



**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): 1/28/2021
 ORM Number: LRB-2020-01376
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Ohio City: Richfield County/Parish/Borough: Summit
 Center Coordinates of Review Area: Latitude 41.22109 Longitude -81.630739 W

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
- 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
LRB-2020-01376 Stream 1	271.2 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 1 is located in the middle of the site, with the channel bisecting the site flowing from west to east, then the northeast, as it continues outside the study area in which it eventually flows into Furnace Run, a perennial stream that travels to the north and then east where it eventual flows into the Cuyahoga River, an (a)(1) Section 10 water. The stream channel Stream 1 has bed and banks, a clearly defined flow channel, and has a gravel and silt substrate at the channel bottom. As reported by HzW Environmental Consultants in a letter dated

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
			<p>17AUG2020 with addendum map and photographs received 21DEC2020, titled "Findings of an Aquatic Resources Evaluation Conducted on a portion of Parcel Number 5002684 in the Village of Richfield, Summit County, Ohio," Stream 1 has intermittent flow. The photographs provided in the report dated 8AUG2020 show some areas of pooling water, but do not indicate flow, which supports an intermittent flow determination as August is the dry season for this area, as indicated in the Antecedent Precipitation Tool (APT) report discussed below. The characteristics described above are typical traits of intermittent stream channels. Aerial and Oblique imagery (ConnectExplorer Oblique Imagery, dated 22APR2020 & 24APR2019, and Google Earth Aerial image, dated 11MAR2019) shows the stream channel with water presence in each of these photographs, supporting that stream 2 has intermittent flow. The USGS Quad OH-Richfield dated 1994 shows this stream as a mapped dotted, blue-line stream, which the legend indicates intermittent flow for dotted blue-line streams further supporting the (a)(2) intermittent trib.</p> <p>An APT report was conducted for the dates of the consultant's site inspections and aerial imagery's reviewed. The APT report data provides consideration of the type of water flow conditions that could be expected at this area. The aerial and oblique imagery observed was for dates within the wet season identifying normal conditions in March and April 2019, and wetter than normal conditions in April 2020 and moderate wetness reported for all of these dates. The aerial and oblique imagery for these dates showed saturation or water presence throughout Stream 1 and Stream 2 could not be seen (no water presence and a small defined channel). So, with the normal conditions and moderate wetness report, that indicates that the intermittent flow determination for Stream 1 and ephemeral flow conditions for Stream 2 is accurate.</p> <p>Similarly the dates of the consultants site visits and photographs, August 8, 2020 and December 11, 2020 indicate normal conditions during the dry season with moderate wetness and the wet season with mild wetness. Since some water was shown in the photographs in December (wet season and normal conditions) and no water was shown in the channel of Stream 2 during August (Dry Season &</p>



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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			normal conditions), this data also supports the flow determinations for the streams. Based on the above information, Stream 1 is an (a)(2) tributary contributing surface water directly to an (a)(1) water in a typical year.

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
N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
LRB-2020-01376 Stream 2	77.6 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Stream 2 is a small ephemeral stream, that has some flow into Stream 1 which connects to the Cuyahoga River through other tributaries. Stream 2 has bed and banks, but does not meet the definition of an (a)(1), (a)(2),(a)(3) or (a)(4) water. It picks up overland sheet flow after rain events and has no other sources of water, resulting in ephemeral flow. The leaves/deposition in the stream bed indicate a lack of flow, as reported by the consultant for their visit on December 11, 2020; photographs were provided verifying this. The photographs show bed and banks, but no flow although pooled water is present in a couple locations along the channel. The photographs provided by the consultant also indicate that the substrate of the stream is a silt/sediment bottom. The photographs show no other signs of hydrology, no OHWM, blackened leaves, water presence, etc. This stream cannot be viewed from aerial imagery. This stream was documented as a non-RPW ephemeral stream in a previous Approved Jurisdictional Determination (LRB-2009-01203 form 9 of 12 – Stream 7), dated 2009OCT30 under Rapanos regulations, which further

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)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>supports that this stream has ephemeral flow.</p> <p>An Antecedent Precipitation Tool (APT) report was conducted for 8AUG2020 and 11DEC2021, the date of the photographs and site visit by the consultant, and the dates of aerial imagery observed (ConnectExplorer Oblique Imagery, dated 22APR2020 & 24APR2019, and Google Earth Aerial image, dated 11MAR2019).</p> <p>Based on the above information, Stream 2 is a (b)(3)ephemeral feature, including an ephemeral stream under the Navigable Waters Protection Rule.</p>
LRB-2020-01376 Culverted portion of Stream 1	53.2	linear feet	<p>(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.</p> <p>This feature is an existing culverted portion of intermittent stream 1 located at the western extent extending under Kinross Lakes Parkway. It does not meet the definition an (a)(1), (a)(3), (a)(4) water. The feature would meet the definition of an (a)(2) water except that 33 CFR 328.3(b)(6) indirectly refers to culverts as an example of non-jurisdictional features (also see 85FR22303). Therefore, the feature is a (b)(1) excluded water feature.</p>

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: HzW Environmental Consultants in a letter dated 17AUG2020 with addendum map and photographs received 21DEC2020, titled "Findings of an Aquatic Resources Evaluation Conducted on a portion of Parcel Number 5002684 in the Village of Richfield, Summit County, Ohio,"

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:** aerial imagery observed (ConnectExplorer Oblique Imagery, dated 22APR2020 & 24APR2019, and Google Earth Aerial image, dated 11MAR2019). Photographs submitted by HzW Environmental Consultants dated 8AUG2020 and 11DEC2020.

Corps site visit(s) conducted on: N/A

Previous Jurisdictional Determinations (AJDs or PJDs): LRB-2009-01203 AJD dated 30OCT2009.

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

USDA NRCS Soil Survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – accessed on 11DEC2020.

USFWS NWI maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - accessed 11DEC2020.

USGS topographic maps: <https://livingatlas.arcgis.com/topoexplorer/index.html> – accessed 13JAN2020. Reviewed USGS topographics from 1994 OH – West Richfield.



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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): APT Methodology

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 (PDSI) and the University of Delaware WebWIMP.

For this study area a single-source location was used to calculate the APT data, as shown in the table below.

Inputs/Data Sources:

Latitude(s)/Longitude(s): 41.22109, -81.6307

Observation Date(s): 3/11/2019, 4/24/2019, 4/22/2020, 8/8/2020, and 12/11/2020

Geographic Area(s) (Scope):

Weather Station(s): Ravenna 2S, Medina 7.6 ENE, Cuyahoga Falls 0.7NE, Broadview Heights 1.5NW, Brecksville 1.7 SE, Brunswick 0.5NE, Akron, Akron Fulton INTL AP, Chippewa Lake

Results:

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
41.22109	-81.6307	3/11/2019	2.98	Moderate wetness	Wet Season	14	14	Normal Conditions
41.22109	-81.6307	4/24/2019	2.73	Moderate wetness	Wet Season	14	14	Normal Conditions
41.22109	-81.6307	4/22/2020	2.51	Moderate wetness	Wet Season	16	16	Wetter than Normal
41.22109	-81.6307	12/11/2020		Moderate wetness	Wet Season	13	13	Normal Conditions
41.22109	-81.6307	8/8/2020		Mild wetness	Dry Season	12	12	Normal Conditions

Conclusion(s): The APT report data provides consideration of the type of water flow conditions that could be expected at this area. The above data generated for the study area for the aerial and oblique imagery, and the consultant site visit dates supports the flow determinations for Stream 1 being intermittent and Stream 2 being ephemeral during a typical year.

C. Additional comments to support AJD: Based on the above documentation and rationale, it has been determined that the study area includes one jurisdictional (a)(2) tributary– LRB-2020-01376 Stream 1 and



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one (b)(3) excluded ephemeral feature – LRB-2020-01376 Stream 2. All of the above documentation supports this determination.