



**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): 10/16/2020
 ORM Number: LRB-2020-00865
 Associated JDs: N/A.
 Review Area Location¹: State/Territory: Ohio City: Kirtland County/Parish/Borough: Lake
 Center Coordinates of Review Area: Latitude 41.594691 Longitude -81.330855

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. |

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. |

| Tributaries ((a)(2) waters): | | | |
|------------------------------|----------------|-----------------|--|
| (a)(2) Name | (a)(2) Size | (a)(2) Criteria | Rationale for (a)(2) Determination |
| Streams 3 and 6 | 1758 and 275.4 | linear feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. |
| | | | Onsite observations indicate that Streams 3 and 6 are perennial a(2) tributaries. Water was observed flowing within these stream channels during the August 27, 2020 site visit. The Antecedent Precipitation Tool (See Typical Year Assessment below) indicates that the site visit was conducted in the dry season during a period of drier than normal precipitation. In addition, fish were observed within these stream channels. Furthermore, Stream 3 is identified in the Chesterland, OH USGS Quad as 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.



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| Tributaries ((a)(2) waters): | | | | |
|------------------------------|-------------|--|-----------------|---|
| (a)(2) Name | (a)(2) Size | | (a)(2) Criteria | Rationale for (a)(2) Determination |
| | | | | perennial stream channel. Based on the above it was determined that Streams 3 and 6 are perennial a(2) tributaries. |

| Tributaries ((a)(2) waters): | | | | |
|------------------------------|------------------------|-------------|---|---|
| (a)(2) Name | (a)(2) Size | | (a)(2) Criteria | Rationale for (a)(2) Determination |
| Streams 1, 2 and 5 | 557.4, 644.4 and 187.4 | linear feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | Onsite observations indicate that Streams 1, 2 and 5 are intermittent a(2) tributaries. Water was observed pooled within the three stream channels, but none were flowing at the surface. Water was observed flowing a few inches below the surface when the substrate was excavated with a shovel. Since the site visit was conducted in the dry season during a period of drier than normal precipitation it was determined that the streams flow intermittently (see Typical Year Assessment below). |

| 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 |
| Pond | 0.56 | acre(s) | (a)(3) Lake/pond or impoundment of a jurisdictional water inundated by flooding from an (a)(1)-(a)(3) water in a typical year. | The Pond was observed to be an impoundment of Stream 1, a Clean Water Act Section 404 a(2) tributary. |

| Adjacent wetlands ((a)(4) waters): | | | | |
|------------------------------------|---------------|---------|--|---|
| (a)(4) Name | (a)(4) Size | | (a)(4) Criteria | Rationale for (a)(4) Determination |
| Wetlands A and D | 0.28 and 1.72 | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Onsite observations indicate that Wetland A directly abuts Stream 1 and Wetland D directly abuts Stream 3, both are Clean Water Act Section 404 a(2) tributaries. |

D. Excluded Waters or Features



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| Excluded waters ((b)(1) – (b)(12)): ⁴ | | | |
|--|----------------|------------------------|---|
| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
| Stream 4 | 94 | linear feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. |
| | | | Stream 4 was observed to be an ephemeral stream channel. This was based on a combination of the following - channel size, observed substrate, lack of flow, and absence of groundwater. The channel was approximately 2 feet in width, with silt substrate – which can be evidence of infrequent flow. There was no observed flow or pools (despite the fact that the visit was conducted during a normal period of precipitation (see Typical Year Assessment below)), and it was determined that the entire watershed size is approximately 1 acre; so, unless groundwater is present there is not a sufficient amount of precipitation to make the stream intermittent or perennial. While onsite, Corps staff walked the length of the stream channel looking for evidence of groundwater influence - none were observed. There were no observed seeps or springs, and topography is relatively flat so none would be expected. In addition, vegetation (i.e. skunk cabbage, royal fern) that are most commonly observed in areas of groundwater influence were not observed onsite nor were oxidized rhizospheres. Therefore, it was determined there is no groundwater influence and hydrology is strictly from precipitation. In addition, to confirm onsite observations the Chesterland, OH 7.5 min USGS Quad was reviewed to determine presence/absence of onsite stream channels. The USGS quad does not identify any stream channels onsite corresponding to the location of Stream 4. Thus, based on the above, it was determined that both onsite Stream 4 is an excluded ephemeral stream. |

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.



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| Excluded waters ((b)(1) – (b)(12)): ⁶ | | | | |
|--|----------------|---------|------------------------------|---|
| Exclusion Name | Exclusion Size | | Exclusion ⁷ | Rationale for Exclusion Determination |
| Wetland B | 0.83 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland B does not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Wetland B was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from Wetland B to any (a)(1-3) water. Wetland B is located approximately 150 LF from the nearest a(1-3) water (a(2) located offsite. Based on site observations the nearest a(1-3) waters (Stream 2) would not flood any of the wetland area at least once during a typical year. The nearest evidence of typical year flow (i.e. debris, leaf wracking) is located approximately 5 feet from Stream 2. Also, there are no natural berms or the like located between the a(1-3) water and wetland. |

| Excluded waters ((b)(1) – (b)(12)): ⁸ | | | | |
|--|----------------|---------|------------------------------|---|
| Exclusion Name | Exclusion Size | | Exclusion ⁹ | Rationale for Exclusion Determination |
| Wetland C | 0.69 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland C directly abuts Stream 4, an excluded b(3) ephemeral feature. Therefore, it is also an excluded feature. Onsite observations indicate that Wetland C's only connection to the downstream a(1) water is through Stream 4. |

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: [Wetland Delineation, Parcel Number 20-A-020-0-00-047-0, City of Kirtland, Lake County, Ohio, January 2020](#)

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.



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This information is sufficient for purposes of this AJD.

Rationale: N/A

- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Aerial and Other: Title(s) and/or date(s).
- Corps site visit(s) conducted on: August 27, 2020
- Previous Jurisdictional Determinations (AJDs or PJDs): Title(s) and/or 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: Title(s) and/or date(s).
- USGS topographic maps: Chesterland, OH 7.5 min

Other data sources used to aid in this determination:

| Data Source (select) | Name and/or date and other relevant information |
|----------------------------|---|
| USGS Sources | N/A. |
| USDA Sources | N/A. |
| NOAA Sources | N/A. |
| USACE Sources | N/A. |
| State/Local/Tribal Sources | N/A. |
| Other Sources | N/A. |

B. Typical year assessment(s): The subject parcel's latitude/longitude was entered into the Antecedent Precipitation Tool (APT) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps' site visit, and whether the site visit was conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest eight weather stations – Chardon, Kirtland 0.9 SW, Kirtland-Holden 2, Kirtland-Holden, Mayfield 0.2 NW, Painesville 3.8 SSW, South Russell 2.0 W, and Painesville 4 NW. The APT shows that normal precipitation at the location of the site is between the 30th (2.8") and 70th (6.0") percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 2.7" which is below the 30th percentile. Thirty to 60 days prior the APT indicates that precipitation was 2.5" which is also below the 30th percentile and 60 to 90 days prior precipitation was 4.7" which is between the 30th and 70th percentiles. Therefore, one to two months prior to the site visit rainfall was below normal precipitation, and three months prior to the date of the site visit precipitation was considered to be normal for that time of year.

The APT, using a weighted approach, indicates that the site visit was conducted during a period of drier than normal precipitation.

C. Additional comments to support AJD: Streams 1, 2, 3, 5 and 6 north for approximately 15 miles into the East Branch of the Chagrin River, an a(2) perennial tributary, which flows north and west approximately 10 miles until flowing into the Chagrin River, an a(1) navigable water.