



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): April 20, 2021

ORM Number: LRB-2020-01327

Associated JDs: N/A

Review Area Location¹:

State/Territory: OH City: Painesville Township County/Parish/Borough: Lake County

Center Coordinates of Review Area: Latitude 41.664758 Longitude -81.278306

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 |
|-------------|-------------|---|--|
| Wetland A | 0.43 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland A directly and physically connects to an off-site perennial (a)(2) stream immediately to the west of the |

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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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| | | | wetland. The stream is named Willow Creek and it flows to the East Branch Black River, and then to the Black River, which is on the Buffalo District's Section 10 water list. The stream is perennial based on the observation of water in the channel on 12 of 13 aerial photos and 1 joint consultant/Corps site visit. According to the Antecedent Precipitation Tool, 10 of the aerial photograph observations of water in the channel were under normal conditions, 1 was under wetter than normal conditions, and one was under drier than normal conditions. |
|--|--|--|---|

D. Excluded Waters or Features

Excluded waters (b)(1) – (b)(12)⁴:

| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
|----------------|----------------|--|---|
| Ditch | 94.4 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) | This ditch is a man-made linear feature constructed at the culvert outlet of the pond discussed below. The ditch is straight and has mostly smaller substrate types, and little aquatic habitat. There is no evidence that the ditch was constructed in or relocated an (a)(1) or (a)(2) water. The ditch is ephemeral. |
| Pond | 1.02 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 1970 and 1982. The pond was constructed in an area mapped as Pierpoint silt loam soils (PEC2, 6 to 12 percent slopes) which are 0% hydric (Web Soil Survey). Based on HistoricAerial.com aerial photos (1970, 1962, 1952) there were no wetlands at this location prior to the construction of the pond. Based on the Corps site visit, the pond does not connect to an a(2) water. There is no evidence to indicate that this pond is an impoundment of a jurisdictional water. The off-site stream discussed in Section C above is 553.6 feet away from the pond at an elevation of 784.5 feet while the pond is at an elevation of 797.6 feet, a difference of 13.1 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 B | 0.09 acres | (b)(1) Non-adjacent wetland | The closest (a)(2) water to Wetland B is off-site to the west of the project area, i.e. the stream discussed in Section C above. Wetland B is at an elevation of 803.7 feet while the stream is at an elevation of 784.5 feet, a difference of 19.2 feet. Wetland E is 935.7 linear feet from the stream. Based on the horizontal and vertical |

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|-----------|------------|-----------------------------|---|
| | | | 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 C | 0.32 acres | (b)(1) Non-adjacent wetland | The closest (a)(2) water to Wetland C is off-site to the west of the project area, i.e. the stream discussed in Section C above. Wetland C is at an elevation of 810.4 feet while the stream is at an elevation of 784.5 feet, a difference of 25.9 feet. Wetland C is 1459.7 linear feet from the stream. 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. |

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 Investigation (Flickinger Geoservices Group, Ltd., 9/28/2020)*

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: ConnectExplorer (4/10/2004, 4/16/2005, 3/24/2006, 8/5/2006, 4/20/2007, 4/24/2007, 4/2/2008, 4/3/2010, 4/30/2011, 4/6/2013, 4/21/2014, 11/29/2017, 4/2/2018), Google Earth (6/4/2009, 4/6/2012, 9/20/2015, 6/11/2016, 9/17/2019), HistoricAerials.com (1952, 1962, 1970, 1982, 1994, 2000, 2002)

Corps Site visit(s) conducted on: *10/9/2020*

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: *USGS Topoview (site accessed 4/1/2021), Mentor OH 1:24K Quad*

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(1963, Rev. 1979; 1963, Rev. 1984; 1963, Rev. 1992; 1994, Rev. 2000)

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 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 Google Earth and ConnectExplorer aerial photos listed below. In addition, an APT was run for the consultant and joint site visits listed below. Antecedent Precipitation results indicate various conditions; twelve years normal, two years drier than normal, and six 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.

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| Date | PDSI Value | PDSI Class | Season | ARC Score | Antecedent Precip Condition | Relates to |
|------------|------------|-------------------|------------|-----------|-----------------------------|------------------------|
| 4/10/2004 | 2.86 | Moderate wetness | Wet Season | 13 | Normal Conditions | ConnectExplorer Aerial |
| 4/16/2005 | 4.21 | Extreme wetness | Wet Season | 6 | Drier than Normal | ConnectExplorer Aerial |
| 3/24/2006 | -0.88 | Incipient drought | Wet Season | 14 | Normal Conditions | ConnectExplorer Aerial |
| 8/5/2006 | 2.94 | Moderate wetness | Dry Season | 18 | Wetter than Normal | ConnectExplorer Aerial |
| 4/20/2007 | 3.61 | Severe wetness | Wet Season | 12 | Normal Conditions | ConnectExplorer Aerial |
| 4/24/2007 | 3.61 | Severe wetness | Wet Season | 12 | Normal Conditions | ConnectExplorer Aerial |
| 4/2/2008 | 3.72 | Severe wetness | Wet Season | 18 | Wetter than Normal | ConnectExplorer Aerial |
| 4/3/2010 | -1.39 | Mild drought | Wet Season | 12 | Normal Conditions | ConnectExplorer Aerial |
| 4/30/2011 | 3.56 | Severe wetness | Wet Season | 18 | Wetter than Normal | ConnectExplorer Aerial |
| 4/6/2013 | 1.69 | Mild wetness | Wet Season | 13 | Normal Conditions | ConnectExplorer Aerial |
| 4/21/2014 | 2.97 | Moderate wetness | Wet Season | 11 | Normal Conditions | ConnectExplorer Aerial |
| 11/29/2017 | 0.55 | Incipient wetness | Wet Season | 14 | Normal Conditions | ConnectExplorer Aerial |
| 4/2/2018 | 2.23 | Moderate wetness | Wet Season | 11 | Normal Conditions | ConnectExplorer Aerial |
| 9/16/2020 | 1.47 | Mild wetness | Wet Season | 15 | Wetter than Normal | Consultant Site Visit |
| 6/4/2009 | 2.26 | Moderate wetness | Dry Season | 15 | Wetter than Normal | Google Earth Aerial |
| 4/6/2012 | -1.64 | Mild drought | Wet Season | 13 | Normal Conditions | Google Earth Aerial |
| 9/20/2015 | -0.89 | Incipient drought | Wet Season | 11 | Normal Conditions | Google Earth Aerial |
| 6/11/2016 | -1.87 | Mild drought | Dry Season | 8 | Drier than Normal | Google Earth Aerial |
| 9/17/2019 | 2.93 | Moderate wetness | Wet Season | 17 | Wetter than Normal | Google Earth Aerial |
| 10/9/2020 | 2.24 | Moderate wetness | Wet Season | 11 | Normal Conditions | Joint Site Visit |

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

Based on an analysis of remote tools identified above as well as observations from a site visit conducted on October 9, 2020, Wetland A listed above as “Adjacent wetlands ((a)(4) waters)” meets the criteria for waters of the U.S. under the NWPR and is a jurisdictional water of the U.S. In addition, the Pond, Ditch, Wetland B, and Wetland C 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.

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