

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): February 02, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Detroit District, Michiana Section, Wayne Trace Property JD, LRE-2021-00868-102-J21

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Indiana County/parish/borough: Allen County City: Fort Wayne
Center coordinates of site (lat/long in degree decimal format): Lat. 41.026693° **N**, Long. -85.084017° **W**.
Universal Transverse Mercator: 16

Name of nearest waterbody: Paul Trier Ditch

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

Name of watershed or Hydrologic Unit Code (HUC): HUC 12: 041000050101; Trier Ditch

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: December 22, 2021

Field Determination. Date(s): August 24, 2021

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 and are not** "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: 1,213 linear feet: 6-10 width (ft) and/or 2.17 acres.

Wetlands: 2.38 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):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **Eleven (11) potentially jurisdictional waters were assessed within the Review Area and eight (8) were**

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.

determined to be isolated waters. Wetlands Section III, Section IV, Section V, Section VA, Section VI, Section VIA, Section VI, and Section VII, as described in the Wetland Delineation Report (Report) prepared by Earth Source, Inc., are all located within an area primarily mapped as Minster silty clay loam and Glynwood silt loam on the NRCS Web Soil Survey for Allen County. The USFWS National Wetland Inventory (NWI) indicates the potential presence of two wetland areas in the vicinity of Wetlands, Section III, Section V, and Section VA. The isolated wetlands total approximately 1.4-acres in size. Review of the applicable USGS Topographic maps, USGS National Hydrography Dataset (NHD) maps, aerial imagery, and the Allen County iMap GIS Engineering Viewer did not indicate the presence of a potential flow path or other potential surface or subsurface hydrologic connection from any of these isolated wetlands to a RPW or TNW; this was confirmed during the site inspection. Flow patterns were observed between some of the wetlands located in the Review Area, however, no hydrologic connection conveying this water off site in any direction or to Paul Trier Ditch, the closest RPW, were observed. None of the wetlands identified above are separated by a berm or other man-made structure from a surface water, this is supported by the site inspection. In addition, there does not appear to be evidence that suggests that the wetlands support recreational use. No direct evidence was observed of known species that require the wetlands to fulfill their life cycle requirements. Given the urbanized setting of the Review Area, species that require the wetlands have likely been displaced. There is also no evidence to support that Wetlands Section III, Section IV, Section V, Section VA, Section VI, Section VIA, Section VI, and Section VII provide for interstate or foreign commerce since they are not subject to commercial use and are not susceptible for commercial use in the future. In addition, there is no evidence that the non-jurisdictional wetlands support recreational use or support fish or shellfish that can be sold for interstate or foreign commerce. There is also no evidence to support that Section III, Section IV, Section V, Section VA, Section VI, Section VIA, Section VI, and Section VII are used, or could be used, for industrial purposes in interstate or foreign commerce.

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):

- | | | |
|--|--|-----------------------------------|
| <input type="checkbox"/> Silts | <input type="checkbox"/> Sands | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles | <input type="checkbox"/> Gravel | <input type="checkbox"/> Muck |
| <input type="checkbox"/> Bedrock | <input type="checkbox"/> Vegetation. Type/% cover: | |
| <input type="checkbox"/> Other. Explain: . | | |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

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

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):

- | | |
|---|---|
| <input type="checkbox"/> Bed and banks | |
| <input type="checkbox"/> OHWM ⁶ (check all indicators that apply): | |
| <input type="checkbox"/> clear, natural line impressed on the bank | <input type="checkbox"/> the presence of litter and debris |
| <input type="checkbox"/> changes in the character of soil | <input type="checkbox"/> destruction of terrestrial vegetation |
| <input type="checkbox"/> shelving | <input type="checkbox"/> the presence of wrack line |
| <input type="checkbox"/> vegetation matted down, bent, or absent | <input type="checkbox"/> sediment sorting |
| <input type="checkbox"/> leaf litter disturbed or washed away | <input type="checkbox"/> scour |
| <input type="checkbox"/> sediment deposition | <input type="checkbox"/> multiple observed or predicted flow events |
| <input type="checkbox"/> water staining | <input type="checkbox"/> abrupt change in plant community |
| <input type="checkbox"/> other (list): | |
| <input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: . | |

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

- | | |
|--|--|
| <input checked="" type="checkbox"/> High Tide Line indicated by: | <input checked="" type="checkbox"/> Mean High Water Mark indicated by: |
| <input type="checkbox"/> oil or scum line along shore objects | <input type="checkbox"/> survey to available datum; |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings; |
| <input type="checkbox"/> physical markings/characteristics | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges | |
| <input type="checkbox"/> 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: 2.38 acres

Wetland type. Explain: Wetland Section I is a forested wetland.

Wetland quality. Explain: Wetland Section I is of moderate quality dominated primarily by large deciduous hardwood trees. Prior to approximately 1980, the area appears to have been in agricultural production based upon aerial imagery. Once agricultural production was abandoned, the area became forested and remains one of the last forested areas in the general vicinity of the Review Area.

Project wetlands cross or serve as state boundaries. Explain: N/A.

(b) General Flow Relationship with Non-TNW:

Flow is: **Intermittent flow**. Explain: Hydrology for the wetland is driven by a seasonally high water table and in response to specific precipitation events throughout the year, it is anticipated that flood waters would overtop the berm and settle in Wetland Section I.

Surface flow is: **Overland sheetflow**

Characteristics: A berm/spoil pile was observed along the east bank of Paul Trier Ditch west of Wetland Section I. During flooding events, Section I is located within Flood Zone AE and flood waters would overtop the berm and settle in Section I.

Subsurface flow: **Unknown**. Explain findings: The NRCS Web Soil Survey maps the area of Section I as Minster silty clay loam. The NRCS describes the Minster soil series as having a moderately high saturated hydraulic conductivity and slow permeability. The partially hydric soils present along the east bank of Paul Trier Ditch provide a conduit for water to move between the wetland and Paul Trier Ditch.

Dye (or other) test performed: N/A.

(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: Along the east bank of Paul Trier Ditch, a berm/spoil pile was observed. 33 CFR 328.3(c) states, "wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands"". Natural or man-made barriers do not reclassify adjacent wetlands as isolated if they would otherwise be determined adjacent but for the barrier. During flood events, water will overtop the berm providing a hydrologic connection between Paul Trier Ditch, further the moderately high saturated conductivity of the soil provides for a hydrologic connection.

(d) Proximity (Relationship) to TNW

Project wetlands are **5-10** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **500-year or greater** 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: At the time of the site inspection, Section I held no standing water and no water was being conveyed between Section I and Paul Trier Ditch. Therefore, no characterization could be made of the water color or quality. Wetland Section I appears to drain predominantly residentially developed land. Section I is located within the Zone AE floodway of Paul Trier Ditch and acts as flood storage during flooding events. Paul Trier Ditch drains predominately agricultural land upstream of Section I. Pollutants consistent with runoff from agricultural, such as fertilizers, nitrates, and sediment and residential areas, such as grease, sediment, and fertilizers in addition to pollutants consistent with runoff from surrounding roads. Wetland Section I provides a measure of water quality protection to Paul Trier Ditch and the Maumee River (TNW) by filtering out pollutants from storm water runoff, retaining flood waters and trapping and retaining sediment.

Identify specific pollutants, if known: N/A.

(iii) Biological Characteristics. Wetland supports (check all that apply):

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: Wetland Section I is a forested wetland located within the floodplain of Paul Trier Ditch dominated primarily by *Populus deltoides*, *Fraxinus pennsylvanica*, and *Quercus bicolor*.

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: The wetland provides some measure of foraging habitat as well as cover for mammals. Waterfowl and migratory birds may also use the wetland for resting, feeding, or as breeding or nesting grounds for part of the year.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **2**

Approximately (13.85) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
No	1.76		
No	12.09		

Summarize overall biological, chemical and physical functions being performed: These wetlands are located within the relevant reach of the Review Area and adjacent to Paul Trier Ditch. These wetlands provide some ability to trap sediment, nutrients, bacteria, toxins, and help to retain flood waters before reaching the Maumee River (TNW). The wetland identified as Section I (2.38 acres), along with other wetlands located with the relevant reach, perform biological, chemical, and physical functions which influence the integrity of downstream waters, including the Maumee River, a TNW. Biological functions include, but are not limited to, breeding and foraging habitat for migratory birds, amphibians, and pollinators. The forested wetlands produce sources of nutrients that contribute to the downstream food webs for fisheries and other aquatic and/or semi-aquatic species. The wetlands also retain and filter surface waters to improve water quality downstream by settling and adsorbing particulates and potential contaminants received from roadside drainage. The wetlands serve as retention areas for floodwaters during precipitation events and slow flow of floodwaters to downstream waterbodies. Section I is located within a delineated FEMA/FIRM Floodway/Flood Hazard area. Decreasing the flood storage capacity of Section I and the other wetlands within the relevant reach would likely contribute to increased downstream flood hazards. Additionally, the State of Indiana has issued Fish Consumption Advisories on the St. Joseph River and the Maumee River. The Maumee River, at its mouth, is a designated EPA Area of Concern in part because of the river's pollutants and sediments causing eutrophication of Lake Erie. Negative impacts to the Maumee River's tributaries' and adjacent wetland's chemical, physical, and biological functions would contribute to further degradation of the TNW's water quality, flood hazards, ecological integrity, and aquatic functions.

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: Wetland Section I, as described in the Wetland Delineation Report (Report), is a forested wetland approximately 2.38-acres in size located within in southwest quadrant of the Review Area. Wetland Section I is located immediately to the east of Paul Trier Ditch, which flows north along the western edge of the Review Area. Paul Trier Ditch continues to flow north off-site for approximately 5.98 river miles to its confluence with the Maumee River (TNW). Paul Trier Ditch is part of the Upper Maumee

River Watershed HUC8:04100005. The Maumee River, a Section 10 Navigable Waterway, flows northeast and empties into Lake Erie (Section 10 Navigable Waterway). The subject wetland is located on an undeveloped property within the City of Fort Wayne surrounded by residential development to the north and south, agricultural land to the west, and a school to the east. Wetland Section I traps sediment, nutrients, bacteria, toxins, and helps to retain flood waters before reaching the Paul Trier Ditch, the Maumee River (TNW), and eventually Lake Erie (TNW). The continued degradation of wetlands situated within the Paul Trier Ditch watershed and in and around New Haven/Fort Wayne, will have a demonstrable effect on the water quality of the Maumee River. Most of the wetlands in the Maumee River watershed in Indiana are relatively small and exist as fragments or relic portions of the Great Black Swamp, which stretched from Fort Wayne, Indiana to Toledo, Ohio and was subjected to massive drainage projects in the 1800's. The drainage work facilitated the pervasive conversion of the landscape to agricultural land. Prior to drainage efforts, the Maumee River's watershed was predominantly one large, forested wetland complex with interspersed marshes. 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, which includes the Paul Trier Ditch watershed, assists in the realization of the goals of the RAP for the Maumee River AOC. Section I and the similarly situated wetlands help trap sediment, nutrients, bacteria, toxins, and help to retain flood waters before reaching the Maumee River (TNW) and ultimately Lake Erie.

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: Paul Trier Ditch, identified as Section IX in the Report, flows north approximately 1,213 linear feet along the western edge of the review area. Paul Trier Ditch (Section IX) is mapped on the United States Geological Survey's National Hydrography Dataset (NHD) as a perennial stream/river and is defined as having "water throughout the year, except for infrequent periods of severe drought". Paul Trier Ditch (Section IX) is identified on the United States Fish and Wildlife Service's National Wetland Inventory (NWI) as an unknown perennial stream feature (R5UBH). Aerial imagery taken in 1998, 2005, 2007, 2012, and 2018, site photographs included in the Delineation Report taken in April of 2021, and site photographs taken in August of 2021, indicate that Paul Trier Ditch conveys water throughout the year. The site inspection confirmed the presence of an Ordinary High Water Mark (OHWM) and a defined bed and bank. Section II is an excavated open-water pond approximately 2.17-acres in size within the Review Area. Along the western edge of Section II, a direct hydrologic surface connection to Paul Trier Ditch was observed during the site inspection. Section II is identified on the NWI as a freshwater pond feature (PUBGx). The site inspection confirmed the presence of an OHWM.
- 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: **1,213** linear feet **6-10** width (ft).
- Other non-wetland waters: **2.17** acres.

Identify type(s) of waters: **Open-water pond.**

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: .

⁸See Footnote # 3.

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: **2.38** 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: .

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.

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

¹⁰ 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.

- 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: 1.4 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: "Wetland Delineation Report - 6400 Wayne Trace Property" prepared by Earth Source, Inc., on behalf of 4R Legacy, LLC., dated May 11, 2021.
- 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 East.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey, Allen County.
- National wetlands inventory map(s). Cite name: USFWS Online Wetlands 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): National Regulatory Viewer - Great Lakes and Ohio River Division Imagery 1998, 2005, 2007, 2012, and 2018.
 - or Other (Name & Date): Site Photographs, Appendix B "Site Photographs" of the Wetland Delineation Report, 2021; Site Inspection Photographs, 2021.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: Upper Maumee River Watershed Management Plan HUC 04100005, December 05, 2014.
- Other information (please specify): Site Inspection Report in Case File. August 24, 2021; Allen County iMap GIS Engineering Viewer; National Regulatory Viewer - Great Lakes and Ohio River Division.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Paul Trier Ditch (Section IX) 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). Paul Trier Ditch flows north approximately 1,213 linear feet along the western edge of the Review Area and continues to flow north approximately 5.98 river miles to its confluence with the Maumee River (TNW). Therefore, Paul Trier Ditch is an RPW within the tributary system of the Maumee River and is a Water of the United States. Section II (RPW) is an open-water pond exhibiting an observed OHWM located within the Review Area with a direct hydrologic surface connection to Paul Trier Ditch and therefore, is an RPW within the tributary system of the Maumee River and is a Water of the United States. Section I is a forested wetland that is adjacent to a perennial RPW (Paul Trier Ditch) within the tributary system of the Maumee River (TNW) and is a Water of the United States.