

**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): November 6, 2014**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Louisville District, Zionsville Creekside Development isolated wetlands 5, 8, 9, 10, 11, 12, 18, 19, LRL-2014-683**

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

State: Indiana County/parish/borough: Boone City: Zionsville  
Center coordinates of site (lat/long in degree decimal format): Lat. 39.945137 °, Long. -86.253979 °  
Universal Transverse Mercator: 563729 N, 4421926 E  
Name of nearest waterbody: Cemetery Creek, UNT to Eagle Creek  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: N/A  
Name of watershed or Hydrologic Unit Code (HUC): 05120201

- 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: November 6, 2014
- Field Determination. Date(s): September 25, 2014, 5T

**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: 5T

**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):<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:  
Wetlands:

**c. Limits (boundaries) of jurisdiction based on: 7T**

Elevation of established OHWM (if known):

**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: Wetland Sites 5 (0.13 acre), 8 (0.02 acre), 9 (0.01 acre), 10 (0.01 acre), 11 (0.01 acre), 12 (0.03 acre), 18 (0.03 acre), and 19 (0.24 acre) are isolated wetlands with no ecological or hydrological connection or adjacency to any stream or other "waters of the United States"

<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.

and are not susceptible to use 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: 7T

Summarize rationale supporting determination: 5T

##### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

#### 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: 5T 7T

Drainage area: 7T 7T

Average annual rainfall: 7T inches

Average annual snowfall: 7T inches

###### (ii) Physical Characteristics:

###### (a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 7T tributaries before entering TNW.

Project waters are 7T river miles from TNW.

Project waters are 7T river miles from RPW.

Project waters are 7T aerial (straight) miles from TNW.

Project waters are 7T aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: 7T

Identify flow route to TNW<sup>5</sup>: 7T

Tributary stream order, if known: 7T

###### (b) General Tributary Characteristics (check all that apply):

**Tributary is:**  Natural

Artificial (man-made). Explain: 7T

Manipulated (man-altered). Explain: 7T

<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.

**Tributary properties with respect to top of bank (estimate):**

Average width: 7T feet  
Average depth: 7T feet  
Average side slopes: 7T

**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: 7T |                                   |
| <input type="checkbox"/> Other. Explain: 7T |   |                                   |

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: 7T

Presence of run/riffle/pool complexes. Explain: 7T

Tributary geometry: 7T

Tributary gradient (approximate average slope): 7T%

(c) **Flow:**

Tributary provides for: 7T

Estimate average number of flow events in review area/year: 7T

Describe flow regime: 7T

Other information on duration and volume: 7T

Surface flow is: 7T Characteristics: 7T

Subsurface flow: 7T Explain findings: 7T

Dye (or other) test performed: 7T

**Tributary has (check all that apply):**

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Bed and banks  |   |  |
| <input type="checkbox"/> OHWM <sup>6</sup> (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 7T        |  |
| <input type="checkbox"/> other (list): 7T                                     |   |  |
| <input type="checkbox"/> Discontinuous OHWM. <sup>7</sup> Explain: 7T         |   |  |

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

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input 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): 7T                          |  |

**(iii) Chemical Characteristics:**

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

Explain: 7T

Identify specific pollutants, if known: 7T

<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.

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): 7T
- Wetland fringe. Characteristics: 7T
- Habitat for:
  - Federally Listed species. Explain findings: 7T
  - Fish/spawn areas. Explain findings: 7T
  - Other environmentally-sensitive species. Explain findings: 7T
  - Aquatic/wildlife diversity. Explain findings: 7T

**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: 7T acres
- Wetland type. Explain: 7T
- Wetland quality. Explain: 7T
- Project wetlands cross or serve as state boundaries. Explain: 7T

**(b) General Flow Relationship with Non-TNW:**

- Flow is: 7T Explain: 7T
- Surface flow is: 7T
- Characteristics: 7T
- Subsurface flow: 7T Explain findings: 7T
- Dye (or other) test performed: 7T

**(c) Wetland Adjacency Determination with Non-TNW:**

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: 7T
  - Ecological connection. Explain: 7T
  - Separated by berm/barrier. Explain: 7T

**(d) Proximity (Relationship) to TNW**

- Project wetlands are 7T river miles from TNW.
- Project waters are 7T aerial (straight) miles from TNW.
- Flow is from: 7T
- Estimate approximate location of wetland as within the 7T 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: 7T
- Identify specific pollutants, if known: 7T

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

- Riparian buffer. Characteristics (type, average width): 7T
- Vegetation type/percent cover. Explain: 7T
- Habitat for:
  - Federally Listed species. Explain findings: 7T
  - Fish/spawn areas. Explain findings: 7T
  - Other environmentally-sensitive species. Explain findings: 7T
  - Aquatic/wildlife diversity. Explain findings: 7T

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

- All wetland(s) being considered in the cumulative analysis: 7T
- Approximately (7T) 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>
7T	7T	7T	7T
7T	7T	7T	7T
7T	7T	7T	7T
7T	7T	7T	7T

Summarize overall biological, chemical and physical functions being performed: 7T

### 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: 7T
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: 7T
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: 7T

### 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: 7T linear feet 7T width (ft), Or, 7T acres.
  - Wetlands adjacent to TNWs: 7T 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: 7T.
  - 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: 7T.

Provide estimates for jurisdictional waters in the review area (check all that apply):

  - Tributary waters: 7T linear feet 7T width (ft).
  - Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

**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: 7T linear feet 7T width (ft).  
 Other non-wetland waters: 7T acres.  
Identify type(s) of waters: 7T

**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: 7T  
 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: 7T

Provide acreage estimates for jurisdictional wetlands in the review area: 7T 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: 7T 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: 7T 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: 7T  
 Other factors. Explain: 7T

**Identify water body and summarize rationale supporting determination: 7T**

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).  
 Other non-wetland waters: 7T acres.  
Identify type(s) of waters: 7T  
 Wetlands: 7T acres.

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

<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.

**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: 7T
- Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 0.48 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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands:

**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: Christopher B. Burke Engineering
- 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: 7T
- Corps navigable waters' study: 7T
- U.S. Geological Survey Hydrologic Atlas: 7T
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:1000 Zionsville Quadrangle
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO Database for Zionsville, <http://soildatamart.nrcs.usda.gov>
- National wetlands inventory map(s). Cite name: Ducks Unlimited National Wetland Inventory Update, 2009
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: Preliminary DFIRM 2009
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Indiana Statewide Imagery and LIDAR program 2011
  - or  Other (Name & Date): Onsite Photographs, March 25, 27, 31 and October 6, 2014
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Wetland 5 (PFO, 0.13 acre) is a topographic "bowl" shape with no hydrologic connection to a water of the U.S.; Wetland 8 (PEM, 0.02 acre) is located along the toe of slope of the east side of a hazardous material remediation site and is topographically bowl shaped; Wetland 9 (PSS, 0.01 acre) is topographically bowl shaped and is associated with the construction of an access road, Wetland 10 (PSS, 0.01 acre), Wetland 11 (PSS, 0.01 acre), Wetland 12 (PSS, 0.03 acre), and Wetland 18 (PFO, 0.03 acre) are topographically bowl shaped features located on the side of a fill pile; and Wetland 19 (PSS, 0.24 acre) is located between two fill areas associated with the



remediation of a hazardous materials site and is topographically bowl shaped. No potential hydrologic connections (such as swales, channels, ditches, etc.) were observed, and there is no documented ecologic connection to Waters of the U.S. Therefore, the wetlands in question are isolated with no hydrologic or ecologic connection to Waters of the U.S. and are not susceptible to use in interstate or foreign commerce.

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7T  
7T

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7T  
Date

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**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): November 6, 2014**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Louisville District, Zionsville Creekside Development: Cemetery Creek (RPW), Wetlands 1 & 3 (Abut RPW), UNTs 1-9 (Non-RPW), Wetlands 4, 6, 7, 13-17 (Adj to Non-RPW), Wetland 2 (adjacent to RPW), LRL-2014-683-sjk**

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

State: Indiana County/parish/borough: Boone City: Zionsville  
Center coordinates of site (lat/long in degree decimal format): Lat. 39.945137 °, Long. -86.253979 °  
Universal Transverse Mercator: 563729 N, 4421926 E

Name of nearest waterbody: Cemetery Creek, UNT to Eagle Creek  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: White River  
Name of watershed or Hydrologic Unit Code (HUC): 05120201

- 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

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- Office (Desk) Determination. Date: November 6, 2014  
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**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: 5T

**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: 7,067 linear feet: 6 width (ft) and/or 0.97 acres.  
Wetlands: 1.23 acres.

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

Elevation of established OHWM (if known): 0.25 ft – 2 ft.

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

<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.

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

### **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: 7T

Summarize rationale supporting determination: 5T

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": 5T

#### **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: 2.75 square miles

Drainage area: 2.75 square miles

Average annual rainfall: 40.79 inches

Average annual snowfall: 22.7 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 2 – 3 tributaries before entering TNW.

Project waters are 20-25 river miles from TNW.

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

Project waters are 10-15 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: 5T

Identify flow route to TNW<sup>5</sup>: RPWs flow west into Cemetery Creek or directly into Eagle Creek which is connected to the White River

Tributary stream order, if known: 4

**(b) General Tributary Characteristics (check all that apply):**

**Tributary is:**  Natural

Artificial (man-made). Explain: 5T

<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.

Manipulated (man-altered). Explain: 5T

**Tributary properties with respect to top of bank (estimate):**

Average width: 6 feet  
Average depth: 0.5 feet  
Average side slopes: 3:1

**Primary tributary substrate composition (check all that apply):**

- |   |   |                                   |
|---|---|-----------------------------------|
| <input checked="" type="checkbox"/> Silts   | <input checked="" type="checkbox"/> Sands                                 | <input type="checkbox"/> Concrete |
| <input type="checkbox"/> Cobbles            | <input checked="" type="checkbox"/> Gravel                                | <input type="checkbox"/> Muck     |
| <input type="checkbox"/> Bedrock            | <input checked="" type="checkbox"/> Vegetation. Type/% cover: wetland/20% |                                   |
| <input type="checkbox"/> Other. Explain: 5T |   |                                   |

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

Presence of run/riffle/pool complexes. Explain: minor riffle/run/pool complexes present in some areas

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 1%

(c) **Flow:**

Tributary provides for: Intermittent but not Seasonal Flow

Estimate average number of flow events in review area/year: 2-5

Describe flow regime: intermittent

Other information on duration and volume: 5T

Surface flow is: Discrete and Confined Characteristics: 5T

Subsurface flow: Unknown Explain findings: 5T

Dye (or other) test performed: 5T

**Tributary has (check all that apply):**

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

- |   |   |
|---|---|
| <input checked="" 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 checked="" 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 checked="" type="checkbox"/> abrupt change in plant community 5T |
| <input type="checkbox"/> other (list): 5T                                     |   |

Discontinuous OHWM.<sup>7</sup> Explain: UNT 4 and UNT 5 (likely the same stream, just labeled separately by consultant) are connected by Wetland 16. This is an area where flow becomes less confined and sheet flows over the wetland area before exiting back into a discrete channel on the downstream end.

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

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input 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): 5T                          |  |

**(iii) Chemical Characteristics:**

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

Explain: Water was present in isolated pools at the site of the site visit, watershed is rapidly developing; therefore, erosion was evident.

<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.

Identify specific pollutants, if known: The tributaries are nearby to a hazardous materials cleanup site; however, there is no known discharge of pollutants (historically or currently) from the site. The tributaries may be subject to increased sedimentation and introduction of nitrates and phosphates from fertilizers associated with upstream development and agriculture.

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): Mature Forest/Open field,100 Ft.
- Wetland fringe. Characteristics: PEM and PSS wetlands at specified locations
- Habitat for:
  - Federally Listed species. Explain findings: Indiana Bat foraging corridors
  - Fish/spawn areas. Explain findings: 5T
  - Other environmentally-sensitive species. Explain findings: 5T
  - Aquatic/wildlife diversity. Explain findings: 5T

**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: 1.23 acres

Wetland type. Explain: PFO, PSS, PEM

Wetland quality. Explain: Poor to moderate. Some wetlands (1, 2, 3, 15, 16, 17) are associated with the immediate floodways of the tributaries they abut and are contained within riparian areas that offer moderate amounts of habitat for various species. These wetlands are dominated by various sedges, skunk cabbage, fowl manna grass, jewel weed, riverbank wild-rye, green ash, and American elm. The remaining wetlands (4, 6, 7, 13, 14) have been historically disturbed by earthmoving activities associated with remediation of a hazardous materials site and construction of new roads to the south and east and, therefore, offer less habitat due to their disturbed nature. These wetlands tend to be dominated by species such as reed canary grass (invasive), sandbar willow, cattail, Kentucky bluegrass, cottonwood, scouring rush, and some sedges.

Project wetlands cross or serve as state boundaries. Explain: 5T

**(b) General Flow Relationship with Non-TNW:**

Flow is: Ephemeral Flow Explain: Wetlands do not flow unless during a rain event.

Surface flow is: Discrete

Characteristics: These wetlands are not associated with a perched groundwater table, and thusly, only flow during rain events when they capture either upland surface flow or floodwaters from their associated tributaries.

Subsurface flow: Unknown Explain findings: 5T

Dye (or other) test performed: 5T

**(c) Wetland Adjacency Determination with Non-TNW:**

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: Each wetland flows directly into tributaries via a defined channel or a swale.

Ecological connection. Explain: 5T

Separated by berm/barrier. Explain: 5T

**(d) Proximity (Relationship) to TNW**

Project wetlands are 20-25 river miles from TNW.

Project waters are 10-15 aerial (straight) miles from TNW.

Flow is from: No Flow

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: Water was present in isolated pools at the site of the site visit, watershed is rapidly developing; therefore, erosion was evident.

Identify specific pollutants, if known: The wetlands are nearby to a hazardous materials cleanup site; however, there is no known discharge of pollutants (historically or currently) from the site. The wetlands may be subject to increased sedimentation and introduction of nitrates and phosphates from fertilizers associated with upstream development and agriculture.

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

- Riparian buffer. Characteristics (type, average width): Woody buffer varying between 50-100+ feet wide consisting of trees/shrubs and some emergent grass areas.
- Vegetation type/percent cover. Explain: Ranges from tree/shrub to emergent. Most wetlands greater than 100% cover, except 16, which has some pockets of shallow aquatic areas with no vegetation.

- Habitat for:
  - Federally Listed species. Explain findings: 5T
  - Fish/spawn areas. Explain findings: 5T
  - Other environmentally-sensitive species. Explain findings: 5T
  - Aquatic/wildlife diversity. Explain findings: Provides some habitat for small mammals, reptiles, and amphibians.

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

All wetland(s) being considered in the cumulative analysis: 11

Approximately (1.23) 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>
Yes	Wetland 1 (0.08)	Yes	Wetland 6 (0.04)
No	Wetland 2 (0.02)	Yes	Wetland 7 (0.09)
Yes	Wetland 3 (0.07)	No	Wetland 13 (0.02)
No	Wetland 4 (0.05)	Yes	Wetland 14 (0.32)
		Yes	Wetland 15 (0.02)
		Yes	Wetland 16 (0.50)
		Yes	Wetland 17 (0.02)

Summarize overall biological, chemical and physical functions being performed: Wetlands provide habitat for wildlife, flood retention/storage, and filters runoff from upslope pastures and development areas.

**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: 5T
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: UNTs 1 and 2 (INT) drain directly into Cemetery Creek (RPW). Wetlands 6 & 7 abut UNT 3 (INT), which drains under 106<sup>th</sup> Street and is encapsulated until it empties into Cemetery Creek. Wetlands 14, 15, 16 directly abut UNTs 4 & 5 (likely the same stream channel, just labeled separately by consultant), which, in addition to UNT 8, drains into Eagle Creek (RPW), which drains into the White River (TNW). Wetland 17 directly abuts UNT 7, which flows into UNT 6, which flows into UNT 5, and then into Eagle Creek (RPW) and White River (TNW). The wetlands and riparian areas provide flood retention and filters nutrients and other pollutants from surrounding areas that can be transported downstream to the White River. Additionally, the tributaries and their abutting wetlands likely provides a fair amount of foraging opportunity, terrestrial habitat, and limited migratory pathways due to their woody riparian buffers/corridors that are connected to a larger network of forested corridor associated with Eagle Creek (the corridors become very urbanized and fragmented downstream from Eagle Creek Reservoir to White River). The tributary provides habitat for aquatic fauna and benthic organisms that are vital to the support of the foodwebs associated with Eagle Creek and the White River.
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: Wetlands 1, 2, 4, and 13 are adjacent to but not abutting the RPW. Wetland 1 and 2 are within the floodplain of Cemetery Creek (RPW)

Louisville District, Zionsville Creekside Development: Cemetery Creek (RPW), Wetlands 1 & 3 (Abut RPW), UNTs 1-9 (Non-RPW), Wetlands 4, 6, 7, 13-17 (Adj to Non-RPW), Wetland 2 (adjacent to RPW), LRL-2014-683-sjk

and appears to receive overland flow from Cemetery Creek and UNT 1 during storm events. Wetland 4 is upslope of UNT 3 and drains to that tributary via roadside ditch. Wetland 13 is situated upon a hillside and drains to UNT 4 via erosion gully. The wetlands and riparian areas provide flood retention and filters nutrients and other pollutants from surrounding areas that can be transported downstream to the White River. Additionally, the tributaries and their abutting wetlands likely provides a fair amount of foraging opportunity, terrestrial habitat, and limited migratory pathways due to their woody riparian buffers/corridors that are connected to a larger network of forested corridor associated with Eagle Creek (the corridors become very urbanized and fragmented downstream from Eagle Creek Reservoir to White River). The tributary provides habitat for aquatic fauna and benthic organisms that are vital to the support of the foodwebs associated with Eagle Creek and the White River.

**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: 5T linear feet 5T width (ft), Or, 5T acres.
- Wetlands adjacent to TNWs: 5T 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: Multiple site inspection by USACE and consultant throughout various times of the year, in addition to available aerial imagery, indicate that Cemetery Creek flows year-round.
- 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: 5T.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 1,461 linear feet 6 width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

**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: 5,606 linear feet 2-6 width (ft).
- Other non-wetland waters: 7T acres.

Identify type(s) of waters: 7T

**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 1 & 3 are contained within UNT 1 and Cemetery Creek.
- 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: 0.15 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: 0.02acres.

**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: 1.06 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

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

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



- 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: 5T
- Other factors. Explain: 5T

**Identify water body and summarize rationale supporting determination: 5T**

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: 7T linear feet 7T width (ft).
- Other non-wetland waters: 7T acres.  
Identify type(s) of waters: 7T

- Wetlands: 7T 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: 7T
- Other: (explain, if not covered above): 7T

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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands: 7T 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): 7T linear feet 7T width (ft).
- Lakes/ponds: 7T acres.
- Other non-wetland waters: 7T acres. List type of aquatic resource: 7T.
- Wetlands:

**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: Christopher B. Burke Engineering
- 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: 7T
- Corps navigable waters' study: 7T

<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.

- U.S. Geological Survey Hydrologic Atlas: 7T
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:1000 Zionsville Quadrangle
- USDA Natural Resources Conservation Service Soil Survey. Citation: SSURGO Database for Zionsville, <http://soildatamart.nrcs.usda.gov>
- National wetlands inventory map(s). Cite name: Ducks Unlimited National Wetland Inventory Update, 2009
- State/Local wetland inventory map(s): 7T
- FEMA/FIRM maps: Preliminary DFIRM 2009
- 100-year Floodplain Elevation is: 7T (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Indiana Statewide Imagery and LIDAR program 2011
  - or  Other (Name & Date): Onsite Photographs, March 25, 27, 31 and October 6, 2014
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law: 7T
- Applicable/supporting scientific literature: 7T
- Other information (please specify): 7T

**B. ADDITIONAL COMMENTS TO SUPPORT JD: 7T**

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Sarah Keller  
Project Manager

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November 19, 2014  
Date