**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): 2/11/2021
ORM Number: LRB-2016-01065
Associated JDs: 2016-01065, 2019-01197
Review Area Location[1]: State/Territory: Ohio City: Oakwood Village County/Parish/Borough: Cuyahoga
Center Coordinates of Review Area: Latitude 41.36330 Longitude -81.51904

## 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 |
| Ditch 1 | 588 | linear feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | Ditches 1 and 2 are ditches constructed within a jurisdictional tributary. They are anthropogenically modified natural stream channels. Historic aerial imagery from 1962, 1967, 1970, and 1982 (all taken prior to the development that permanently relocated the tributary) show a natural, sinuous stream channel that flowed from the southeast, north through the subject parcel. In the early to mid-1980s the area surrounding and including the subject parcel was developed. At that time, the tributary was rerouted into the ditches delineated presently. |

[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.

| Tributaries ((a)(2) waters): | | | | |
|---|---|---|---|---|
| (a)(2) Name | (a)(2) Size | | (a)(2) Criteria | Rationale for (a)(2) Determination |
| | | | | Furthermore, USGS topographic maps from 1939, 1950, 1964, 1968, and 1979 all depict an intermittent tributary flowing from the southeast, north through the subject parcel. Moreover, there are no other linear features that convey water from south to north within the subject parcel. Therefore, it has been determined that Ditches 1 and 2 are anthropogenically modified natural stream channels.<br><br>Onsite observations and a review of resources indicate that Ditches 1 and 2 have intermittent flow: First of all, as stated in the discussion above, historic and current USGS topographic maps depict an intermittent stream channel flowing from the southeast to the north through the subject parcel; Secondly, both ditches had flowing water at the time of the site visit. According to the Antecedent Precipitation Tool (See Section III. B for discussion), the site visit was conducted during a period of normal precipitation. Since precipitation was normal, flow was observed, and it had not rained immediately prior to nor during the visit it was determined that the ditches have more than ephemeral flow. Finally, a delineation report submitted for DA No. 2019-01197, and subsequently approved by the Corps, located between 1300-1400 stream feet downstream of the subject parcel depicts the same ditches as intermittent. Based on available resources, there is no evidence of side channels/tributaries that enter the ditches between the subject parcel and the downstream delineation.<br><br>Therefore, based on the discussion above, it has been determined that Ditches 1 and 2 are anthropogenically modified natural stream channels with intermittent flow and are currently considered a(2) intermittent tributaries. |
| Ditch 2 | 842 | linear feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | See discussion above for Ditch 1. |

| 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. |

## D. Excluded Waters or Features

| Excluded waters ((b)(1) – (b)(12)):[4] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[5] | Rationale for Exclusion Determination |
| Wetland A | 0.14 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland A 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. This wetland was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from this wetland to any (a)(1-3) water. In the southwest corner of the wetland water does flow via overland sheet flow to Ditch 1. However, the site visit confirmed that there is no discreet channel connecting the wetland to Ditch 1. Onsite observations also indicated that the area between Wetland A and Ditch 1 is not wetland. The hydrology and vegetation requirements were not met. Moreover, a previous delineation (DA No. 2016-01065 for Kokosing Construction Company Inc) associated with the adjacent laydown area also showed that Wetland A does not physically touch nor has a discreet connection to Ditch 1. Therefore, this wetland does not physically touch an a(1-3) water. Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland areas at least once during a typical year. Ditch 1 is down-cut approximately 10 feet from surrounding grade. Onsite observations of debris/leaf wracking indicate that this tributary overflows its banks by approximately 5 feet, well below surrounding grade. Wetland A is located approximately 40 feet from Ditch 1. Also, there are no natural or manmade berms with a |

[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 |
| | | | | connection such as a culvert located between any a(1-3) water and this wetland. |
| Wetland B | 1.21 | 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. This wetland was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from this wetland to any (a)(1-3) water. This wetland does not physically touch an a(1-3) water. Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland at least once during a typical year. The nearest tributary is down-cut approximately 10 feet from surrounding grade. Onsite observations of debris/leaf wracking indicate that this tributary overflows its banks by approximately 5 feet, well below surrounding grade. Wetland B is located approximately 40 feet from Ditch 2. Also, there are no natural or manmade berms with a connection such as a culvert located between any a(1-3) water and this wetland. |
| Wetland C | 0.02 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland C 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. This wetland was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from this wetland to any (a)(1-3) water. This wetland does not physically touch an a(1-3) water. Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland at least once during a typical year. The nearest tributary is down-cut approximately 10 feet from surrounding grade. Onsite observations of debris/leaf wracking indicate that this tributary overflows its banks by approximately 5 feet, well below surrounding grade. Wetland C is located approximately 20 feet from Ditch 2. Also, there are no natural or manmade berms with a connection such as a culvert located between any a(1-3) water and this wetland. |
| Wetland D | 0.44 | acre(s) | (b)(1) Non-adjacent wetland. | Wetland D 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 |

| Excluded waters ((b)(1) – (b)(12)):[4] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[5] | Rationale for Exclusion Determination |
| | | | | Water Act. This onsite portion of the wetland was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from this wetland to any (a)(1-3) water. This wetland does not physically touch an a(1-3) water. Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland at least once during a typical year. The nearest tributary is down-cut approximately 10 feet from surrounding grade. Onsite observations of debris/leaf wracking indicate that this tributary overflows its banks by approximately 5 feet, well below surrounding grade. Wetland D is located approximately 450 feet from Ditch 2. Also, there are no natural or manmade berms with a connection such as a culvert located between any a(1-3) water and this wetland. |

| Excluded waters ((b)(1) – (b)(12)):[6] | | | | |
|---|---|---|---|---|
| Exclusion Name | Exclusion Size | | Exclusion[7] | Rationale for Exclusion Determination |
| S.W.M. Area | 0.28 | 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. | The S.W.M. Area was constructed for the express purpose of treating stormwater runoff associated with a temporary lay down yard located to the north and east. There is a defined intake and outtake structure. Onsite observations indicate that the area was bermed on the edges – further evidencing that is was constructed for the purpose of treating stormwater. Additionally, no available evidence indicates that the area was wetland prior to construction. |

## 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 and Water Resource Delineation Report, 21 Acre (Approximate) Project Area of a 31 Acre Property, 7400 Oak Leaf Road, Oakwood Village, Cuyahoga County, Ohio, prepared for Helmar Properties, prepared by Land Solutions, LLC, September 23, 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.

This information is sufficient for purposes of this AJD.
Rationale: The Corps has reviewed the information in the report and has determined it is sufficient.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).
☒ Photographs: Other: Aerial - https://earthexplorer.usgs.gov (1962 and 1970); https://historicaerials.com/viewer (1967, 1970, 1982)
☒ Corps site visit(s) conducted on: October 7, 2020
☒ Previous Jurisdictional Determinations (AJDs or PJDs): DA Nos. 2016-01065 and 2019-01197
☒ 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: Northfield,OH 7.5 min (1939, 1950, 1964, 1968, 1979, 1997, 2013)

**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 of Engineers' October 7, 2020 site visit, and whether the site visit was conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest six weather stations – Ravenna 2 S, Macedonia 1.2 WNW, Macedonia 0.7 NNW, Brecksville 1.7 SE, Kirtland-Holden 2, and Akron Fulton Intl AP. The APT shows that normal precipitation at the location of the site is between the 30th (2.5") and 70th (5.7") percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 6.2" which is above the 70th percentile. Thirty to 60 days prior the APT indicates that precipitation was 2.2" which is below the 30th percentile, and 60 to 90 days prior precipitation was 3.9" which is between the 30th and 70th percentiles. Therefore, one month prior to the site visit precipitation was above normal, two months prior precipitation was drier than normal, and three months prior 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 normal precipitation.

**C. Additional comments to support AJD:** Ditches 1 and 2 flow approximately 2.5 miles west and into Tinkers Creek, an a(2) perennial tributary, which flows approximately 3.5 miles west and into the Cuyahoga River, a Section 10 of the Rivers and Harbors Act navigable water.