

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): May 6, 2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Detroit District, Michiana Branch, Sand Bar LLC - Indiana Transport, LRE-2015-00033-120

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Indiana County/parish/borough: Elkhart City: near Middlebury
Center coordinates of site (lat/long in degree decimal format): Lat. 41.75322° N, Long. -85.66217° W.
Universal Transverse Mercator: Zone 16, X611252, Y4623217

Name of nearest waterbody: Stone Lake

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A

Name of watershed or Hydrologic Unit Code (HUC): 4050001

- 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: April 27, 2015
 Field Determination. Date(s): April 1, 2015

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 no** "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: acres.

c. Limits (boundaries) of jurisdiction based on: Pick List

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: **The USGS topographic map (Middlebury, Ind. Quadrangle) depicts an intermittent stream (dashed blue-line)**

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.

bisecting the review area. This feature appears to cross the state-line into Michigan (Constantine, Mich. - Ind. Quadrangle) according to the USGS topographic and National Hydrography Dataset (NHD) maps. Based upon those data, the feature appears to begin in LaGrange County, Indiana (north of interstate 80-90 toll road), travel westward through the review area, then turns north to cross County Road 2 and appears to continue north to cross the Indiana-Michigan state-line to connect with an unnamed tributary (dashed blue-line intermittent stream) to Pigeon River. Based upon mapping, the feature would appear to enter the property in question on its eastern border, crossing under County Line Road. There is an approximate 24" metal pipe culvert at this location. The culvert pipe and linear depression were dry at the time of inspection. The feature is a linear depression with a bed and bank but does not exhibit any other physical evidence or characteristics of an Ordinary High Water Mark (OHWM) at any point throughout its length within the review area. I walked the length of the linear depression throughout the parcel and did not observe shelving, a natural line indicating flow, wracking, sediment sorting, scour, or deposition. Despite recent snow melt, the entire length of the feature was covered in undisturbed, dry leaves. There was no evidence of the leaf litter being disturbed or washed away, no water stained leaves, nor any changes in plant community. I did not observe any evidence of recent flow, ponding of water, or soil saturation within the feature. The linear depression does not meet the three wetland criteria which require a dominance of hydrophytic vegetation, hydric soils, and hydrology, nor does any portion of the review area. Non-hydric sandy soils and upland vegetation are prevalent throughout the review area. The linear depression may have functioned as a drainage-way in the past, but evidence observed during the site inspection does not support the linear depression currently receiving flow. The entire review area is mapped as non-hydric soils. There is evidence that this feature has been manipulated in the past (straightness and presence of spoil piles) and may have been wholly excavated out of upland within the review area. A separate investigation was conducted by a consulting firm contracted by the property agent. The consultant documented no waters of the United States present within the review area. They identified the feature as an abandoned remnant drainage feature that has a bed and bank, but no other indicators of an OHWM or hydrology. The consultants also noted that the adjacent property to the west (off-site) had filled in the linear depression. I also viewed the linear depression where it crosses County Road 2 (off-site). At this point, the linear feature is no more than a grassed swale at the south side of County Road 2. There is a pipe culvert crossing under the roadway to the agricultural field to the north. The swale and pipe culvert were dry at the time of inspection. The field had been planted to corn the previous year; stubble has remained intact over winter. There was no evidence of a swale or drainage-way in the agricultural field to the north of County Road 2 at this location. The entire field visible from County Road 2 had been tilled and planted to corn in 2014. Despite wet signatures in historical aerial photos (Google Earth 2011 and older), there were no physical indicators of surface flow at this location including erosion, crop failure, visible changes in the character of the soil, presence of litter or debris, etc. In summary, although the linear feature depicted on the USGS topographic and NHD is depicted as an intermittent stream, it lacks physical characteristics to indicate hydrology, including the recent passage of water, and/or a relatively permanent flow of water. The linear depression within the review area does not continue past County Road 2; any visible evidence of the feature has been erased by tilling and planting. There was no observed evidence of a surface or subsurface continuation to trace the feature further north into Michigan as indicated on both the USGS map and NHD. Therefore, the feature is not considered a tributary to a downstream traditional navigable water and is not a water of the United States..

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: **Pick List**

Drainage area: **Pick List**

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 **Pick List** river miles from TNW.

Project waters are **Pick List** river miles from RPW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Project waters are **Pick List** aerial (straight) miles from RPW.

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

Identify flow route to TNW⁵: .

Tributary stream order, if known: .

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

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.

(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: **Pick List**.

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:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

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

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (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.⁷ Explain:

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

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 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:

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: acres

Wetland type. Explain: .

Wetland quality. Explain: .

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

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

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: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** 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): .
- Vegetation type/percent cover. Explain: .
- 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: **Pick List**

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

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

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:

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: 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
 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: .

⁸See Footnote # 3.

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

¹⁰Prior 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 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: Sand Bar Property Wetland Delineation Report dated April 13, 2015 by Earth Source, Inc..
- 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: 1:24K, Middlebury, Ind. Quad and Constantine, Mich. - Ind. Quad.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Hydric Rating by Map Unit - Elkhart County, Indiana and LaGrange County, Indiana. Web Soil Survey.
- National wetlands inventory map(s). Cite name: USFWS Online Wetlands Mapper.
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Michiana Regional GIS, Google Earth, and Elkhart County GIS; multiple years.
 or Other (Name & Date): April 1, 2015 inspection photos. wetland delineation photos dated March 30, 2015.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): April 1, 2015 USACE site inspection, Regulatory Guidance Letter 05-05. .

B. ADDITIONAL COMMENTS TO SUPPORT JD: The USGS topographic map (Middlebury, Ind. Quadrangle) depicts an intermittent stream (dashed blue-line) bisecting the review area. This feature appears to cross the state-line into Michigan (Constantine, Mich. - Ind.

Quadrangle) according to the USGS topographic and National Hydrography Dataset (NHD) maps. Based upon those data, the feature appears to begin in LaGrange County, Indiana (north of interstate 80-90 toll road), travel westward through the review area, then turns north to cross County Road 2 and appears to continue north to cross the Indiana-Michigan state-line to connect with an unnamed tributary (dashed blue-line intermittent stream) to Pigeon River. Based upon mapping, the feature would appear to enter the property in question on its eastern border, crossing under County Line Road. There is an approximate 24" metal pipe culvert at this location. The culvert pipe and linear depression were dry at the time of inspection. The feature is a linear depression with a bed and bank but does not exhibit any other physical evidence or characteristics of an Ordinary High Water Mark (OHWM) at any point throughout its length within the review area. I walked the length of the linear depression throughout the parcel and did not observe shelving, a natural line indicating flow, wracking, sediment sorting, scour, or deposition. Despite recent snow melt, the entire length of the feature was covered in undisturbed, dry leaves. There was no evidence of the leaf litter being disturbed or washed away, no water stained leaves, nor any changes in plant community. I did not observe any evidence of recent flow, ponding of water, or soil saturation within the feature. The linear depression does not meet the three wetland criteria which require a dominance of hydrophytic vegetation, hydric soils, and hydrology, nor does any portion of the review area. Non-hydric sandy soils and upland vegetation are prevalent throughout the review area. The linear depression may have functioned as a drainage-way in the past, but evidence observed during the site inspection does not support the linear depression currently receiving flow. The entire review area is mapped as non-hydric soils. There is evidence that this feature has been manipulated in the past (straightness and presence of spoil piles) and may have been wholly excavated out of upland within the review area. A separate investigation was conducted by a consulting firm contracted by the property agent. The consultant documented no waters of the United States present within the review area. They identified the feature as an abandoned remnant drainage feature that has a bed and bank, but no other indicators of an OHWM or hydrology. The consultants also noted that the adjacent property to the west (off-site) had filled in the linear depression. I also viewed the linear depression where it crosses County Road 2 (off-site). At this point, the linear feature is no more than a grassed swale at the south side of County Road 2. There is a pipe culvert crossing under the roadway to the agricultural field to the north. The swale and pipe culvert were dry at the time of inspection. The field had been planted to corn the previous year; stubble has remained intact over winter. There was no evidence of a swale or drainage-way in the agricultural field to the north of County Road 2 at this location. The entire field visible from County Road 2 had been tilled and planted to corn in 2014. Despite wet signatures in historical aerial photos (Google Earth 2011 and older), there were no physical indicators of surface flow at this location including erosion, crop failure, visible changes in the character of the soil, presence of litter or debris, etc. Although the linear feature depicted on the USGS topographic and NHD is depicted as an intermittent stream, it lacks physical characteristics to indicate hydrology, including the recent passage of water, and/or a relatively permanent flow of water. The linear depression within the review area does not continue past County Road 2; any visible evidence of the feature has been erased by tilling and planting. There was no observed evidence of a surface or subsurface continuation to trace the feature further north into Michigan as indicated on both the USGS map and NHD. In summary, although the linear depression may have functioned as a drainage-way in the past, there is no on-the-ground evidence to support it functioning as such today. There is no OHWM. There are no indicators of hydrology. There is a lack of connectivity of the feature to downstream traditional navigable waters. Therefore, the linear depression is not a water of the United States. The entire review area is considered upland. .