Regulatory Program

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers
This form should be completed by following the instructions provided
in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 23 August 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): LRN-2019-00028

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Tennessee County/parish/borough: Hamilton City: Harrison
Center coordinates of site (lat/long in degree decimal format): Lat. 35.19650, Long. -85.08800.
Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☒ attached ☐ in report/map titled .
☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:
☐ Office (Desk) Determination Only. Date: .
☒ Office (Desk) and Field Determination. Office/Desk Dates: May 6, 2019 Field Date(s): May 7, 2019.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Hydrologic Determination Report for BW Hunting Club, September 21, 2018 and Supplemental Aquatic Resources Report for BW Hunting Club, March 29, 2019.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Hydrologic Determination Field Data Sheets for WWC1-WWC5 contained in Supplemental Report dated March 29, 2019.
☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .
Revised Title/Date: .
☐ Data sheets prepared by the Corps. Title/Date: .
☐ Corps navigable waters study. Title/Date: .
☐ CorpsMap ORM map layers. Title/Date: .
☐ USGS Hydrologic Atlas. Title/Date: .
☒ USGS, NHD, or WBD data/maps. Title/Date: ORM2, accessed May 6, 2019.
☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .
☒ USGS maps. Scale & quad name and date: ORM2, accessed May 6, 2019.
☒ USDA NRCS Soil Survey. Citation: NRCS Web Soil Survey, accessed May 6, 2019.
☒ USFWS National Wetlands Inventory maps. Citation: ORM2, accessed May 6, 2019.
☐ State/Local wetland inventory maps. Citation: .
☒ FEMA/FIRM maps. Citation: ORM2, accessed May 6, 2019.
☒ Photographs: ☐ Aerial. Citation: . or ☒ Other. Citation: Photos taken by AJP; May 7, 2019.
☐ LiDAR data/maps. Citation: .
☐ Previous JDs. File no. and date of JD letter: .
☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:
☐ "*navigable waters of the U.S.*" within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.
- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "*waters of the U.S.*" within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**
☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))
- **Complete Table 1 - Required**

☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

☐ (a)(2): All interstate waters, including interstate wetlands.
- **Complete Table 2 - Required**

☐ (a)(3): The territorial seas.
- **Complete Table 3 - Required**

☐ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
- **Complete Table 4 - Required**

☐ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 5 - Required**

☐ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
- **Complete Table 6 - Required**

☐ Bordering/Contiguous.
Neighboring:
☐ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

☐ The review area is comprised entirely of dry land.

☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

☐ (b)(2): Prior converted cropland.

☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

☒ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.[1]

☐ (b)(4)(iv): Small ornamental waters created in dry land.[1]

☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

☒ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.[1]

☐ (b)(4)(vii): Puddles.[1]

☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.[1]

☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.[1]

☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.

☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The project site is proposed for the Birchwood II Landfill. A site visit was conducted on May 7, 2019 to document the feature as described in the Hydrologic Determination Report and Supplemental Aquatic Resources Report submitted by Quantum Environmental & Engineering Services, LLC. Five (5) features were identified (WWC1-WWC5) within the project boundary and identified as an erosional feature not consistent with the definition of a tributary, and not considered a Water of the US (WoUS). WWC1 is approximately

[1] In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

320 lf in length, and flows through a narrow valley near the top of the project boundary and connects with WWC2. No channel was observed for WWC1, including a lack of bed and bank. WWC2 is approximately 1,578 lf in length, and flows from the southeast corner of the project boundary to the western boundary where it continues offsite. No channel with defined bed and bank was observed for the entire length of this feature. The provided monitoring report indicated the existence of Pond 1 on the western project boundary, and was explained to be fed by surface flow from WWC2. During the site visit, there was no pond present at this location, and no hydric soils were observed. A bermed area was present, but lack of water and hydric soils indicate this area lacks enough flow to maintain hydrology. Due to a lack of water or hydric soils, Pond 1 is classified as puddle. WWC3 is approximately 303 lf, and begins in a narrow valley on the southern property boundary. It flows through a narrow valley where it continues into a field with no gradient. There was no visible bed and bank for the entire length of WWC3, and it had no connection downstream. WWC4 and WWC5 are located in the northern portion of the property boundary, and are 127 lf and 98 lf, respectively. Both features were described to provide surface flow to Pond 2, but no bed and bank was visible for these features. Pond 2 is a 0.80 acre feature, with an outflow structure, and is classified as a artificially constructed pond created in dry land.

WWC1, WWC2, WWC3, WWC4, and WWC5 are not consistent with the definition of a tributary, and therefore not a WoUS. Regulatory Guidance Letter (RGL) 05-05 provides guidance for identifying the ordinary high water mark (OWHM) by identifying reasonably reliable characteristics that indicate regular or frequent flow events, including destruction of terrestrial vegetation, wracking, sediment sorting, leaf litter disturbed or washed away, bed and bank, etc. During the site visit on May 7, 2019, WWC1-WWC5 did not have bed and bank or any other consistent OHWM features required by the 2015 Clean Water Rule. Throughout all observed channels, there was an abundance of leaf litter from the previous year, as well as terrestrial vegetation growing on the channel bottoms. There was also an absense of wracking, sorting, scour, deposition, and change in substrate that would suggest the channels convey water of a regular and frequency necessary for them to be considered a WoUS. Pond 1 is considered upland because while it did have a berm, and appeared to contain water at one time, it lacked water and hydric soils during the May 7, 2019 site visit. Pond 2 is considered as an artificial and constructed pond, created in dry land. The pond had an ouflow strucutre, and was created at the head of a valley, with no jurisdicitional tributaries providing flow to or from the feature.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5)Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
WWC1	Based on a field review and further investigation, WWC1 meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics of bed and bank that are required to meet the defintion of a tributary per 33 C.F.R 328.3.
WWC2	Based on a field review and further investigation, WWC2 meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics of bed and bank that are required to meet the defintion of a tributary per 33 C.F.R 328.3.
WWC3	Based on a field review and further investigation, WWC3 meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics of bed and bank that are required to meet the defintion of a tributary per 33 C.F.R 328.3.
WWC4	Based on a field review and further investigation, WWC4 meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics of bed and bank that are required to meet the defintion of a tributary per 33 C.F.R 328.3.
WWC5	Based on a field review and further investigation, WWC5 meets the criteria for exclusion per (b)(4)(vi), erosional features, because it lacks the physical characteristics of bed and bank that are required to meet the defintion of a tributary per 33 C.F.R 328.3.

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.

Pond 1	Based on a field review and further investigation, the feature identified as Pond 1 is meets the criteria for exclusion per (b)(4)(vii),because it is a puddle. A review of multiple years of historic aerial photography found a single occurance of the feature holding water. Pond 1 is a pond construced in uplands which does not have the capacity to retain/hold water. The feature was not constructed in a water of the U.S.: A review of multiple years of historic aerial photography and USGS topographic maps did identify potential waters in the vicinity of Pond 1, however, the field investigation found the “blue line” stream depicted on the USGS Topographic Map was not a tributary (See Table 10: WWC-1 and WWC-3). There are no tributaries flowing in or out of Pond 1, and no downstream connection. Addtionally, no water was observed in the feature at the time of the site visit. While it is apparent water does occasionally stand in the lowest portions of the feature after precipitation events, as evidenced by the muddy bottom of the feature, most years of aerial photography show the feature is not holding water. Addtionally, the feature was found not to be a wetland because it lacked field indicators of hydric soils.
Pond 2	Based on a field review and and further investigation, Pond 2 meets the criteria for exclusion per (b)(4)(ii),because it is an artificially constructed lakes or ponds created in dry land. There are no tributaries flowing in or out of Pond 2, and no downstream connection. A review of multiple years of historic aerial photography and USGS topographic maps did not identify any suspected waters of the U.S. in the location of Pond 2.