

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 28, 2017

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, JND Properties, LLC., 2016-01058 - 9.5 Acre Undeveloped Site - Intermittent Stream 1 (399 linear feet) and Adjacent Wetland A (0.40 acres), Wetland B (0.19 acre), Mosaic Wetland C (0.31 acres), Mosaic Wetland D (0.02 acres), Mosaic Wetland E (0.17 acres), Mosaic Wetland F (0.23 acres) and Storm Water Detention Basin 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Ohio County/parish/borough: Lorain City: Avon Lake
Center coordinates of site (lat/long in degree decimal format): Lat. 41.49618 °, Long. -81.9864 °
Universal Transverse Mercator: 17

Name of nearest waterbody: Gable Ditch
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Erie
Name of watershed or Hydrologic Unit Code (HUC): 04110001

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
 Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

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

- Office (Desk) Determination. Date: December 14, 2016
 Field Determination. Date(s): November 15, 2016, *Click here to enter a date.*

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: *Click here to enter text.*

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There *Choose an item.* "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. *[Required]*

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): ¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 399 linear feet: 5 width (ft) and/or # acres.
Wetlands: 1.32 acres.

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

Elevation of established OHWM (if known): *Click here to enter text.*

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- ☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: A storm water detention basin that is approximately 0.39 acres in size, is located on the northwestern portion of the property. A review of historical aerial photographs show that the storm water detention basin was excavated between 1970 and 1994. Historical aerial photographs do not indicate that wetland existed in the delineated area prior to this time, but it is impossible to know this without knowing on-site conditions prior to the disturbance. B&L Companies did provide a copy of storm water detention pond plan that was designed to drain storm water from the adjacent southern property, which was developed as a strip mall circa 1984 by Learwood Square Company LLC. The retail area was expanded towards Lear Road circa 2000. The storm water plan does show that a 36" storm water pipe does originate at the retail development and it does drain into the storm water pond. It has been determined that Storm Water Detention Basin 1 is a part of Storm Water Pollution Prevention Plan (SWPPP) that was constructed for the retail development located to the south of subject parcel. After a review of the SWPPP plan and a review multiple historical aerial photographs of the project area, it has been determined that this storm water control feature was constructed in upland and for the sole purpose of draining upland into storm water drainage features and the storm water pond. Therefore, Storm Water Detention Basin 1 not regulated under Section 404 of the CWA

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: N/A

Summarize rationale supporting determination: N/A

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": N/A

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: # 0.21 square miles

Drainage area: # 0.21 square miles

Average annual rainfall: 38.8 inches

Average annual snowfall: 42.5 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 1-2 river miles from TNW.

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

Project waters are 1-2 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: *Click here to enter text.*

Identify flow route to TNW⁵: Ditch 1 flows into Gable Ditch, Gable Ditch flows into Lake Erie, a Section 10 navigable water.

Tributary stream order, if known: *Click here to enter text.*

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

Tributary is: Natural

Artificial (man-made). Explain: *Click here to enter text.*

Manipulated (man-altered). Explain: A review of historical aerial imagery (<https://www.historicaerials.com/viewer>), a channel was located to the south of the delineation area.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

This channel is visible in the 1952, 1962 and 1970 aerial photos. In the 1994 aerial photo, this channel had been relocated to the north and then to the west. It appears that the channel that is located on the western portion of the site is an excavated drainage feature. However, the historic channel last visible in the 1970 aerial photo is clearly shown to have been relocated and it now includes the portion of Ditch 1 that was identified on-site..

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

Average width: 5 feet
Average depth: .5 feet
Average side slopes: 2:1

Primary tributary substrate composition (check all that apply):

- Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: *Click here to enter text.*
 Other. Explain: Detritus, leaf pack/woody debris

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: The channel appeared to be stable. Erosion was not observed along the channel.

Presence of run/riffle/pool complexes. Explain: No

Tributary geometry: Relatively Straight

Tributary gradient (approximate average slope): #%

(c) **Flow:**

Tributary provides for: Intermittent but not Seasonal Flow

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

Describe flow regime: Ditch 1 flows to the north, where it then flows to the west, then back to the south and then to the west under Lear Road. From here Ditch 1 flows into Gable Ditch, a direct perennial tributary to Lake Erie.

Other information on duration and volume: No

Surface flow is: Confined Characteristics: Surface flow was observed flowing in a channel with a defined bed and bank and ordinary high water mark.

Subsurface flow: Unknown Explain findings: *Click here to enter text.*

Dye (or other) test performed: *Click here to enter text.*

Tributary has (check all that apply):

- Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community *Click here to enter text.*
 other (list): *Click here to enter text.*
 Discontinuous OHWM.⁷ Explain: *Click here to enter text.*

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

- High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list): *Click here to enter text.*

(iii) **Chemical Characteristics:**

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

Explain: Water color is clear.

Identify specific pollutants, if known: Unknown

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ibid.

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

- Riparian corridor. Characteristics (type, average width): Wooded on both banks. The riparian corridor is 60 feet wide on the right bank and greater than 60 feet on the left bank.
- Wetland fringe. Characteristics: *Click here to enter text.*
- Habitat for:
 - Federally Listed species. Explain findings: *Click here to enter text.*
 - Fish/spawn areas. Explain findings: *Click here to enter text.*
 - Other environmentally-sensitive species. Explain findings: *Click here to enter text.*
 - Aquatic/wildlife diversity. Explain findings: *Click here to enter text.*

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: 1.32 acres

Wetland type. Explain: Palustrine Forested

Wetland quality. Explain: The wetlands are young growth wooded forest. The wetlands are surrounded by residential and commercial development on all sides. The wetlands have mainly developed in abandoned agricultural furrows.

Project wetlands cross or serve as state boundaries. Explain: No

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent Flow Explain: Water flows through the wetland complexes after rain events and during the spring snow melt thaw. The site slopes and decreases in elevation from east to west. LIDAR imagery shows that the waters on-site flow from east to west into the abandoned storm water detention basin. This was confirmed visually during the on-site field review on November 15, 2016 because a drainage swale could be seen originating in Wetland F flowing towards the storm water detention basin. From the storm water detention basin, the water flows northwest through storm water culverts located under the entrance road that leads to the developed property to the north the delineation site. Ditch 1 originates off-site to the south and west of the project area. In the delineation area the water in Ditch 1 flows towards the north outside of the delineation area for an additional 397 linear feet to the north outside of the delineation area. Ditch 1 then bends and flows towards the west for 958 linear feet. Ditch 1 then bends again and flows towards the south for 397 linear feet where it then flows into a culvert located under Lear Road to the west. Ditch 1 continues to flow towards the west and flows into Gable Ditch. Gable Ditch is a direct tributary to Lake Erie, a Section 10 water.

Surface flow is: Overland Sheetflow

Characteristics: Water on-site overland sheetflows from east to west through confined agricultural furrows.

Subsurface flow: Unknown Explain findings:

Dye (or other) test performed: *Click here to enter text.*

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: *Click here to enter text.*

Ecological connection. Explain: *Click here to enter text.*

Separated by berm/barrier. Explain: Wetlands A, B, C, D, E and F are hydrologically separated from Ditch 1 on-site by a berm located on the eastern boundary of the delineation area and by residential development to the north. During the on-site review, the wetlands that are located on the east side of the delineation area near Ditch 1 were observed to be separated from Ditch 1 by a berm. The delineation area slopes towards the west with an elevation difference of about seven feet from east to west (629 feet elevation at east side of site to 622 elevation at the west side of site). Wetlands in the delineation area do flow into a lower downstream segment of Ditch 1 through a storm water detention basin. The storm water detention basin drains through a culvert into a downstream segment of Ditch 1 located near Lear Road. Ditch 1 flows into Gable Ditch, a direct tributary to Lake Erie, a Section 10 water.

(d) Proximity (Relationship) to TNW

Project wetlands are 1-2 river miles from TNW.

Project waters are 1-2 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Waters

Estimate approximate location of wetland as within the 2-year or less 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: Wetland A, B, C, D, E and F were not inundated during the on-site visit.

Identify specific pollutants, if known: Unknown

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

- Riparian buffer. Characteristics (type, average width): *Click here to enter text.*
- Vegetation type/percent cover. Explain: Tree and shrub
- Habitat for:
 - Federally Listed species. Explain findings: *Click here to enter text.*
 - Fish/spawn areas. Explain findings: *Click here to enter text.*
 - Other environmentally-sensitive species. Explain findings: *Click here to enter text.*
 - Aquatic/wildlife diversity. Explain findings: Pools of water provide habitat for amphibians and ephemeral pool crustaceans.

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

All wetland(s) being considered in the cumulative analysis: 6
Approximately (1.32) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
No	0.40	Y/N	
No	0.19	Y/N	
No	0.31	Y/N	
No	0.02	Y/N	
No	0.17		
No	0.23		

Summarize overall biological, chemical and physical functions being performed: Floodwater storage, filter nutrients and sediment, provide groundwater recharge, wildlife habitat.

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: *Click here to enter text.*

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:

2. **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:

Ditch 1, an intermittent stream channel, flows to the north outside of the delineation area for another 397 linear feet, then to the west for 958 linear feet, then to the south for 397 linear feet where it then flows to the west under Lear Road into Gable Ditch, a direct perennial tributary to Lake Erie. From there, the water flows into Gable Ditch, a direct tributary to Lake Erie, a Section 10 water. Wetlands A, B,

C, D, E and F surface sheet flow into a downstream portion of Ditch 1 that is not located in the delineation area. Gable Ditch is designated Warmwater Habitat (WWH) by the Ohio Environmental Protection Agency (OEPA)¹. OEPA's Biological and Water Quality Study of the Black River Watershed 2012² states that Gable Ditch is in non-attainment status due to direct habitat alterations caused by channel erosion from stream channel hydro modifications. According to StreamStats³, Gable Ditch has a drainage area of 1.81 square miles. Within the Gable Ditch watershed, 25.2% of the land in the watershed is forested, 88.5% is urban development, 19.8% is impervious surface and 11.9% is wetland or other waterbodies. National Wetland Inventory Mapping indicate that there is one (1) wetland that directly abuts Gable Ditch and four (4) wetlands that are located adjacent to Gable Ditch downstream of the delineation area. These wetlands total about 13.37 acres. According to a United States Environmental Protection Agency Fact Sheet No. 2 (Values and Functions of Wetlands)⁴, wetlands store runoff, filter pollutants and settle sediment that would otherwise be transported to the downstream reaches. Wetlands help to maintain and improve water quality by intercepting pollutants before the water enters open water. OEPA Fact Sheet on The Importance and Benefits of Primary Headwater Habitat Streams (January 2003), which includes intermittent streams, states that intermittent streams provide important ecological benefits such as sediment control, nutrient control, flood control, wildlife habitat corridors, and provide a source of water and food supply during drier times of the year. Currently, 88.5% of the Gable Ditch Watershed has been developed. Remaining wetland in the watershed help to reduce the severity and frequency of flooding events. Intermittent Stream 1 and Wetlands A, B, C, D, E, F and Ditch 1 store storm water runoff. Because the amount of impervious surface in the Gable Ditch watershed (19.8%) exceeds the amount of wetland (11.9%), Ditch 1 and Wetlands A, B, C, D, E and F provide beneficial floodwater storage service. Ditch 1 and Wetlands A, B, C, D, E and F filters pollutants, nutrients and sediment that would otherwise be transported to Gable Ditch, which ultimately flows into Lake Erie. Lake Erie provides drinking water for approximately 11 million people⁵. Because Ditch 1 and Wetlands A, B, C, D, E and F provide for storm water flood storage and provide beneficial ecological services, such as sediment and pollutant filtration that help to maintain the biological, chemical and physical integrity of Lake Erie, it has been determined that intermittent Ditch 1 and Wetlands A, B, C, D, E and F have a significant nexus with Lake Erie, a TNW.

1. http://epa.ohio.gov/portals/35/rules/01-27_nov15.pdf
2. <https://streamstats.usgs.gov/ss>
3. <http://epa.ohio.gov/Portals/35/rules/Black%20River%20Recommendations%2010-2014.pdf>
4. <https://nepis.epa.gov/Exe/ZyPDF.cgi/200053Q1.PDF?Dockey=200053Q1.PDF>
5. <https://www.epa.gov/greatlakes/lake-erie>

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: # linear feet # width (ft), Or, # acres.
 - Wetlands adjacent to TNWs: # acres.

2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: *Click here to enter text.*
 - 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: Photographs that were submitted with the original wetland delineation, water was observed flowing in Ditch 1 on 10-MAY-2016. Water was also observed in Ditch 1 during the on-site review conducted on 16-NOV-2016. The Ditch 1 is depicted as an intermittent channel on the Soil Survey of Lorain County, Ohio published July 1976 (Sheet Number 2).

Provide estimates for jurisdictional waters in the review area (check all that apply):
 - Tributary waters: 399 linear feet 5 width (ft).
 - Other non-wetland waters: 0.39 acres.
 Identify type(s) of waters: Storm Water Detention Basin I

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

- Tributary waters: # linear feet # width (ft).

- Other non-wetland waters: # acres.

Identify type(s) of waters: *Click here to enter text.*

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: *Click here to enter text.*

- 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: *Click here to enter text.*

Provide acreage estimates for jurisdictional wetlands in the review area: # acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.32 acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: # acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or

- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.

- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

- which are or could be used for industrial purposes by industries in interstate commerce.

- Interstate isolated waters. Explain: *Click here to enter text.*

- Other factors. Explain: *Click here to enter text.*

Identify water body and summarize rationale supporting determination: *Click here to enter text.*

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

- Tributary waters: # linear feet # width (ft).

- Other non-wetland waters: # acres.

Identify type(s) of waters: *Click here to enter text.*

- Wetlands: # acres.

⁸See Footnote # 3.

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

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

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: *Click here to enter text.*
- Other: (explain, if not covered above): Storm Water Detention Pond 1 was determined to be a non-jurisdictional feature. A review of historical aerial photographs show that the storm water detention basin was excavated between 1970 and 1994. Historical aerial photographs do not indicate that wetland existed in the delineated area prior to this time, but it is impossible to know this without knowing on-site conditions prior to the disturbance. B&L Companies did provide a copy of storm water detention pond plan that was designed to drain storm water from the adjacent southern property, which was developed as a strip mall circa 1984 by Learwood Square Company LLC. The retail area was expanded towards Lear Road circa 2000. The storm water plan does show that a 36" storm water pipe does originate at the retail development and it does drain into the storm water pond.

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
- Lakes/ponds: # acres.
- Other non-wetland waters: acres. List type of aquatic resource: Storm Water Detention Pond 1.
- Wetlands: # acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
- Lakes/ponds: # acres.
- Other non-wetland waters: # acres. List type of aquatic resource: *Click here to enter text.*
- Wetlands: # acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Aquatic Resource Delineation for a 9.5 -acre site for a Property located to the East of Lear Road in Avon Lake, Lorain County, Ohio dated August 17, 2016, Revised December 05, 2016 and Revised July 17, 2017
- 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: *Click here to enter text.*
- Corps navigable waters' study: *Click here to enter text.*
- U.S. Geological Survey Hydrologic Atlas: USACE ORM2 Dataset
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: OH-North Olmstead
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Lorain County, Ohio July 1976
- National wetlands inventory map(s). Cite name: OH-North Olmstead
- State/Local wetland inventory map(s): *Click here to enter text.*
- FEMA/FIRM maps: *Click here to enter text.*
- 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Bing Aerial Imagery 2017, Google Earth Pro 2017
- or Other (Name & Date): Site photographs submitted with the applicant's PCN. On-site photographs taken during the on-site field review on 16-NOV-2016
- Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- Applicable/supporting case law: *Click here to enter text.*
- Applicable/supporting scientific literature: *Click here to enter text.*

Other information (please specify): *Click here to enter text.*

B. ADDITIONAL COMMENTS TO SUPPORT JD: *Click here to enter text.*

November 28, 2017

Date

Shawn Blohm
Regulatory Specialist