



**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): 8/27/2020
 ORM Number: LRL-2019-836-sam
 Associated JDs: NA
 Review Area Location¹: State/Territory: Indiana City: Portland County/Parish/Borough: Jay
 Center Coordinates of Review Area: Latitude 40.3492 Longitude -85.0033

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 or describe rationale.
- 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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Stream A	1,450	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream A contributes intermittent flow downstream to an offsite perennial stream Butternut Creek, to the Salamonie River, to the Wabash River, a Section 10 TNW.

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.	

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	
N/A.	N/A.	N/A.	N/A.	

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: **Title(s) and date(s)**
This information **Select.** sufficient for purposes of this AJD.
Rationale: **N/A or describe rationale for insufficiency (including partial insufficiency).**
- Data sheets prepared by the Corps: **Title(s) and/or date(s).**
- Photographs: **Other: Site photographs from sites visits on 9/17/19, 1/23/20, and 7/15/20**
- Corps site visit(s) conducted on: **9/17/19, 1/23/20, and 7/15/20**
- 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: **Websoil survey 12/20/2019**
- USFWS NWI maps: **Waters Map prepared 2/13/20**
- USGS topographic maps: **LRL GIS Viewer**

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Stream stats	Stream Stats
USDA Sources	N/A.
NOAA Sources	N/A.
Other USACE data (specify)	LRL GIS Viewer Data Layers
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): Three site visits were conducted at the site on September 17, 2019, January 23, 2020, and July 15, 2020 to assess impacts to a potentially jurisdictional stream (Stream A). The stream in question had mostly been filled prior to the initial site visit so there was no flow observed moving through the impacted portion of the channel. However, intermittent stream flow was observed both upstream and

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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downstream of the impacted area as follows:

Observations of the upstream un-impacted portion of the stream were not made during the September 17, 2019 site visit. However, during this visit observations were made of remnants of the channel that had not been filled in. The channel downstream of the property could be seen; however, the flow regime was not observed as the view was obstructed from vegetation and property access was not possible. APT data for the site visit on September 17, 2019 indicated normal conditions with respect to rainfall and dry season conditions according to WEbWIMP H2O Balance. Looking at the rainfall for the previous 90 days, the data indicates that July was drier than normal, August was drier than normal and September had normal conditions.

During the site visit on January 23, 2020, water was observed flowing through the unimpacted stream above the impact area in the forested area that had not been cleared. APT data for the date of the visit show that the time of year was the wet season per WebWIMP and that the area was experiencing wetter than normal conditions for the 90 days previous with both November and January being wetter than normal. While conditions are listed as being wetter than normal, ephemeral channels would only be expected to flow 24-48 hours after a rain event. A review of the rain events show it had not rained within 48 hours of the site visit. During the wet season, the ground water tables are elevated and connected to the intermittent channels, providing flow.

During the site visit on July 15, 2020, water was not observed flowing through the channel above the impact area; however several pools were observed where water had been flowing. A review the APT data shows that the site visit occurred in the dry season and that conditions were normal for the day listed. A closer look at the normal conditions indicates that the normal conditions were on the dryer side of normal, and made the "normal criteria" due to rainfall the area received 48 hours before the site visit. Prior to the visit, according to the NOAA weather data for Jay County, the area received 0.62 inches of rainfall on July 13, 2020. While flow was not observed, this is not atypical for intermittent stream channels at this time of year. Being in the dry season, and drier than normal prior to the rainfall, flow would not be necessarily expected in intermittent stream channels. Typically intermittent channels will flow during winter and spring months and then be dry in the summer. During the summer, ground water tables are lower and thereby not connected to the stream.

In reviewing the APT data, sufficient site visit observations of the stream's flow regime were made under normal circumstances found in a typical year to determine that intermittent flow is present.

- C. Additional comments to support AJD:** In reviewing the site, the drainage for Stream A, according to Stream Stats is 0.254 square miles. Stream A is a second order stream with two ephemeral channels joining on the south end of the property, and then another two ephemeral channels joining throughout the unimpacted area.

Water seen in the streams (flowing on January 23, 2020 and pooled July 15, 2020) would not have been solely in response to recent rain events as defined by an ephemeral flow regime. It had not rained within the previous 48 hours prior to the site visit. Additionally, intermittent channels typically flow during the winter and spring months when the ground water table is elevated. Visual observations of the un-impacted portion of Stream A above the impact area show the stream has not only a well developed bed and bank but also numerous and distinct ordinary high water mark indicators including scour, undercutting, benching,



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rack lines and clear vegetative breaks. All of these features are evidence of large amounts of water flowing over an extended period of time and is consistent with an intermittent stream flow regime.

While water was not flowing during the July 17, 2020 site visit, observations of the Stream A above the impact area included the identification of salamanders and macroinvertebrates under rocks in the dry portion of the stream, and observations of crayfish and frogs within the pools. These observations are further evidence of an intermittent flow regime.