U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/14/2020
ORM Number: LRB-2020-00669
Associated JDs: N/A
Review Area Location[1]: State/Territory: Ohio City: Middleburg Heights County/Parish/Borough: Cuyahoga
Center Coordinates of Review Area: Latitude 41.386201 Longitude -81.836101

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)[2]

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters):[3]				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size		(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

[1] Map(s)/figure(s) are attached to the AJD provided to the requestor.
[2] If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.
[3] A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland A	0.04	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A meets the definition of a wetland and is located approximately 525 feet to the west of Abram Creek, an (a)(2) perennial tributary that flows into the Rocky River, an (a)(2) water, the Rocky River flows into Lake Erie, an (a)(1) water. An Unnamed Perennial Tributary to Abram Creek is located just to the north outside of the delineation area. Wetland A does not abut an (a)(1) – (a) (3) water. A review of the Cuyahoga County, Ohio GIS Web Mapping Application indicates that the bottom elevation of Abram Creek to the top of the bank is a 6-foot elevation difference and there is an 8-foot elevation difference the bottom elevation of the Unnamed Perennial Tributary to Abram Creek to the top of the bank. The Cuyahoga County, Ohio GIS Web Mapping Application indicates that this wetland lies within Flood Hazard Zone X-Area of Minimal Flood Hazard. Wetland A is separated from Abram Creek and the Unnamed Perennial Tributary by natural stream banks. There is no evidence of wrack lines, sediment deposits or any other indications of flooding from Abrams Creek or the Unnamed Perennial Tributary noted in the wetland. A review of Cuyahoga County GIS Imagery dates for spring and fall 2019, spring and fall of 2017 and spring and fall of 2016. There is no evidence of inundation from Abram Creek or the Unnamed Perennial Tributary to this wetland. Due to the height of the river bank and the distance of the wetland from Abram Creek and the Unnamed Perennial Tributary. It has been determined that Wetland A is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. The Antecedent Precipitation Condition for 28-JUL-2020 was that the date is within the dry season, had normal precipitation for the date and was experiencing mild wetness. It has been determined that that Wetland A meets the Exclusion (b)(1) Non-adjacent wetland.

[4] Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.
[5] Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland B	0.38	acre(s)	(b)(1) Non-adjacent wetland.	Wetland B meets the definition of a wetland and is located approximately 295 linear feet to the west of Abram Creek, an (a)(2) perennial tributary that flows into the Rocky River, an (a)(2) water, the Rocky River flows into Lake Erie, an (a)(1) water. An Unnamed Perennial Tributary to Abram Creek is located just to the north outside of the delineation area. Wetland B does not abut an (a)(1) – (a) (3) water. A review of the Cuyahoga County, Ohio GIS Web Mapping Application indicates that the bottom elevation of Abram Creek to the top of the bank is a 6-foot elevation difference and there is an 8-foot elevation difference the bottom elevation of the Unnamed Perennial Tributary to Abram Creek to the top of the bank. The Cuyahoga County, Ohio GIS Web Mapping Application indicates that this wetland lies within Flood Hazard Zone X-Area of Minimal Flood Hazard. Wetland B is separated from Abram Creek and the Unnamed Perennial Tributary by natural banks. There is no evidence of wrack lines, sediment deposits or any other indications of flooding from Abrams Creek or the Unnamed Perennial Tributary noted in the wetland. A review of Cuyahoga County GIS Imagery dates for spring and fall 2019, spring and fall of 2017 and spring and fall of 2016. There is no evidence of inundation from Abram Creek or the Unnamed Perennial Tributary to this wetland. Due to the height of the river bank and the distance of the wetland from Abram Creek and the Unnamed Perennial Tributary. It has been determined that Wetland A is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. The Antecedent Precipitation Condition for 28-JUL-2020 was that the date is within the dry season, had normal precipitation for the date and was experiencing mild wetness. It has been determined that that Wetland B meets the Exclusion (b)(1) Non-adjacent wetland.
Wetland C	0.02	acre(s)	(b)(1) Non-adjacent wetland.	Wetland C meets the definition of a wetland and is located approximately 160 feet to the west of Abram Creek, an (a)(2) perennial tributary that flows into the Rocky River, an (a)(2) water, the Rocky River flows into Lake Erie, an (a)(1) water. An Unnamed Perennial Tributary to Abram Creek is located just to the north outside

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				of the delineation area. Wetland C does not abut an (a)(1) – (a) (3) water. A review of the Cuyahoga County, Ohio GIS Web Mapping Application indicates that the bottom elevation of Abram Creek to the top of the bank is a 6-foot elevation difference and there is an 8-foot elevation difference the bottom elevation of the Unnamed Perennial Tributary to Abram Creek to the top of the bank. The Cuyahoga County, Ohio GIS Web Mapping Application indicates that this wetland lies within Flood Hazard Zone X-Area of Minimal Flood Hazard. There is no evidence of wrack lines, sediment deposits or any other indications of flooding from Abrams Creek or the Unnamed Perennial Tributary noted in the wetland. A review of Cuyahoga County GIS Imagery dates for spring and fall 2019, spring and fall of 2017 and spring and fall of 2016. There is no evidence of inundation from Abram Creek or the Unnamed Perennial Tributary to this wetland. Due to the height of the river bank and the distance of the wetland from Abram Creek and the Unnamed Perennial Tributary. It has been determined that Wetland C is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. The Antecedent Precipitation Condition for 28-JUL-2020 was that the date is within the dry season, had normal precipitation for the date and was experiencing mild wetness. It has been determined that that Wetland C meets the Exclusion (b)(1) Non-adjacent wetland.
Stormwater Feature 1	0.15	acre(s)	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	Storm Water Detention Basin 1 is located approximately 257 feet to the west of Abram Creek, an (a)(2) perennial tributary. Abram Creek flows to the Rocky River, an (a)(2) water. The Rocky River flows into Lake Erie, an (a)(1) water. A review of Historicalaerials.com aerial imagery for the years 1952, 1962, 1970, 1982 and 1994 shows that Detention Basin 1 was constructed in upland. Aerial imagery indicates that Storm Water Detention Basin 1 was excavated in upland around 2000. Flickinger Wetland Group provided a copy of construction drawings that show that Storm Water Detention Basin 1 was constructed within a storm water detention basin easement. Based upon a review of aerial imagery and the construction plans for

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				the water detention basin, it has been determined that Storm Water Detention Basin 1 is a (b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate or store stormwater runoff.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: Wetlands Investigation +/- 14-acres Commerce Parkway, Middleburgh Heights, Ohio.

This information is sufficient for purposes of this AJD.

Rationale: N/A or describe rationale for insufficiency (including partial insufficiency).

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Aerial and Other: Photographs submitted with the waters delineation report, Cuyahoga County, Ohio GIS Web Mapping Application (Spring/Fall Historicaerials.com 1952, 1962, 1970, 1982, 1994, 2000

☒ Corps site visit(s) conducted on: 28-JUL-2020

☐ Previous Jurisdictional Determinations (AJDs or PJDs): ORM Number(s) and date(s).

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☐ USDA NRCS Soil Survey: Title(s) and/or date(s).

☒ USFWS NWI maps: USACE ORM2 Dataset

☒ USGS topographic maps: USACE ORM2 Database

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USACE ORM2 Dataset
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	USACE ORM2 Dataset
State/Local/Tribal Sources	N/A.
Other Sources	Cuyahoga County, Ohio GIS Web Mapping Application

B. Typical year assessment(s): The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of “normal,” “wetter than normal,” or “drier than normal” based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index and the University of Delaware WebWIMP.

An APT evaluation was run, associated with Cuyahoga County GIS aerial photos for fall and spring 2019, fall and

spring 2017 and fall and spring 2016. An APT evaluation was also run for the date of the site visit, July 28, 2020 . The evaluation was run for one weather station within the vicinity of the site. This site is the Cleveland Weather Station. Results indicate various conditions; Spring 2019 had wetter than normal conditions, fall 2019 had drier than normal conditions, Spring 2017 had wetter than normal conditions and Fall 2017 drier than normal conditions, Spring 2016 had wetter than Fall 2016 had normal precipitation conditions. Aerias for all years suggest no inundation to Wetland A, B and C from Abram Creek. For the date of the site visit, there was near normal precipitation conditions.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Cond
41.386201	-81.836101	7/28/2020	1.25	Mild wetness	Dry Season	14	Normal Conditions
41.386201	-81.836101	5/1/2019	2.33	Moderate wetness	Wet Season	15	Wetter than Normal
41.386201	-81.836101	10/1/2019	2.69	Moderate wetness	Wet Season	9	Drier than Normal
41.386201	-81.836101	5/1/2017	1.66	Mild wetness	Wet Season	16	Wetter than Normal
41.386201	-81.836101	10/1/2017	-1.6	Mild drought	Wet Season	6	Drier than Normal
41.386201	-81.836101	5/1/2016	-1.32	Mild drought	Wet Season	18	Wetter than Normal
41.386201	-81.836101	10/1/2016	0.71	Incipient wetness	Wet Season	14	Normal Conditions

C. Additional comments to support AJD: Wetlands A, B and C do not directly abut Abram Creek, an (a)(2) perennial Stream or Stream 1, an (a)(2) perennial stream, or are located within the extent of inundation by flooding from Abram Creek (a)(1) water, in a typical year. It has been determined that Wetlands A, B and C are not adjacent to an (a)(1) – (a)(3) water. This assessment is based on the following information: 1. There is a six foot elevation difference from the bottom of Abram Creek to the top of the river bank. 2. Wetland A sits approximatley 525 lf from Abram Creek, Wetland B 295 lf from Abram Creek and Wetland C 160 lf from Abram Creek. 3. A Typical Years Assessment was run to coincide with multiple aerial images from 2020 to 2016 obtained from the Cuyahoga County, Ohio GIS Web Mapper . The antecedent precipitation condition for each aerial supports the assumption that flooding from Abram Creek, an (a)(2) perennial stream, does not inundate wetlands A, B and C within a typical year. There was no evidence of wrack lines or sediment deposition on vegetation that would indicate that flood waters from Abram Creek would inundate these wetlands. Based upon a review of aerial imagery and the construction plans for the storm water detention basin, it has been determined that Storm Water Detention Basin 1 is a (b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate or store stormwater runoff.