



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): 15-APR-2021

ORM Number: LRB-2020-01256

Associated JDs: LRB-2014-00051 (PJD, 8/15/2014)

Review Area Location<sup>1</sup>:

State/Territory: OH City: Oakwood County/Parish/Borough: Cuyahoga County

Center Coordinates of Review Area: Latitude 41.354939 Longitude -81.51068

**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

**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

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 1	80.6 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Stream 1 flows approximately 530 linear feet through Wetland A to Stream 2 and then approximately 1800 linear feet to the South Branch Deerlick Run to Deerlick Run, then to Tinkers Creek which flows to the Cuyahoga River, an (a)(1) and Section 10 water. The Cuyahoga River is listed on the Buffalo District Section 10 waters list. Stream 1 is approximately 1 linear foot wide. Stream 1 is at the top of a small well-defined valley and is fed by Wetland B. There was no water in the Stream on the Corps/consultant joint site visit on 10/8/2020 under normal conditions according to the Antecedent Precipitation Tool (APT) with the 30 days

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			immediately preceding the site visit being dry. On the consultant site visit on March 26, 2019, the condition was also normal according to the APT with the 30-days immediately prior to the site visit being dry but there was water standing in the stream. As the stream has water slowly fed to it by Wetland B it was determined that Stream 1 flows more than just in response to rain events and is therefore intermittent.
Stream 2	193.7 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 2 originates off-site from an off-site spring south of Alexander Road. Stream 2 then flows approximately 1800 west under Interstate 271 to South Branch Deerlick Run to Deerlick Run, then to Tinkers Creek which flows to the Cuyahoga River, an (a)(1) and Section 10 water. Also in support of Stream 2 being perennial, ConnectExplorer aerial photos indicate water in the channel in all aerial photos reviewed (4/9/2006, 4/24/2007, 12/8/2014, 4/29/2015, 11/5/2016, 11/29/2017, 12/25/2019, 11/19/2020). Also in support that the Stream 2 is perennial, an 1896 map on the Cleveland Historic Maps website ( <a href="https://www.arcgis.com/apps/view/index.html?appid=db0ee6134d64de4adaaa3660308abfd">https://www.arcgis.com/apps/view/index.html?appid=db0ee6134d64de4adaaa3660308abfd</a> ) indicates a spring at this location.

**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
Wetland A- Emergent	0.06 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland A (Emergent) directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B, C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.
Wetland A- Forested	2.56 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland A (Forested) directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B, C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.
Wetland B	0.21 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland B directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B, C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.
Wetland C	0.08 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland C directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B,

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			C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.
Wetland D-Emergent	0.08 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland D (Emergent) directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B, C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.
Wetland D-Forested	0.12 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland D (Forested) directly abuts and physically connects to perennial Stream 2, an off-site (a)(2) water. Although the wetland delineation map demarcates Wetland A, B, C and D as separate wetlands they are connected and all one wetland. These wetlands are part of one large wetland that extends off site.

**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
Pond 1	0.08 acres	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6)	Based on Google Earth aerial photos, the pond appeared between June 16, 2006 and May 31, 2007. The pond was constructed in an area mapped as Mahoning silt loam soils (MgB, 2 to 6 percent slopes) which are only 5% hydric (Web Soil Survey). Based on available aerial photography (Google Earth, 2/28/2006) there was a probable wetland at this location. Pond 1 has a culvert that outlets to Wetland F but Wetland F is a (b)(1) non-adjacent Wetland as described below. Therefore, based on the site visit and review of remote tools, the pond doesn't connect to an (a)(2) water and there is no evidence to indicate that this pond is an impoundment of a jurisdictional water. The off-site stream discussed below is 269 feet away from the pond at an elevation of 1049.3 feet while the pond is at an elevation of 1050.5 feet, a difference of 1.2 feet. Based on the horizontal and vertical distance from the stream, this pond is not connected to and will not be flooded by the stream in a typical year. This pond is surrounded by uplands and is entirely on-site. The entire perimeter was observed and no direct connections to an (a)(1)-(a)(3) water were observed. It isn't physically separated from an (a)(1)-(a)(3) water by any natural berms or similar natural feature nor is it physically separated from an (a)(1)-(a)(3) water only by artificial structure/features Therefore, this pond is not jurisdictional.
Wetland E	0.26 acres	(b)(1) Non-adjacent wetland	The closest a(2) water to Wetland E is off-site to the south of the project area. The Huntington District identified it as Stream 2A and in a Preliminary Jurisdictional Determination (LRH-2014-00051, 8/15/2014) indicated the flow regime is intermittent. Wetland E is at an elevation of 1049.5 linear feet while

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			Stream 2A is at an elevation of 1043.5, a difference of 6 feet. Wetland E is 734 linear feet from Stream 2A. Based on the horizontal and vertical distance from the stream, this wetland is not connected to and will not be flooded by the stream in a typical year. This wetland is surrounded by uplands and is entirely on-site. The entire perimeter was observed and no direct connections to an (a)(1)-(a)(3) water were observed. It isn't physically separated from an (a)(1)-(a)(3) water by any natural berms or similar natural feature nor is it physically separated from an (a)(1)-(a)(3) water only by artificial structure/features Therefore, this wetland is non-adjacent.
Wetland F	0.08 acres	(b)(1) Non-adjacent wetland	The closest a(2) water to Wetland F is off-site to the south of the project area. The Huntington District identified it as Stream 2A and in a Preliminary Jurisdictional Determination (LRH-2014-00051, 8/15/2014) indicated the flow regime is intermittent. Wetland F is at an elevation of 1045.8 linear feet while Stream 2A is at an elevation of 1043.5, a difference of 2.3 feet. Wetland F is 192 linear feet from Stream 2A. Based on the horizontal and vertical distance from the stream, this wetland is not connected to and will not be flooded by the stream in a typical year. This wetland is extends off-site to the south. The entire perimeter was observed and no direct connections to an (a)(1)-(a)(3) water were observed. It isn't physically separated from an (a)(1)-(a)(3) water by any natural berms or similar natural feature nor is it physically separated from an (a)(1)-(a)(3) water only by artificial structure/features Therefore, this wetland is non-adjacent.
Wetland G-Emergent	0.38 acres	(b)(1) Non-adjacent wetland	The closest a(2) water to Wetland G (Emergent) is off-site to the south of the project area. The Huntington District identified it as Stream 2A and in a Preliminary Jurisdictional Determination (LRH-2014-00051, 8/15/2014) indicated the flow regime is intermittent. Wetland G (Emergent) is at an elevation of 1053, while Stream 2A is at an elevation of 1043.5, a difference of 9.5 feet. Wetland E is 486 linear feet from Stream 2A. Based on the horizontal and vertical distance from the stream, this wetland is not connected to and will not be flooded by the stream in a typical year. This wetland is surrounded by uplands and is entirely on-site. The entire perimeter was observed and no direct connections to an (a)(1)-(a)(3) water were observed. It isn't physically separated from an (a)(1)-(a)(3) water by any natural berms or similar natural feature nor is it physically separated from an (a)(1)-(a)(3) water only by artificial structure/features Therefore, this wetland is non-adjacent.
Wetland G-Forested	0.15 acres	(b)(1) Non-adjacent wetland	The closest a(2) water to Wetland G (Forested) is off-site to the south of the project area. The Huntington District identified it as Stream 2A and in a Preliminary

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			Jurisdictional Determination (LRH-2014-00051, 8/15/2014) indicated the flow regime is intermittent. Wetland G (Forested) is at an elevation of 1059, while Stream 2A is at an elevation of 1043.5, a difference of 15.5 feet. Wetland E is 696 linear feet from Stream 2A. Based on the horizontal and vertical distance from the stream, this wetland is not connected to and will not be flooded by the stream in a typical year. This wetland is surrounded by uplands and is entirely on-site. The entire perimeter was observed and no direct connections to an (a)(1)-(a)3 water were observed. It isn't physically separated from an (a)(1)-(a)(3) water by any natural berms or similar natural feature nor is it physically separated from an (a)(1)-(a)(3) water only by artificial structure/features Therefore, this wetland is non-adjacent.
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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: *Wetland Delineation (HZW Environmental Consultants, September 2020 and June 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: Aerial (See table below under Typical Year Assessment for source and date of photos)
- Corps Site visit(s) conducted on: 10/8/2020
- Previous Jurisdictional Determinations (AJDs or PJDs): LRH-2014-00051 (PJD, 8/15/2014)
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Web Soil Survey (<https://websoilsurvey.nrcs.usda.gov/app/>, site accessed 10/5/2020)
- USFWS NWI maps: *National Wetlands Inventory* (<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>, site accessed 3/31/2021)
- USGS topographic maps: HistoricAerials.com (2016, 1962, 1939)

**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.

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**Typical year assessment(s):** 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 and the University of Delaware WebWIMP.

The APT was run for Connect Explorer aerial photos listed in the table below. In addition, an APT was run for the consultant site visits listed below and the Corps site visit. Antecedent Precipitation results indicate various conditions; six years normal, three years drier than normal, and two years wetter than normal. Aerials for all years suggest no inundation to any of the non-jurisdictional wetlands from any a(1)-a(3) water.

Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition	Relates to
4/9/2006	-1.35	Mild drought	Wet Season	8	Drier than Normal	ConnectExplorer Aerial
4/24/2007	3.61	Severe wetness	Wet Season	11	Normal Conditions	ConnectExplorer Aerial
12/7/2014	3.47	Severe wetness	Wet Season	8	Drier than Normal	ConnectExplorer Aerial
4/29/2015	1.81	Mild wetness	Wet Season	13	Normal Conditions	ConnectExplorer Aerial
11/5/2016	-0.77	Incipient drought	Wet Season	16	Wetter than Normal	ConnectExplorer Aerial
11/29/2017	0.55	Incipient wetness	Wet Season	14	Normal Conditions	ConnectExplorer Aerial
12/25/2019	2.37	Moderate wetness	Wet Season	13	Normal Conditions	ConnectExplorer Aerial
11/19/2020	1.96	Mild wetness	Wet Season	16	Wetter than Normal	ConnectExplorer Aerial
8/18/2020	1.28	Mild wetness	Dry Season	9	Drier than Normal	Consultant Site Visit
10/8/2020	2.24	Moderate wetness	Wet Season	11	Normal Conditions	Joint Site Visit
3/26/2019	2.98	Moderate wetness	Wet Season	12	Normal Conditions	Consultant Site Visit

**B. Additional comments to support AJD:** Based on an analysis of remote tools identified above as well as observations from a site visit conducted on October 8, 2020, Wetland A, Wetland B, Wetland C, and Wetland D listed above as "Adjacent wetlands ((a)(4) waters)" meets the criteria for waters of the U.S. under the NWPR and are a jurisdictional water of the U.S. Also Stream 1 and 2 listed above as "Tributaries ((a)(2) waters)" meet the criteria for waters of the U.S. under the NWPR and are jurisdictional water of the U.S. In addition, Wetland E, Wetland F, Wetland G and Pond listed above as "Excluded waters(b)(1)-(b)(12)" do not meet any of the four criteria set forth in 33CFR328.3(a) and therefore are excluded waters and not jurisdictional waters of the U.S. These findings are consistent with previous JDs cited.

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