



**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): 11/13/2020

ORM Number: LRB 2016-00326

Associated JDs: N/A.

Review Area Location<sup>1</sup>: State/Territory: Ohio City: Cuyahoga Falls County/Parish/Borough: Summit

Center Coordinates of Review Area: Latitude 41.11811 Longitude -81.51889

**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)<sup>2</sup>**

§ 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): <sup>3</sup>				
(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
See Sheets 11-12 of 12 for list of a(2) perennial tributaries	See Sheets 11-12 of 12	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 the streams listed as perennial (except CV009a discussed below in Section II.D) on Sheets 11-12 of 12 are perennial a(2) tributaries. Water was observed flowing within these stream channels during the August 25, 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 and/or macro invertebrates were observed within these stream channels. Based on the above it

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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.



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			was determined that these streams are perennial a(2) tributaries.
See Sheets 11-12 of 12 for list of a(2) intermittent tributaries	See Sheets 11-12 of 12	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 the streams listed as intermittent (except CV001, CV006, CV009c, and GO057 discussed in Section II. D below) on Sheets 11-12 of 12 are intermittent a(2) tributaries. Water was observed pooled within the these stream channels, but none was observed 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
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
See Sheets 8-10 of 12 for list of a(4) abutting wetlands	See Sheets 8-10 of 12	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.
			Onsite observations indicate that the wetlands identified as jurisdictional on Sheets 8-10 of 12 directly abut at least one of the streams identified above as a(2) waters. Therefore, they are Clean Water Act Section 404 a(4) waters.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
CV009a	207	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.
			Stream CV009a was observed to be flowing at the time of the August 25, 2020 site visit. Therefore, it was determined to be a perennial stream channel. However, there was no observed surface connection to an a(1) water in a typical year. CV009a was observed to flow into wetland CV009. However, there was no observed flow from CV009 to any a(1) water. CV009 was circumnavigated during the site visit and no observed surface water connection was observed connecting the wetland to an a(1)

<sup>4</sup> 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.

<sup>5</sup> 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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REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
				water. It was determined that CV009a has subsurface flow to the nearest a(2) tributary (Cuyahoga River). CV009a loses surface flow approximately 250 linear feet from the nearest a(2) water. CV009a flows into an area dominated by alluvial sand and gravel substrate that was historically used as a dumping ground for construction debris. Based on the natural substrate (which is porous and does not retain water well) and historic manipulation of the landscape it has been determined that the flow from CV009a no longer flows via surface flow to the nearest a(2) waterway. Along the banks of the Cuyahoga River, downslope and in the general direction where CV009a would natural flow, groundwater was observed diffusely seeping out of the ground. It is believed that this groundwater originates with CV009a. However, ground water alone (and it has been determined CV009a is not a subterranean stream) is excluded from Section 404 jurisdiction. Therefore, based on the above CV009a is determined to be an excluded b(1) water.
N/A.CV001, CV006, CV009c, and GO057	249, 636, 196, 154	linear feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	Streams CV001, CV006, CV009c, and GO057 were determined to be intermittent tributaries. Water was observed pooled within the four stream channels, but none was observed flowing at the surface. Water was observed flowing a few inches below the surface when the substrate was excavated with a shovel. However, there was no observed surface connection to an a(1) water in a typical year. It was observed that these stream channels' surface water flow becomes subsurface before reaching the nearest a(2) waters. The area immediately downstream and downgrade of the locations where these streams lose surface water flow was traversed and assessed for evidence of stream channels and surface water. None was observed. Therefore, it has been determined that these streams are excluded b(1) waters.
See Sheets 11-12 of 12 for a list of ephemeral streams	See Sheets 11-12 of 12	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	These streams were observed to be ephemeral stream channels. This was based on a combination of the following - channel size, lack of flow, watershed size, and absence of groundwater. The channels were all approximately between 2-3 feet in width, which can be evidence of infrequent flow. There was



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

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			no observed flow nor standing pools (see Typical Year Assessment below)). Additionally, it was determined that the entire watershed size for each of these streams is approximately 1 acre in size; so, unless groundwater is present there is an insufficient 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 - there were no observed seeps or springs. 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 observed on vegetation present within the channels. Therefore, it was determined there is no groundwater influence and hydrology is strictly from precipitation. In addition, to confirm onsite observations the Akron East and Akron West, OH 7.5 min USGS Quads were reviewed to determine presence/absence of onsite stream channels. The USGS quad does not identify any stream channels onsite corresponding to the location of these streams. Thus, based on the above, it was determined that the stream channels identified as ephemeral on Sheets 11-12 of 12 are excluded ephemeral streams.
See Sheets 8-10 of 12 for a list of excluded b(1) wetlands.	See Sheets 8-10 of 12	acre(s)	(b)(1) Non-adjacent wetland.
			Onsite observations indicate that the wetlands identified as non-jurisdictional on Sheets 8-10 of 12 are non-adjacent b(1) waters. These wetlands do 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. These wetlands were circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from these wetlands to any (a)(1-3) water. Based on site observations the nearest a(1-3) waters 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 1-10 feet from the onsite a(2) tributaries. These wetlands are all located further than 10 feet from the nearest a(2) tributaries. Also, there are no natural berms or the like located between the a(2) onsite waters and these wetlands. Based on



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REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			the above it has been determined that these wetlands are b(1) excluded waters.

**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 & Other Waters Delineation Report – Gorge Dam Removal, prepared by Summit Metro Parks Natural Resource Management Department, October 2019.](#)

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: [Select. Title\(s\) and/or date\(s\).](#)
- Corps site visit(s) conducted on: [August 25, 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: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [Akron East and Akron West, OH 7.5 min](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</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 five weather stations – Akron Fulton INTL AP, Akron, Cuyahoga Falls 1.1 SE, Ravenna 2 S, and Cleveland. The APT shows that normal precipitation at the location of the site is between the 30th (2.2") and 70th (5.3") percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 1.7" which is below the 30th percentile. Thirty to 60 days prior the APT indicates that precipitation was 0.7" which is also below the 30th percentile and 60 to 90 days prior precipitation was 2.9" 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.



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REGULATORY PROGRAM  
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- C. Additional comments to support AJD:** All of the adjacent a(2) tributaries (except the Cuyahoga River itself) flow into the Cuyahoga River, an a(2) water, which flows approximately 2200 feet to the west before turning into an a(1) navigable waterway.