are 1 (or less) river miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from TNW.

Flow is from: from wetland to navigable water.  
 Estimate approximate location of wetland as within the 2-year or less 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: The water is somewhat brown due to the sediment load that it carries. The water is expected to transport higher levels of nutrients due to the current farming practices on-site that are undertaken through the stream channel. During and following storm events, the stream is expected to carry elevated levels of nitrogen and phosphorous as a result of fertilizer use as well as chemicals typically used for pesticides and herbicides. Additionally, because of the continued disturbance to the stream by farm equipment, the stream carries a heavier sediment load as it reshapes and reforms its channel through the loose, plowed soil surface.

Identify specific pollutants, if known:

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

Riparian buffer. Characteristics (type, average width): Wetland G is located at the stream's headwaters and provides a buffer from chemical and sediment inputs. Wetland D and H are located along the stream channel and perform similar services for a smaller portion of the channel.

Vegetation type/percent cover. Explain: The wetlands are emergent and scrub-shrub areas.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings:

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

All wetland(s) being considered in the cumulative analysis: 3

Approximately ( 0.9 ) 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>
Wetland G	Y	0.66
Wetland H	N	0.08
Wetland D	Y	0.16

Summarize overall biological, chemical and physical functions being performed: The wetlands serve to provide aquatic habitat on-site which is connected to, or in close proximity to, a stream channel. The wetlands collect storm water from the surrounding land and filter the water of pollutants and sediments, thereby increasing water quality upon discharge into Stream 1/6. The wetlands also retard flood waters from receiving waters, including the TNW. The wetlands provide a diversity of habitat including emergent and scrub-shrub areas. The stream and wetland system continues off-site, adding to the services provided.

**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: Stream 1/6 Relevant Reach 1 (1,024 linear feet) originates from Wetland G and flows to the west adjacent to Wetlands H and D. Stream 1/6 Relevant Reach flows into Relevant Reach 2, and then it flows off-site to the north into Fohl Creek. Fohl Creek is a perennial RPW that receives several small hydrologic contributions via ephemeral tributaries. When considered in conjunction with the adjacent wetlands, Stream 1/6 provides a significant contribution to Fohl Creek. Fohl Creek receives two intermittent hydrologic contributions off-site. The remaining inputs to the stream system are largely in the form of ephemeral tributaries which drain small areas for short durations of time following storm events. Fohl Creek is a direct tributary to the Tuscarawas River (TNW) and the site is located less than 1.0 mile from the TNW. Contributing water to the Stream 1/6 Relevant Reach 1 system is filtered by the adjacent and abutting wetlands before it enters the stream system and as it continues its descent towards Fohl Creek. As a result, water quality of the tributary waters is improved, as is the water quality in the TNW. Being ephemeral, Stream 1/6 Relevant Reach 1 flows for relatively short durations following storm events. Water retarded by the wetlands is more slowly released, causing flow to continue for longer periods following rain events, as observed during the site visit. The frequency of flow is estimated to be between 11 and 20 throughout the year due to the frequency of rain events. As a result of the estimated frequency of flow and the contribution to Fohl Creek, as well as the close proximity to the TNW, Stream 1/6 is believed to have more than a speculative or insubstantial effect on the TNW.
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:

**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-RPWs<sup>8</sup> 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: 1,024 linear feet 3 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:

<sup>8</sup>See Footnote # 3.

- 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: \_\_\_\_\_ 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: **0.9** acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

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  
 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):<sup>10</sup>**

- 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): \_\_\_\_\_

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

<sup>10</sup> 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.

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: "Wetland Delineation Report; Prospect Park Property" prepared by Foresight Engineering Group, with final revisions received on September 8, 2011.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - 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: Navarre quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Stark County.
- National wetlands inventory map(s). Cite name: Navarre quad.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): "Wetland Delineation Report; Prospect Park Property" prepared by Foresight Engineering Group, with final revisions received on September 8, 2011.  
or  Other (Name & Date): "Wetland Delineation Report; Prospect Park Property" prepared by Foresight Engineering Group, with final revisions received on September 8, 2011.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Ephemeral stream 1/6 is not used for interstate commerce. Although the land is used for commercial production of crops that may enter or affect interstate markets, the stream and wetlands, by themselves, are not. The stream and wetlands are not known to provide suitable habitat for any threatened or endangered species.