



DEPARTMENT OF THE ARMY  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO  
ATTENTION OF

July 30, 2014

Regulatory Division  
South/Transportation Branch  
LRH-2014-00138-SCR – Kinnikinnick Creek  
Rupiper Mitigation Site (No PID)

Mr. Timothy Hill  
Ohio Department of Transportation  
Office of Environmental Services  
1980 West Broad Street, Mail Stop 4170  
Columbus, Ohio 43223

Dear Mr. Hill:

I refer to the Conceptual Mitigation Plan and Surface Water Delineation Report prepared by Hull & Associates, Inc. dated December 26, 2013 and May 30, 2014, respectively, for the Rupiper Mitigation Site south of Crouse Chapel Road in Green Township, Ross County, Ohio, a proposed compensatory mitigation site in association with the proposed Phases 2-3 of the Portsmouth Bypass Project in Scioto County, Ohio. Waters in the review area drain into the Scioto River.

The United States Army Corps of Engineers (Corps) authority to regulate waters of the United States (U.S.) is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (CWA) requires that a Department of the Army (DA) permit be obtained prior to discharging dredged or fill material into waters of the U.S., including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires that a DA permit be obtained for any work in, on, over or under a navigable water.

You have requested an evaluation of the Rupiper Mitigation Site as a potentially viable compensatory mitigation option for the proposed Phases 2-3 of the Portsmouth Bypass Project. You have indicated the entire Rupiper Mitigation Site would be preserved in perpetuity under an easement held by the Ross County Park District. Following an evaluation under 33 CFR 332, the Corps has determined the Rupiper Mitigation Site does have potential to be a component of a compensatory mitigation plan for discharges of fill material into waters of the U.S. that may occur for Phases 2-3 of the Portsmouth Bypass Project.

You have also requested a preliminary jurisdictional determination (PJD) for the aquatic resources within the Rupiper Mitigation Site. The attached maps correctly describe aquatic resources within the PJD review area. A total of 3,158 linear feet of three (3) streams and 9.325 acres of nineteen (19) wetlands are located within the 44.9-acre PJD review area.

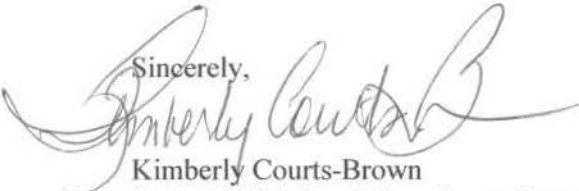
Based on a review of the information provided, a site visit conducted on December 30, 2013, and other information available to us, this office has determined that the aquatic resources on the attached Tables 1-2 **may** be jurisdictional waters of the U.S. This determination has been made in accordance with the Regulatory Guidance Letter (RGL) for Jurisdictional Determinations issued by the Corps on June 26, 2008 (RGL No. 08-02). As indicated in the guidance, this PJD is non-binding and cannot be appealed (33 CFR 331.2), and only provides a written indication that waters of the U.S., including wetlands, may be present on-site.

You have declined to exercise the option to obtain an approved jurisdictional determination for these aquatic resources in this instance and at this time. For the purposes of the determination of impacts, compensatory mitigation, and other resource protection measures for activities that require authorization from this office, the aquatic resources described in the attached PJD will be evaluated as if they are waters of the U.S.

Attached please find two copies of the PJD. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date one copy of the form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy to the following address:

Mr. Brett C. Latta, CPG (LRH-2014-00138-SCR)  
U.S. Army Corps of Engineers - Huntington District  
Ohio Regulatory Transportation Office  
Building 10 / Section 10, PO Box 3990  
Columbus, Ohio 43218-3990

If you have any questions concerning the above, please contact Brett C. Latta of the Columbus Field Office at (614) 692-4672.

Sincerely,  
  
Kimberly Courts-Brown  
Acting Chief, South Regulatory Branch

Enclosures

Copy furnished w/ enclosures via e-mail:

Joni Lung  
Ohio EPA  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
[Joni.Lung@epa.state.oh.us](mailto:Joni.Lung@epa.state.oh.us)

Adrienne Earley  
Ohio Department of Transportation  
1980 West Broad Street  
Mail Stop 4170  
Columbus, Ohio 43223  
[Adrienne.Earley@dot.state.oh.us](mailto:Adrienne.Earley@dot.state.oh.us)

Karen Hallberg  
U.S. Fish and Wildlife Service  
4625 Morse Road, Suite 104  
Columbus, Ohio 43230  
[Karen\\_Hallberg@fws.gov](mailto:Karen_Hallberg@fws.gov)

Mike Pettegrew  
Ohio Department of Transportation  
1980 West Broad Street  
Mail Stop 4170  
Columbus, Ohio 43223  
[Mike.Pettegrew@dot.state.oh.us](mailto:Mike.Pettegrew@dot.state.oh.us)

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):**

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

*kdd*  
*7/30/14*

Ohio Department of Transportation  
Office of Environmental Services  
1980 West Broad Street, Mail Stop 4170  
Columbus, Ohio 43223

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

Huntington District, Rupiper Mitigation Site (No PID), 2014-00138-SCR

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

**State:** Ohio  
**County:** Ross  
**City:** Green Township

**Center coordinates of site:** 39.43464 North, 82.96441 West

**Name of nearest waterbody:** Kinnikinnick Creek

**Identify (estimate) amount of waters in the review area:**

Non-wetland waters: There are three (3) streams within the 44.9-acre review area for the preliminary jurisdictional determination (PJD). Refer to the attached Table 1 and maps of this *Preliminary Jurisdictional Determination Form* for a detailed summary.

Wetlands: There are nineteen (19) wetlands with a cumulative total of 9.325 acres within the 44.9-acre review area for the PJD. Each wetland appears to have a continuous surface or shallow subsurface connection and/or adjacency to a water of the United States (U.S.). Refer to the attached Table 2 and maps of this *Preliminary Jurisdictional Determination Form* for a detailed summary.

**Name of any water bodies on the site that have been identified as Section 10 waters:**

None

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination: Date: 7 July 2014
- Field Determination: Date(s): 30 December 2013

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “pre-construction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant’s acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply - checked items should 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: Refer to "Surface Water Delineation Report" for Rupiper Mitigation Site (No PID) dated 30 May 2014.
- 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: 05060002 – Lower Scioto, Ohio (HUC retrieved from ORM database).
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s): Kingston, Ohio 7.5-minute map.
- USDA Natural Resources Conservation Service Soil Survey.
- National wetlands inventory map(s): Retrieved from ORM database.
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Refer to Surface Water Delineation Report for Rupiper Mitigation Site (No PID), Figure 3 and Figure 3a (date unknown).
  - or  Other (Name & Date): Refer to Surface Water Delineation Report for Rupiper Mitigation Site (No PID), Appendix A (May 2014).
- Previous determination(s). File no. and date of response letter:
- Other information (please specify): **See the attached maps and Tables 1-2.**

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

\_\_\_\_\_  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining the  
signature is impracticable)

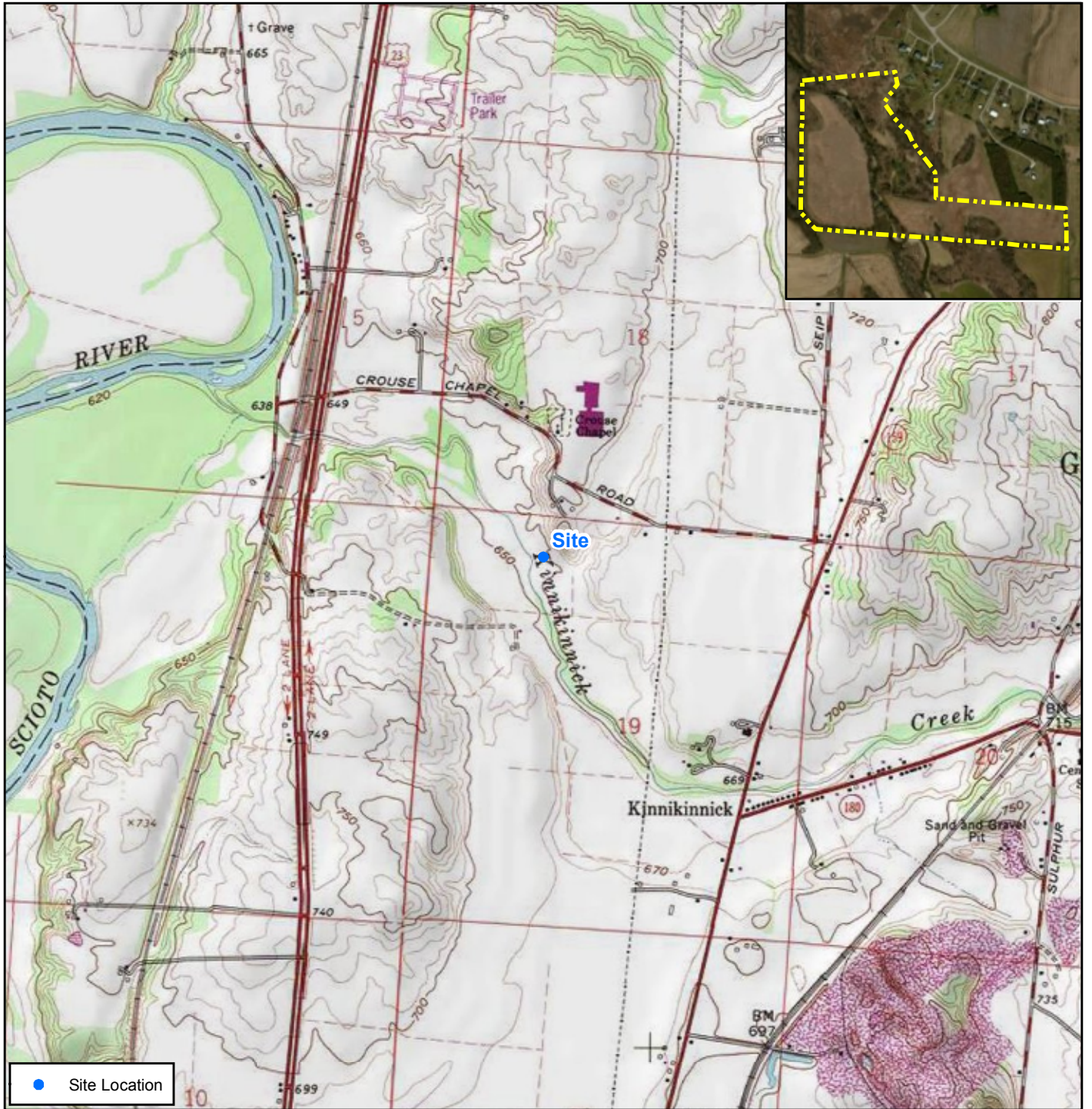
**Table 1 – Potentially Jurisdictional Streams Summary  
LRH-2014-00138-SCR: Rupiper Mitigation Site (No PID)**

Stream ID / Name	Flow Regime	Linear Feet
Stream 1 / UT to Kinnikinnick Creek	Perennial	547
Stream 2 / UT to Kinnikinnick Creek	Perennial	715
Stream 3 / Kinnikinnick Creek	Perennial	1,896
<b>Total</b>		<b>3,158</b>

**Table 2 – Potentially Jurisdictional Wetlands Summary  
LRH-2014-00138-SCR: Rupiper Mitigation Site (No PID)**

<b>Wetland ID</b>	<b>Cowardin Class</b>	<b>Total Area (acres)</b>
Wetland A	PEM	0.004
Wetland B	PEM	0.022
Wetland C	PEM	0.066
Wetland D	PEM	0.038
Wetland E	PEM/PSS/PFO	0.372
Wetland F	PEM/PSS	0.014
Wetland G	PEM/PSS	0.214
Wetland H	PEM/PSS	0.049
Wetland I	PEM/PFO	0.199
Wetland J	PEM/PSS/PFO	6.363
Wetland L	PEM/PSS/PFO	0.433
Wetland M	PEM	0.075
Wetland N	PEM/PSS	0.110
Wetland O	PEM	0.048
Wetland P	PEM	0.010
Wetland Q	PEM	0.013
Wetland R	PEM	0.003
Wetland S	PEM/PSS/PFO	1.292
	<b>Total</b>	<b>9.325</b>

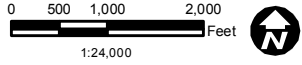




● Site Location



**DISCLAIMER**  
 Hull & Associates, Inc. (Hull) has furnished this map to the company identified in the title block (Client) for its sole and exclusive use as a preliminary planning and screening tool and field verification is necessary to confirm these data. This map is reproduced from geospatial information compiled from third-party sources which may change over time. Areas depicted by the map are approximate and may not be accurate to mapping, surveying or engineering standards. Hull makes no representation or guarantee as to the content, accuracy, timeliness or completeness of any information or spatial location depicted on this map. This map is provided without warranty of any kind, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose. In no event will Hull, its owners, officers, employees or agents, be liable for damages of any kind arising out of the use of this map by Client or any other party.



Quad: Kingston

Source: The topographic map was acquired through the USGS Topographic Map web service.

The aerial photo in the inset was acquired through the ESRI Image web service. Aerial photography dated 2012.

Ohio Department of Transportation  
 Office of Environmental Services  
 1980 West Broad Street  
 Columbus, OH 43223  
 (614) 466-7100

VAR-STW Environmental Mitigation No. 2012-2  
 SCI-823-0.00 (PID 19415)

**Site Location Map**

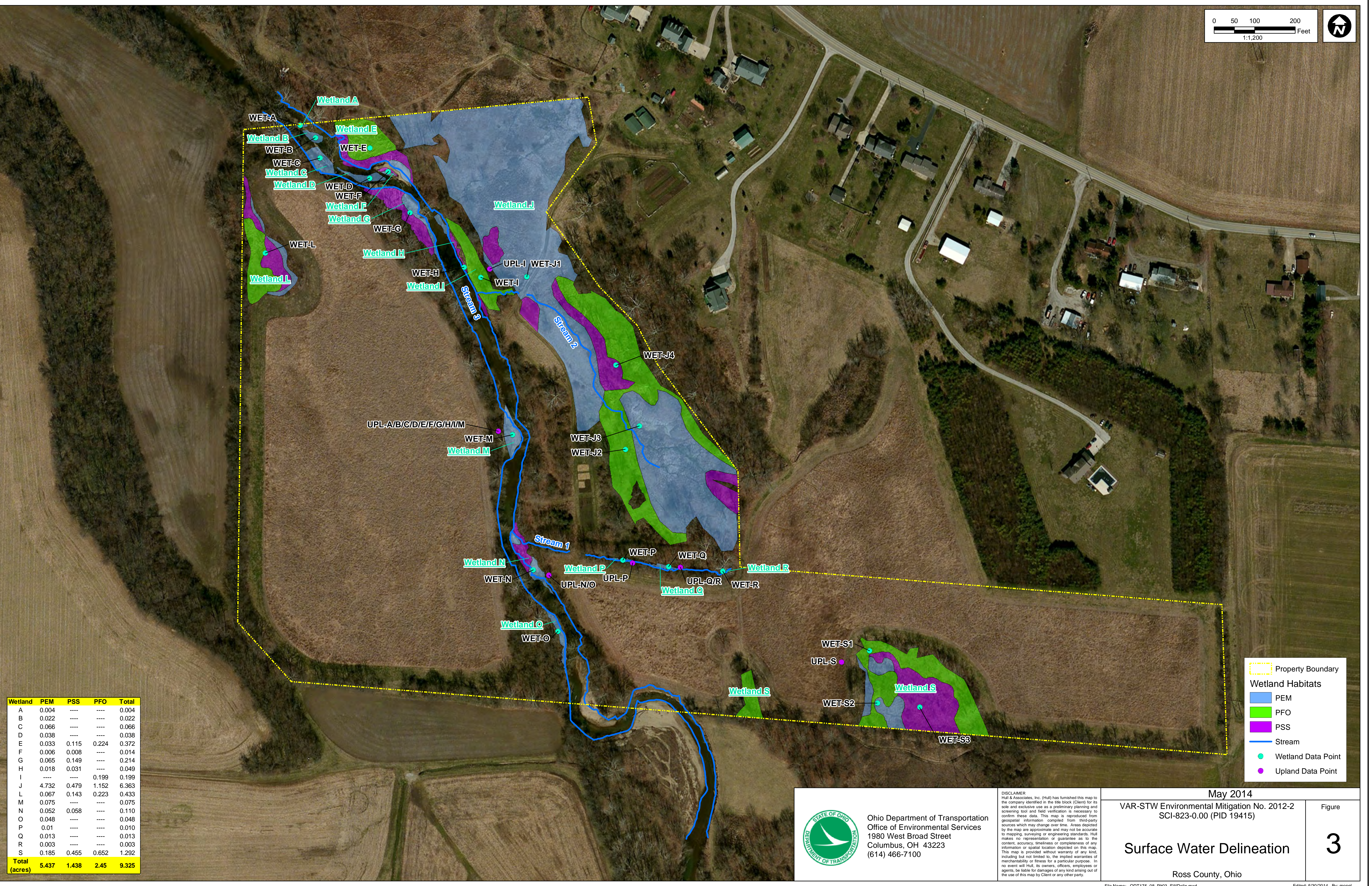
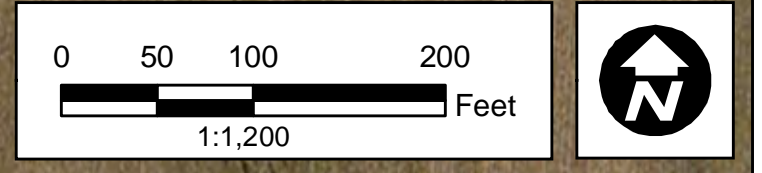
Ross County, Ohio

Date:  
**May 2014**

File Name:  
 ODT175\_06\_Fig01\_SLM.mxd  
 Edited: 2/7/2014 By: moppel

Figure  
**1**





Wetland	PEM	PSS	PFO	Total
A	0.004	----	----	0.004
B	0.022	----	----	0.022
C	0.066	----	----	0.066
D	0.038	----	----	0.038
E	0.033	0.115	0.224	0.372
F	0.006	0.008	----	0.014
G	0.065	0.149	----	0.214
H	0.018	0.031	----	0.049
I	----	----	0.199	0.199
J	4.732	0.479	1.152	6.363
L	0.067	0.143	0.223	0.433
M	0.075	----	----	0.075
N	0.052	0.058	----	0.110
O	0.048	----	----	0.048
P	0.01	----	----	0.010
Q	0.013	----	----	0.013
R	0.003	----	----	0.003
S	0.185	0.455	0.652	1.292
<b>Total (acres)</b>	<b>5.437</b>	<b>1.438</b>	<b>2.45</b>	<b>9.325</b>

- Property Boundary
- Wetland Habitats**
- PEM
- PFO
- PSS
- Stream
- Wetland Data Point
- Upland Data Point

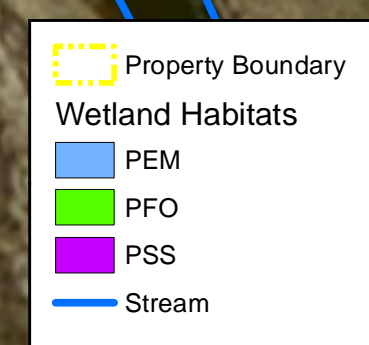
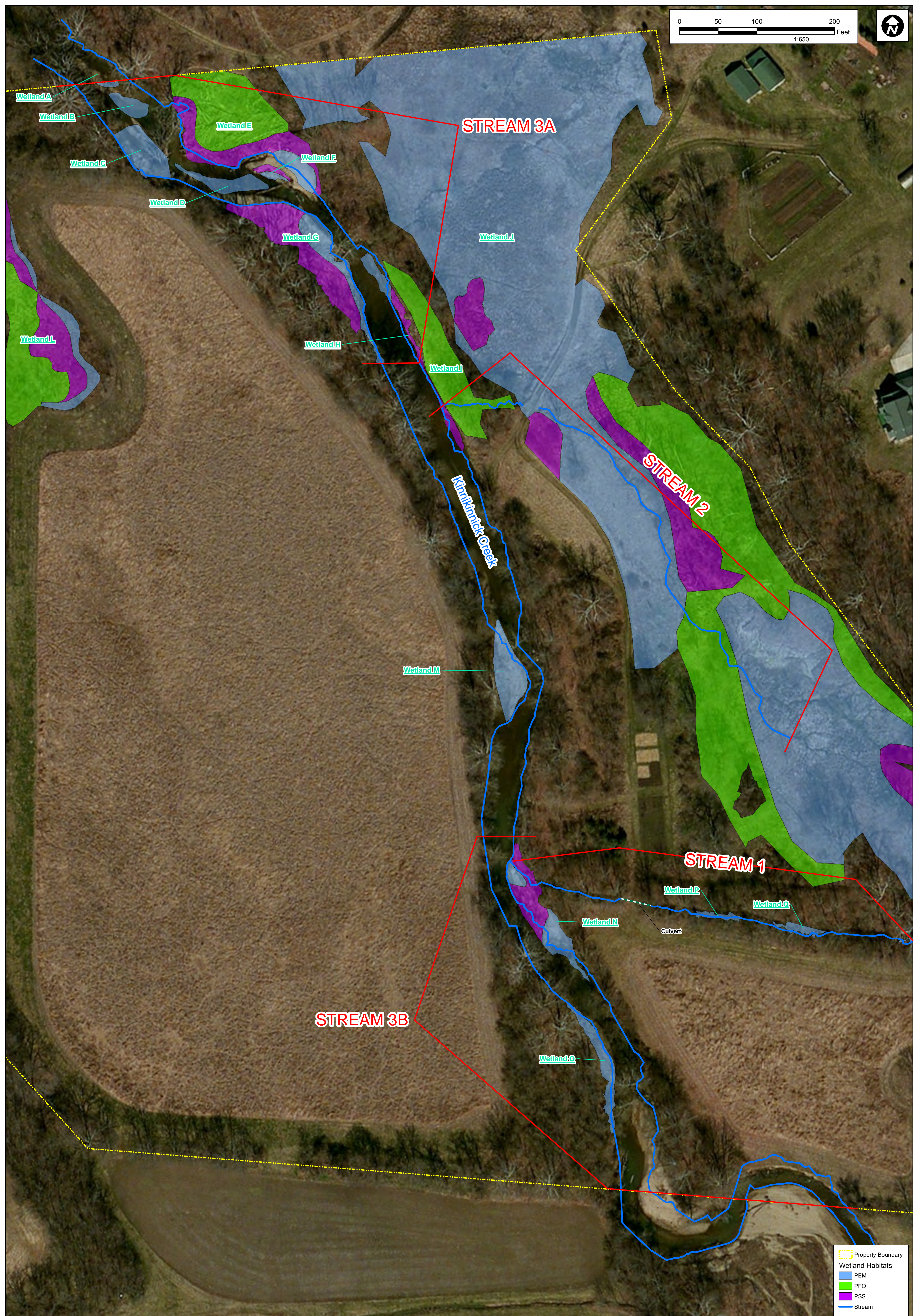
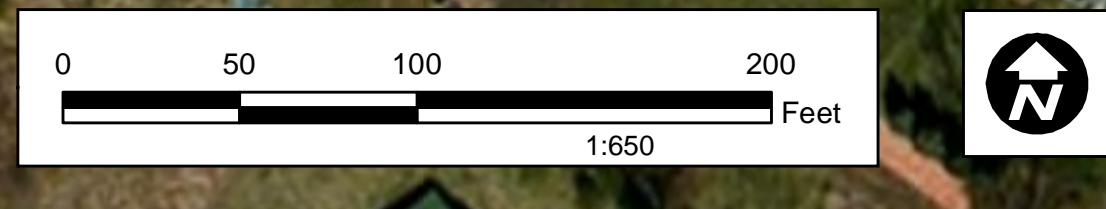

 Ohio Department of Transportation  
 Office of Environmental Services  
 1980 West Broad Street  
 Columbus, OH 43223  
 (614) 466-7100

DISCLAIMER  
 Hull & Associates, Inc. (Hull) has furnished this map to the company identified in the title block (Client) for its sole and exclusive use as a preliminary planning and screening tool and field verification is necessary to confirm these data. This map is reproduced from geospatial information compiled from third-party sources which may change over time. Areas depicted by the map are approximate and may not be accurate to mapping, surveying or engineering standards. Hull makes no representation or guarantee as to the content, accuracy, timeliness or completeness of any information or spatial location depicted on this map. This map is provided without warranty of any kind, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose. In no event will Hull, its owners, officers, employees or agents, be liable for damages of any kind arising out of the use of this map by Client or any other party.

May 2014  
 VAR-STW Environmental Mitigation No. 2012-2  
 SCI-823-0.00 (PID 19415)  
**Surface Water Delineation**  
 Ross County, Ohio

Figure  
**3**





Ohio Department of Transportation  
 Office of Environmental Services  
 1980 West Broad Street  
 Columbus, OH 43223  
 (614) 466-7100

DISCLAIMER  
 Hull & Associates, Inc. (Hull) has furnished this map to the company identified in the site block (Client) for its sole and exclusive use as a preliminary planning and screening tool and field verification is necessary to confirm these data. This map is reproduced from geospatial information compiled from third-party sources which may change over time. Areas depicted by the map are approximate and may not be accurate to mapping, surveying or engineering standards. Hull makes no representation or guarantee as to the content, accuracy, timeliness or completeness of any information or spatial location depicted on this map. This map is provided without warranty of any kind, including but not limited to, the implied warranties of merchantability or fitness for a particular purpose. In no event will Hull, its contacts, officers, employees or agents, be liable for damages of any kind arising out of the use of this map by Client or any other party.

May 2014  
 VAR-STW Environmental Mitigation No. 2012-2  
 SCI-823-0.00 (PID 19415)  
**Rupiper Streams  
 Enlargement**  
 Ross County, Ohio

Figure  
**3A**