**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): 11/23/2020
ORM Number: LRL-2020-881-sjk
Associated JDs: N/A
Review Area Location[1]: State/Territory: IN City: Kilmore County/Parish/Borough: Clinton
Center Coordinates of Review Area: Latitude 40.3421 Longitude -86.5017

## 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 |
| Boyle's Ditch | 964 | linear feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | The stream contributes perennial flow throughout the year to Kilmore Creek, South Fork Wildcat Creek, Wildcat Creek, then Wabash River (TNW). |
| Kilmore Creek | 1,104 | linear feet | (a)(2) Perennial tributary contributes | The stream contributes perennial flow throughout the year to South Fork Wildcat Creek, Wildcat Creek, and then Wabash River (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.

| Tributaries ((a)(2) waters): | | | | |
|---|---|---|---|---|
| (a)(2) Name | (a)(2) Size | | (a)(2) Criteria | Rationale for (a)(2) Determination |
| | | | surface water flow directly or indirectly to an (a)(1) water in a typical year. | |
| Stream 2 | 555 | linear feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | The stream contributes intermittent flow throughout the year to Kilmore Creek, South Fork Wildcat Creek, Wildcat Creek, then Wabash River (TNW). |
| Stream 3 | 67 | linear feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | The stream contributes perennial flow throughout the year to Kilmore Creek, South Fork Wildcat Creek, Wildcat Creek, then Wabash River (TNW). |
| Stream 4 | 3,387 | linear feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | The stream contributes perennial flow throughout the year to Kilmore Creek, South Fork Wildcat Creek, Wildcat Creek, then Wabash River (TNW). |

| 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 |
| Wetland 12 | 0.6 | acre(s) | (a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature. | The wetland is separated from Kilmore Creek by only a naturally deposited sediment berm that causes a micro topographical increase. |
| Wetland 13 | 0.3 | acre(s) | (a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature. | The wetland is separated from Kilmore Creek by only a naturally deposited sediment berm that causes a micro topographical increase. |

| Adjacent wetlands ((a)(4) waters): | | | | |
|---|---|---|---|---|
| (a)(4) Name | (a)(4) Size | | (a)(4) Criteria | Rationale for (a)(4) Determination |
| Wetland 14 | 0.2 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | The boundary of the wetland directly abuts Stream 2. |
| Wetland 19 | 0.2 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | The wetland boundary directly abuts Stream 4. |
| N/A. | N/A. | N/A. | N/A. | N/A. |
| N/A. | N/A. | N/A. | N/A. | N/A. |
| 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 |
| Stream 1 | 40 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This is an erosional feature that has occurred due to headcutting and flow from surrounding agricultural land. |
| Stream 5 | 14 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This is an erosional feature that has occurred due to headcutting and flow from surrounding agricultural land. |
| Stream 6 | 87 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This is an erosional feature that has occurred due to headcutting and flow from surrounding agricultural land. |
| Stream 7 | 13 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This is an erosional feature that has occurred due to headcutting and flow from surrounding agricultural land. |
| Wetland 1 | 0.5 | acre(s) | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This feature did not meet all 3 wetland criteria and tends to collect diffuse runoff from surrounding agricultural land (it may also qualify for (b)(4)). |
| Wetland 2 | 2.8 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland 2 is in the middle of an agricultural field with no nearby potential tributaries. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |

[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.

| Excluded waters ((b)(1) – (b)(12)):[4] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[5] | Rationale for Exclusion Determination |
| Wetland 3 | 0.7 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in an agricultural field and extends east to State Road 75 into its roadside ditches. There are no potential tributaries in the vicinity. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |
| Wetland 4 | 4.9 | acre(s) | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This feature did not meet all 3 wetland criteria and tends to collect diffuse runoff from surrounding agricultural land into a swale (it may also qualify for (b)(4)). |
| Wetland 5 | 0.04 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is located in a swale associated with a buried drainage tile system. It does not abut nor is inundated by Boyle's Ditch in a typical year. |
| Wetland 6 | 0.3 | acre(s) | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This feature did not meet all 3 wetland criteria and tends to collect diffuse runoff from surrounding agricultural land into a swale (it may also qualify for (b)(4)). |
| Wetland 7 | 1.0 | acre(s) | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This feature did not meet all 3 wetland criteria and tends to collect diffuse runoff from surrounding agricultural land into a swale (it may also qualify for (b)(4)). |
| Wetland 8 | 0.2 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a topographical bowl in an agricultural field. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |
| Wetland 9 | 0.5 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is located in a swale and separated by Stream 4 by multiple physical barriers. The boundary does not abut the stream. Additionally, it only receives hydrology from surrounding upland sources. |
| Wetland 10 | 0.4 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a topographically lower area in an agricultural field. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |
| Wetland 11 | 0.06 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a depressional area in an agricultural field that neither abuts nor is inundated by Kilmore Creek in a typical year. See IIIB. |
| Wetland 15 | 0.03 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a depressional area in an agricultural field that neither abuts nor is inundated by Kilmore Creek or Stream 2 in a typical year. See IIIB. |
| Wetland 16 | 0.04 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a depressional area in an agricultural field that neither abuts nor is |

| Excluded waters ((b)(1) – (b)(12)):[4] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[5] | Rationale for Exclusion Determination |
| | | | | inundated by Kilmore Creek or Stream 2 in a typical year. See IIIB. |
| Wetland 17 | 0.1 | acre(s) | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. | This feature did not meet all 3 wetland criteria and tends to collect diffuse runoff from surrounding agricultural land into a swale (it may also qualify for (b)(4)). |
| Wetland 18 | 0.1 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a grassed swale in an agricultural field. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |
| Wetland 20 | 1.8 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a depressional area in an agricultural field that neither abuts nor is inundated by Kilmore Creek in a typical year. See IIIB and IIIC. |
| Wetland 21 | 3.5 | acre(s) | (b)(1) Non-adjacent wetland. | The wetland is in a topographically lower area in an agricultural field next to a fencerow. It neither abuts nor is inundated by an (a)(1)-(a)(3) water in a typical year. |

## 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: Wetland delineation report dated 8/28/2020 by Energy Renewal Partners, LLC.

This information is 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: Aerial and Other: Site photos from consultant (June 1-5, 2020, and August 4, 2020); 2018 aerial in delineation report; 2005, 2014, 2017, 2018 (Google Earth), 3/13/2020, 5/8/2020 (DigitalGlobe)

☐ Corps site visit(s) conducted on: Date(s).

☐ 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: Web Soil Survey, Clinton Co (see delineation report)

☒ USFWS NWI maps: Digital mapper (see delineation report)

☒ USGS topographic maps: 7.5' Michigantown quad

**Other data sources used to aid in this determination:**

| Data Source (select) | Name and/or date and other relevant information |
|---|---|
| USGS Sources | N/A. |
| USDA Sources | N/A. |
| NOAA Sources | N/A. |
| Other USACE data (specify) | LiDAR imagery from LRL Regulatory Viewer |
| Other state/local data (specify) | Clinton County GIS – County Surveyor regulated waters shapefile (See delineation report) |

| Data Source (select) | Name and/or date and other relevant information |
|---|---|
| FEMA/FIRM maps | DNR 2019 Floodway, DNR 2019 Floodway Fringe, and FEMA 2011 Flood Hazard areas (see delineation report) |

**B. Typical year assessment(s):**

Wetland 11: The delineation report presumed this wetland would be inundated by Kilmore Creek in a typical year because it is located in the FEMA floodplain.
3/13/2020 - This aerial shows above-average rainfall compared to the rolling 30-year average. It shows wetter than normal conditions during a period of severe wetness in the wet season. The aerial shows standing water within the wetland and surrounding areas. However, it shows that the wetland receives water from surrounding upland areas and may eventually discharge into the creek in extreme wet conditions, but it fails to show the creek inundating the wetland.

Wetland 15 and 16:
3/13/2020 aerial: This aerial shows above-average rainfall compared to the rolling 30-year average. It shows wetter than normal conditions during a period of severe wetness in the wet season. The aerial shows standing water within Wetland 16 and saturation within Wetland 15. However, it is apparent that, even under extreme wetness, these wetlands only receive water from upland sources and are not adjacent to either Stream 2 or Kilmore Creek.

Wetland 20: The delineation report presumed this wetland would be inundated by Kilmore Creek in a typical year because it is located in the FEMA floodplain. Multiple aerials and provided photos were reviewed for any indication the creek inundated the wetland.
2/28/2005 aerial - This aerial shows normal conditions in a period of severe wetness during the wet season; however, no indication of inundation by Kilmore Creek is apparent.
4/11/2017 aerial – This aerial shows above-average rainfall compared to the rolling 30-year average. It shows normal conditions during a period of mild wetness in the wet season. No indication of inundation by Kilmore Creek is apparent.
3/13/2020 aerial - This aerial shows above-average rainfall compared to the rolling 30-year average. It shows wetter than normal conditions during a period of severe wetness in the wet season. The aerial shows standing water within the wetland and surrounding areas. However, it shows that the wetland receives water from surrounding upland areas and may eventually discharge into the creek in extreme wet conditions, but it fails to show the creek inundating the wetland.
JUN 1-5, 2020 – The photos provided in the delineation report of Kilmore Creek were taken in a time of above-average rainfall compared to the rolling 30-year average. The APT shows the delineation inspection occurred during wetter than normal conditions during a period of mild wetness in the dry season. No evidence that the creek left it banks within the review area is evident.

**C. Additional comments to support AJD:** LiDAR data for Wetland 20 shows the potential outfall of water flow from the wetland to Kilmore Creek, which indicates the wetland may provide flow to Kilmore Creek in very wet conditions, but that the creek does not provide flow into the wetland.