

**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): April 05, 2018**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Detroit District, Michiana Branch, Franke Park Drainage Improvement JD, LRE-2018-00102-102-J18**

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

State: Indiana County/parish/borough: Allen City: Fort Wayne  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.110827° **N**, Long. -85.157293° **W**.  
Universal Transverse Mercator: 16

Name of nearest waterbody: Spy Run Creek

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

Name of watershed or Hydrologic Unit Code (HUC): St. Marys Watershed; HUC-8: 04100004

- 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: March 28, 2018  
 Field Determination. Date(s): March 29, 2018

**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: 1807 linear feet: 2-15 width (ft) and/or          acres.  
Wetlands: 2.11 acres.

**c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual**

Elevation of established OHWM (if known): N/A.

**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: .376 square miles

Drainage area: .376 square miles

Average annual rainfall: 38.3 inches

Average annual snowfall: 33.5 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 3 tributaries before entering TNW.

Project waters are 2-5 river miles from TNW.

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

Project waters are 2-5 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 approximately 71 feet to the Unnamed Tributary (UNT) to Spy Run Creek. The UNT to Spy Run Creek flows south out of the review area approximately 1,325 feet to its outfall into Spy Run

<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.

Creek. Spy Run Creek flows approximately 2.5 miles to its confluence with the St. Marys River. The St. Marys River then flows approximately 2,500 feet southeast to its confluence with the St. Joseph River to form the Maumee River (TNW).

Tributary stream order, if known: 1.

(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: 2 feet  
Average depth: .5 feet  
Average side slopes: **2:1**.

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 showed no signs of erosion and did not appear to be manipulated.

Presence of run/riffle/pool complexes. Explain: None observed.

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): 15 %

(c) Flow:

Tributary provides for: **Ephemeral flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: The flow of the tributary (Non-RPW) (Section IA) to the Unnamed Tributary (UNT) to Spy Run Creek is predominantly driven by seasonal events such as snowmelt and responds to precipitation events throughout the year. Based upon the observed presence of surface water flowing through the tributary during the consultant's delineation in November and our site inspection in March, the small tributary was observed to exhibit flow at least two months during the year.

Other information on duration and volume:

Surface flow is: **Discrete**. Characteristics: The tributary flows through a defined channel to its confluence with the Unnamed Tributary (UNT) to Spy Run Creek.

Subsurface flow: **No**. Explain findings: N/A.

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:

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

<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.

other (list):

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The tributary (Section IA) is located in a park setting (Franke Park) within the City of Fort Wayne with some residential and urban development in the surrounding area. At the time of the inspection, the tributary to the Unnamed Tributary (UNT) to Spy Run Creek was conveying water. The water was clear and cool. The small tributary drains primarily upland forest dominated by Sugar Maple (*Acer saccharum*) and White Oak (*Quercus alba*). It is anticipated that the tributary would retain flood water, convey water to tributaries with abutting wetlands, and trap pollutants and sediment from runoff from development surrounding the park.

Identify specific pollutants, if known: N/A.

(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: The tributary, identified as Section IA, was observed to be a Non-RPW (n-RPW) and flows approximately 71 feet and discharges into the Unnamed Tributary (UNT) to Spy Run Creek (Section I) (RPW). Spy Run Creek is part of the St. Marys River Watershed (HUC-8: 04100004). The St. Marys River eventually joins the St. Joseph River to form the Maumee River, a Section 10 water, which flows northeast into Lake Erie. Section IA is located in a park setting with some residential and urban development in the surrounding area, it provides some ability to help trap sediment, nutrients, bacteria, and retain flood waters before reaching Spy Run Creek, the St. Marys River, and the Maumee River (TNW).

The St. Marys River Watershed is located in northeastern Indiana and drains approximately 240,366 acres across three different counties: Adams County, Allen County, and Wells County. The watershed includes the cities of Berne, Decatur, and Woodburn, portions of Fort Wayne, the town of Monroe, and rural residential and agricultural lands. Portions of the St. Marys River, Spy Run Creek, and Unnamed Tributaries to Spy Run Creek, have been listed on the 303(d) list due to increased levels of E.coli above acceptable limits set by the Indiana Department of Environmental Management (IDEM). According to the St. Marys River Watershed Management Plan, 80% of the samples collected by IDEM in Spy Run Creek exceeded the acceptable Indiana E. coli standard. Section I, and its abutting wetlands, provide some capacity to filter out fecal coliform from water conveyed through Section IA. The St. Marys River Watershed Management plan noted that “many of the small ditches and streams have been cleared, straightened, and deepened to augment drainage of agriculture fields”. This makes the waterway susceptible to increased erosion, increases the pollutant load to downstream waters, negatively impacts aquatic life, and decreases ability to retain flood waters. Further, the St. Marys River Watershed Management Plan notes that flash flooding along streams in the watershed has been, in part, a result of changes in hydrology and hydraulics (including subsurface tiling), developments without proper stormwater detention/retention measures, increases in impervious surfaces due to development, etc. Specifically in the City of Fort Wayne, flooding has been a result of increased urbanization and floodplain encroachment. The subject tributary helps to convey water into tributaries with abutting wetland areas that may store and slowly release potential flood waters and to limit the total pollutant load to the St. Marys River, the Maumee River, and ultimately Lake Erie.

The St. Marys River flows into the navigable Maumee River. The ditches that drained the Great Black Swamp are conduits for fast drainage and provide little flood retention and little ability to filter/retain pollutants. This has led to the Maumee River being flood

prone, nutrient and pollutant rich, and has resulted in the construction of a large scale Corps flood control project located in Fort Wayne, Indiana (Rep. Mark Souder, IN, requested \$5.3 million in additional funding for additional Corps flood control work in the 2007 WRDA). Impacts to the remaining waters and wetlands in the upper Maumee River's watershed, especially in the Fort Wayne area, will serve to reduce the effectiveness of the existing, as well as future, Corps flood control projects in Fort Wayne. The lower reaches of the Maumee River (in Ohio) have been designated a Great Lakes Area of Concern (AOC) and are subject to a Remedial Action Plan (RAP). In an effort to clean up the most polluted areas in the Great Lakes, the United States and Canada, in Annex 2 of the Great Lakes Water Quality Agreement, committed to cooperate with State and Provincial Governments to ensure that RAPs are developed and implemented for all designated AOCs in the Great Lakes basin. Limiting pollutants of any type in the upstream reaches of the Maumee River assists in the realization of the goals of the RAP for the Maumee River AOC. Section IA has not been altered or manipulated, thus can provide some measure of flood water retention by slowing downstream flow during high flow events and will help limit the pollutant/nutrient load to the St. Marys River and the Maumee River. The remaining waters and wetlands in the St. Marys River watershed, including the subject tributary, play a significant role in mitigating effects on the biological, chemical, and physical integrity of both the St. Marys River and Maumee River, as well as Lake Erie.

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: The Unnamed Tributary (UNT) to Spy Run Creek (Section I) is mapped on the United States Geological Survey's National Hydrography Dataset (NHD) as a perennial stream and is defined as having "water throughout the year, except for infrequent periods of severe drought". Leaf-off aerial imagery taken in 1998, 2001, 2005, 2014, and 2016, site photographs included in the Delineation Report taken in November of 2017, and site photographs taken in March of 2018, suggest that the UNT to Spy Run Creek conveys water throughout the year. The UNT to Spy Run Creek is approximately 1,736 linear feet in length and flows south southwest through the review area. Our site inspection confirmed the presence of an Ordinary High Water Mark (OHWM) and a defined bed and bank.
  - 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: 1,736 linear feet 8-15 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: 71 linear feet 2 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

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

directly abutting an RPW: **Wetlands, Section IB, Section IC, Section II, and Section III, as described in the Delineation Report, directly abut the UNT to Spy Run Creek. All wetlands identified within the review area abut a perennial RPW (UNT to Spy Run Creek) which flows indirectly into a TNW (Maumee River), and therefore should be considered Waters of the United States.**

- 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: **2.11** 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.<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: \_\_\_\_\_.

<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.

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: "Franke Park Drainage Improvement Wetland Delineation Report" prepared by Earth Source, Inc., on behalf of the City of Fort Wayne, dated February 05, 2018.
- 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 National Hydrography Dataset.  
 USGS NHD data.  
 USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000, IN-Fort Wayne West.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey, Allen County.
- National wetlands inventory map(s). Cite name: USFWS Online Wetland Mapper (NWI).
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth, 1998, 2001, 2005, 2014, and 2016.  
or  Other (Name & Date): Site Photographs, Appendix B "Site Photographs" of the Wetland Delineation Report, 2017; Site Inspection Photographs, 2018.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: "St. Marys River Watershed Management Plan", St. Marys River Watershed Project and the Allen County SWCD, May 01, 2009 (Funded by the Indiana Department of Environmental Management).
- Other information (please specify): Site Inspection Report in Case File, March 29, 2018; United States Geological Survey (USGS) StreamStats data used to determine stream characteristics and the area of the drainage basin of the UNT to Spy Run Creek; An annual Climatological Report of Fort Wayne, Indiana was sourced from the National Climatic Data Center (NCDC) to determine average annual rainfall and snowfall of the area.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The Unnamed Tributary (UNT) to Spy Run Creek (Section I) is a perennial RPW that exhibits an Ordinary High Water Mark (OHWM) and a defined bed and bank. The RPW is depicted as a perennial stream on the United States Geological Survey's National Hydrography Dataset (NHD). The UNT to Spy Run Creek flows approximately 1,325 feet south through a network of storm drains to its outfall into Spy Run Creek. Spy Run Creek flows approximately 2.5 miles to its confluence with the St. Marys River. The St. Marys River then flows approximately 2,500 feet southeast to its confluence with the St. Joseph River to form the Maumee River (TNW). Therefore, the UNT is an RPW within the tributary system of the Maumee River and should be considered a Water of the United States. Section IA was observed to be a Non-RPW draining upland forest to the UNT to Spy Run Creek. The stream exhibits an OHWM and defined bed and bank. Wetlands, Section IB, Section IC, Section II, and Section III, as described in the Delineation Report, directly abut the UNT to Spy Run Creek (RPW). All wetlands identified within the review area abut a perennial RPW (UNT to Spy Run Creek) which flows indirectly into a TNW (Maumee River), and therefore should be considered Waters of the United States.