



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

October 21, 2024

Regulatory Division
North Branch
LRH-2024-805-GMR-Unnamed Tributary (UNT) Brushy Creek

PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS

Dick Roggenkamp
The New Albany Company
800 Walton Parkway, Suite 120
New Albany, Ohio 43054

Dear Dick Roggenkamp:

I refer your September 16, 2024, report titled *Piqua Washington Road 364.1-Acre Study Area West of North County Road 25A, North of Farrington Road, East of Washington Road, South of Drake Road, Washington Township and City of Piqua, Miami County, Ohio*, prepared and submitted on your behalf by EMH&T, Inc. You have requested a preliminary jurisdictional determination (JD) for the potential jurisdictional aquatic resources and an approved JD for the potential non-jurisdictional features on the approximately 364.1-acre site located west of North County Road 25A, north of Farrington Road, east of Washington Road, and south of Drake Road, in Washington Township and the City of Piqua, Miami County, Ohio (Enclosure 1). The approximate center coordinates of the site are 40.113109°, -84.254518°. On-site waters consist of a section of an unnamed tributary to Brushy Creek, an indirect tributary to the Great Miami River, a traditional navigable water of the United States. This jurisdictional determination (JD) request has been assigned the following file number: LRH-2024-805-GMR-UNT Brushy Creek. Please reference this file number on all future correspondence related to this subject JD request.

The United States Army Corps of Engineers' (Corps) authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR Part 328 and 33 CFR Part 329. Section 404 of the Clean Water Act (Section 404) requires a Department of the Army (DA) permit be obtained prior to discharging dredged and/or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

Preliminary Jurisdictional Determination

Based on the review of the aquatic resources in the September 16, 2024 report, this office has determined that one (1) intermittent stream (Stream 1 – 3,269 linear feet), and four (4) wetlands (Wetland A – 0.30 acre, Wetland B – 0.10 acre, Wetland C – 0.07 acre, and Wetland D – 0.05 acre) are located within the PJD boundary, and are described in the enclosed PJD form. This office has determined that these waters **may** be jurisdictional waters of the U.S. in accordance with the Regulatory Guidance Letter (RGL) for JDs issued by the Corps on October 31, 2016 (RGL No. 16-01). As indicated in the guidance, this PJD is non-binding and cannot be appealed (33 CFR § 331.2) and only provides a written indication that waters of the United States, including wetlands, may be present on-site.

You have declined to exercise the option to obtain an AJD in this instance and at this time for the aquatic resources within the PJD boundary. For the purposes of the determination of impacts, compensatory mitigation, and other resource protection measures for activities that require authorization from this office, the aquatic resources described in the enclosed PJD Form will be evaluated as if they are waters of the United States.

Enclosed please find two (2) copies of the PJD Form. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date one (1) copy of the form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy via email to Andrew.j.wendt@usace.army.mil or to the following address:

U.S. Army Corps of Engineers
Huntington District, Regulatory Division
Attn: North Branch (LRH-2024-805-MUS)
502 8th Street
Huntington, West Virginia 25701

Approved Jurisdictional Determination

The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in Sackett v. EPA. Additionally, to the extent applicable, our December 2, 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 Section 404 jurisdiction.

Based on a review of the information provided we have determined Wetland E (0.09 acre), Wetland F (0.20 acre), and Wetland G (0.06 acre) do not exhibit an unbroken surface connection or a continuous surface water connection to a water identified in paragraph (a)(1) through (a)(6) of the pre-2015 regulations. Wetlands E, F, and G do not physically abut or touch a relatively permanent water, are not connected to a relatively permanent water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert, and there is no evidence of a natural berm, bank, dune, or similar natural landform between these features and a relatively permanent water. Therefore, Wetlands E, F, and G are not jurisdictional waters of the U.S. and are not subject to Section 404 regulation. However, you should contact the Ohio Environmental Protection Agency, Division of Surface Water, at (614) 664-2001 to determine state permit requirements.

In accordance with the September 27, 2023, Joint Memorandum between the United States Environmental Protection Agency (USEPA) and the Corps regarding coordination on jurisdictional determinations, local level coordination was completed with the USEPA Region 5 with coordination completed on October 16, 2024.

This jurisdictional verification is valid for a period of five (5) years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date. This letter contains an AJD for the subject site within the AJD boundary. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Regulatory Administrative Appeals Officer
United States Army Corps of Engineers

Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: (513) 684-2699
Fax: (513) 684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR § 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **December 20, 2024**. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This determination has been conducted to identify the limits of the Corps' Section 404 jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

A copy of this letter has been provided to your agent and the Ohio Environmental Protection Agency. We are available for pre-application consultation for resources identified in the PJD. If you have any questions concerning the above, please contact Mr. Andrew Wendt of the North Branch at 513-825-4518, by mail at the above address, or by email at Andrew.j.wendt@usace.army.mil.

Sincerely,



Kyle M. Moore
Regulatory Project Manager
North Branch

Enclosures

cc: via email

Rachel Secrest and Anna Kamnyev, Ohio Environmental Protection Agency