



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): 24-MAR-2021

ORM Number: LRB-2015-01049

Associated JDs: N/A

Review Area Location¹:

State/Territory: OH City: Mentor County/Parish/Borough: Lake County

Center Coordinates of Review Area: Latitude 41.645183 Longitude -81.383153

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
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

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

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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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stream 2 (2021)	248.1 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	<p>As per a review of remote tools which are documented in Section IIIA and Section IIIC, Stream 2 has been determined to be a ditch (constructed channel). Stream 2 is not a natural feature but rather was constructed in an agricultural field.</p> <p>33CFR328.3(b)(5) excludes ditches that are not waters identified in paragraph (a)(1) or (2), and those portions of ditches constructed in waters identified in paragraph (a)(4) that do not satisfy the conditions of paragraph (c)(1).</p> <p>(a)(1) Assessment: Stream 2 is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. Stream 2 is not on the Buffalo District Section 10 list, has not been determined by a Federal Court to be navigable under Federal law, and does not meet the legal definition of navigable-in-fact. Stream 2 has not been used, is not currently being used, and is not susceptible of being used (with or without reasonable improvements), as a highway for commerce over which trade and travel are, or may be conducted in the customary modes of trade and travel on water. Stream 2 varies from approximately 1-3 feet in width and is no more than 2 feet in depth; these characteristics preclude Stream 2 from supporting navigation of any sort. Stream 2 is hundreds of miles from the nearest tidal water.</p> <p>(a)(2) Assessment: The term tributary includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of the tributary definition.</p> <p>Available evidence (historic aerials, historic topographic maps, and historic soil surveys) indicates that Stream 2 was not constructed in and did not relocate a tributary. The only evident stream/tributary within the immediate vicinity of the review area, a stream/tributary to the Chagrin River which persists west of the review area, is mapped and visible on resources back to the late 1920's. That off-site stream/tributary, to which Stream 2 flows, still persists in the same general location today. Stream 2 was constructed in an agricultural field.</p> <p>Available evidence does not indicate that Stream 2 was constructed in a wetland meeting the definition of adjacent at 33CFR328.3(c)(1). Current and historic</p>

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			<p>soils surveys indicate the review area has "poor drainage" or the soils are somewhat poorly drained. No wetland features are mapped on any of the historic topographic maps or historic soil survey maps. The 1952 Historicaerials.com aerial photo, and the 1937 and 1951 LakeNavigator 3.0 Aerial photos depict saturation signatures within the vicinity of Stream 2. However, the 1962 and 1970 Historicaerials.com aerial photographs, and the 1973 LakeNavigator 3.0 Aerial photo do not depict saturation signatures. The previous preliminary jurisdictional determination identified wetlands at the upstream and downstream extents of Stream 2, albeit outside of the current review area. It cannot be conclusively determined that Stream 2 was constructed in an (a)(4) adjacent wetland as historic topographic and soil survey maps do not indicate wetlands surrounding Stream 2, aerial photos indicate variability in saturation signatures, and while poor drainage may be indicative of wetland presence, it is not in and of itself conclusive. Therefore, it cannot be confirmed that Stream 2 was constructed in an (a)(4) adjacent wetland.</p> <p>Stream 2 is excluded under 33CFR328.3(b)(5) as it is a ditch that is not a water identified in paragraph (a)(1) or (2) and was not constructed in a water identified in paragraph (a)(4).</p> <p>For the purposes of this determination, flow regime and contribution of flow are not relevant and are therefore not discussed further herein.</p>
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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: Aquatic Resource Map submitted 2/12/2021
 This information (*is/is not/is and is not*) sufficient for purposes of this AJD.
 Rationale: N/A

Data sheets prepared by the Corps: N/A

Photographs: Connect Explorer aerial photos- 4/21/2014, 1/29/2017, 4/4/2013, 4/30/2011, 4/2/2010, 4/24/2007, and 4/27/2019; Google Earth aerial photos- 4/13/1994, 12/31/1999, 7/6/2018, 5/14/2017, 4/6/2012/9/17/2019; LakeNavigator 3.0 aerial/ortho photos- 1937, 1951, 1973, 2000; Historicaerials.com aerial photos- 1952, 1962, 1970, 1982, 1994, 2000, 2002, 2013, 2015, 2017

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

Previous Jurisdictional Determinations (AJDs or PJDs): LRB-2015-01049 Preliminary

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Jurisdictional Determination dated 11/30/15

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

USDA NRCS Soil Survey:

USDA NRCS Web Soil Survey, <https://websoilsurvey.nrcs.usda.gov/> accessed 3/10/2021;

USDA Soil Conservation Service 1979 Soil Survey of Lake County, Ohio,

https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/ohio/lakeOH1929/lakeOH1929.pdf;

USDA Bureau of Chemistry and Soils 1929 Soil Survey, Lake County, Ohio by Arthur E. Taylor,

https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/ohio/lakeOH1929/lakeOH1929.pdf

USFWS NWI maps: USFWS National Wetland Inventory: Surface Waters and Wetlands,

<https://www.fws.gov/wetlands/data/mapper.html> accessed 3/10/2021

USGS topographic maps: 1947, 1955, 1961, 1971, 1979, 1992, 1997, 2013, 2016 (obtained from Historicaerials.com on 3/10/2021)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS The National Map Viewer, https://apps.nationalmap.gov/viewer/ accessed 3/10/2021
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Lake County Ohio LakeNavigator 3.0, https://gis.lakecountyohio.gov/lakenavigator3/ accessed 3/10/2021
Other Sources	USEPA WATERS GeoViewer, https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=ada349b90c26496ea52aab66a092593b accessed 3/10/2021 1930 Lake County Map, W. W. Hixon Publishing Co., http://www.historicmapworks.com/Map/US/154479/Lake+County+Map/Lake+County+1930c/Ohio/

B. Typical year assessment(s): A typical year assessment was not performed for this jurisdictional determination. The determination that Stream 2 is an excluded (b)(5) ditch did not require an assessment of contribution of flow or a determination of flow regime.

C. Additional comments to support AJD: N/A or provide additional discussion as appropriate.

- LakeNavigator 3.0 1937 aerial photo, Historicaerials.com 1952 aerial photo, and Historicaerials.com 1962 aerial photo- No stream/tributary/ditch visible within the review area; review area subject to agricultural activities.
- LakeNavigator 3.0 1951 Aerial photo, Historicaerials.com 1970 aerial photo, LakeNavigator 3.0 1973 Aerial photo, and Historicaerials.com 1982 aerial photo- A linear feature is visible along the easternmost extent of the review area but it is unclear if it is a ditch, a hedgerow, or an area of saturation. It appears that agriculture ceased on the site sometime after 1973.

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- Historicaerials.com 1994 aerial photo, Google Earth 4/13/1009 aerial photo, and LakeNavigator 3.0 2000 Orthophoto- A constructed channel is visible throughout the review area, extending off-site to the east and west.
- USGS topographic maps from 1947, 1955, 1961, 1971, 1979, 1992, 1997, 2013, 2016- No stream/tributary features are depicted in the review area. Several topographic maps indicate a tributary west of the review area, which is consistent with aerial photos and the previous preliminary jurisdictional determination.
- Connect Explorer aerial photos from 4/21/14, 1/29/17, 4/4/13, 4/30/2011, 4/2/2010, 4/24/2007, and 4/27/2019; and Google Earth aerial photo from 12/31/99- The Stream 2 channel is visible in all aerial photos as is flow in the channel.
- USEPA WATERS GeoViewer and USGS National Map- No surface water features are identified in the review area or immediate vicinity.
- USFWS National Westlands Inventory- No surface water features are identified in the review area and one small PEM wetland is identified northwest of the review area.
- The 1929 Soil Survey, Lake County, Ohio by Arthur E. Taylor (USDA Bureau of Chemistry and Soils) identifies a tributary east of the review area which is consistent with aerial photos and the previous preliminary jurisdictional determination. Lorain Loam, Caneadea Loam, and Caneadea Silty Clay Loam Dark Colored Phase are mapped in the general vicinity of the review area; all three soil types are noted as having poor drainage.
- The 1979 Soil Survey of Lake County, Ohio (USDA Soil Conservation Service) identifies a tributary east of the review area which is consistent with aerial photos and the previous preliminary jurisdictional determination. Red Hook soils (RhA) are mapped in the review area which is somewhat poorly drained. RhA soils are not noted to be flooded but a high water table within 0.5-1.5 feet of the soil surface is noted as apparent from December to May.
- The NRCS Web Soil Survey identifies the soils in the review area as having the following characteristics: depth to restrictive feature- more than 80 inches, drainage class- somewhat poorly drained, runoff class- low, capacity of the most limiting layer to transmit water (Ksat)- moderately high to high (0.20 to 2.00 in/hr), depth to water table- about 6 to 18 inches, frequency of flooding- none, frequency of ponding- none, and available water capacity- moderate (about 6.5 inches).
- 1930 Lake County Map published by W. W. Hixon Publishing Co. <http://www.historicmapworks.com/Map/US/154479/Lake+County+Map/Lake+County+1930c/Ohio/>- No stream/tributary features are depicted in the review area. The map identifies a tributary west of the review area, which is consistent aerial photos and the previous preliminary jurisdictional determination.

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