



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): 07-APR-2021
ORM Number: LRB-2020-01333
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
Review Area Location¹:
State/Territory: OH City: County/Parish/Borough: Geauga County
Center Coordinates of Review Area: Latitude 41.454705 Longitude -81.043954

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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² If the navigable water is not subject to the ebb and flow of the tide and 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.

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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
Man-Made Pond 1	0.13 acres	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel	<p>Man-made Pond 1 extends north of the subject property and does not appear in the aerial from June 2014 but is present in an aerial from September 2015. The pond was constructed in agricultural area that reportedly contains a non-hydric soil.</p> <p>The pond is not located in or near a navigable water and was not constructed within a stream or a wetland and therefore is excluded under 33CFR328.3(b)(9).</p>
Stream E1	860 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	<p>As per a review of remote tools (aerial photographs, topographic maps, and historic atlases) which are documented in Section IIIA and Section IIIC, Stream E1 has been determined to be a drain/swale within an agricultural area. Based upon a review of submitted information and aeriels the feature lacks a defined bed and bank and is not always present and has been converted to crop production in recent years.</p> <p>33CFR328.3(b)(5) excludes ditches that are not waters identified in paragraph (a)(1) or (a)(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 E1 is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. The ditch 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. The ditch 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. The feature is approximately 9 feet wide and is not located near a 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. This feature lacks a defined bed and bank is not considered to be a tributary.</p> <p>Available evidence (historic aeriels, historic topographic maps, and historic soil surveys) indicates Stream E1, was not constructed in and did not relocate a tributary.</p>

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			<p>Available evidence does not indicate that Stream E1 was constructed in a wetland meeting the definition of adjacent at 33CFR328.3(c)(1). The NRCS Web Soil Survey indicates Stream E1 is surrounded by non-hydric soils. No wetland features are mapped in the immediate area around his feature. Stream E1 does not appear on aerial photographs from 1994, 2004, 2005, 2011 Aerials from 2006,2009, 2010, 2012, 2014, 2015 and 2019 indicate drainage feature but no indications of saturation or inundation. Therefore, it cannot be confirmed that the ditch was constructed in an (a)(4) adjacent wetland.</p> <p>Stream E1 is excluded under 33CFR328.3(b)(5) as this feature lacks a defined bed and bank and 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>
Stream E2	275 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	<p>As per a review of remote tools (aerial photographs, topographic maps, and historic atlases) which are documented in Section IIIA and Section IIIC, Stream E2 has been determined to be a drain/swale within an agricultural area. Based upon a review of submitted information and aerials the feature lacks a defined bed and bank and is not always present and has been converted to crop production in recent years.</p> <p>33CFR328.3(b)(5) excludes ditches that are not waters identified in paragraph (a)(1) or (a)(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 E2 is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. The ditch 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. The ditch 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. The feature is approximately 13 feet wide and is not located near a tidal water.</p> <p>(a)(2) Assessment: The term tributary includes a ditch that either relocates a tributary, is constructed in a</p>

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			<p>tributary, or is constructed in an adjacent wetland as long as the ditch satisfies the flow conditions of the tributary definition. This feature lacks a defined bed and bank is not considered to be a tributary.</p> <p>Available evidence (historic aerials, historic topographic maps, and historic soil surveys) indicates Stream E2 was not constructed in and did not relocate a tributary.</p> <p>Available evidence does not indicate that Stream E2 was constructed in a wetland meeting the definition of adjacent at 33CFR328.3(c)(1). The NRCS Web Soil Survey indicates Stream E2 is surrounded by non-hydric soils. No wetland features are mapped in the immediate area around his feature. Stream E2 does not appear on aerial photographs from 1994, 2004, 2005, 2011 Aerials from 2006,2009, 2010, 2012, 2014, 2015 and 2019 indicate drainage feature but no indications of saturation or inundation. Therefore, it cannot be confirmed that the ditch was constructed in an (a)(4) adjacent wetland.</p> <p>Stream E2 is excluded under 33CFR328.3(b)(5) as this feature lacks a defined bed and bank 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>
Stream E3	300 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	<p>As per a review of remote tools (aerial photographs, topographic maps, and historic atlases) which are documented in Section IIIA and Section IIIC, Stream E3 has been determined to be a drain/swale within an agricultural area. Based upon a review of submitted information and aerials the feature lacks a defined bed and bank and is not always present and has been converted to crop production in recent years.</p> <p>33CFR328.3(b)(5) excludes ditches that are not waters identified in paragraph (a)(1) or (a)(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 E3 is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. The ditch 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. The ditch has not been used, is not currently being used, and is not susceptible of being used (with or</p>

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			<p>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. The feature is approximately 14 feet wide and is not located near a 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. This feature lacks a defined bed and bank is not considered to be a tributary.</p> <p>Available evidence (historic aerials, historic topographic maps, and historic soil surveys) indicates Stream E3, was not constructed in and did not relocate a tributary.</p> <p>Available evidence does not indicate that Stream E3 was constructed in a wetland meeting the definition of adjacent at 33CFR328.3(c)(1). The NRCS Web Soil Survey indicates Stream E3 is surrounded by non-hydric soils. No wetland features are mapped in the immediate area around his feature. Stream E3 does not appear on aerial photographs from 1994, 2004, 2005, 2011 Aerials from 2006,2009, 2010, 2012, 2014, 2015 and 2019 indicate drainage feature but no indications of saturation or inundation. Therefore, it cannot be confirmed that the ditch was constructed in an (a)(4) adjacent wetland.</p> <p>Stream E3 is excluded under 33CFR328.3(b)(5) as this feature lacks a defined bed and bank and 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>
Stream E4	290 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	<p>As per a review of remote tools (aerial photographs, topographic maps, and historic atlases) which are documented in Section IIIA and Section IIIC, Stream E4 has been determined to be a drain/swale within an agricultural area. Based upon a review of submitted information and aerials the feature lacks a defined bed and bank and is not always present and has been converted to crop production in recent years.</p> <p>33CFR328.3(b)(5) excludes ditches that are not waters identified in paragraph (a)(1) or (a)(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>

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			<p>(a)(1) Assessment: Stream E4 is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. The ditch 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. The ditch 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. The feature is approximately 6 feet wide and is not located near a 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. This feature lacks a defined bed and bank is not considered to be a tributary.</p> <p>Available evidence (historic aerials, historic topographic maps, and historic soil surveys) indicates Stream E4, was not constructed in and did not relocate a tributary.</p> <p>Available evidence does not indicate that Stream E4 was constructed in a wetland meeting the definition of adjacent at 33CFR328.3(c)(1). The NRCS Web Soil Survey indicates Stream E4 is surrounded by non-hydric soils. No wetland features are mapped in the immediate area around his feature. Stream E4 does not appear on aerial photographs from 1994, 2004, 2005, 2011 Aerials from 2006,2009, 2010, 2012, 2014, 2015 and 2019 indicate drainage feature but no indications of saturation or inundation. Therefore, it cannot be confirmed that the ditch was constructed in an (a)(4) adjacent wetland.</p> <p>Stream E4 is excluded under 33CFR328.3(b)(5) as this feature lacks a defined bed and bank and 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.

X Information submitted by, or on behalf of, the applicant/consultant: *Wetland and Stream*

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Delineation Report – Bonner Property Due Diligence August 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)*.

X Photographs:

- Photographs provided in August 2020 Surface Water Delineation Report (described above)
- Google Earth Aerials: 1994, 2004, 2005, 2006, 2009, 2011, 2012, 2014, 2015 and 2019

Corps Site visit(s) conducted on: *Date(s)*.

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: *Title(s) and/or date(s)*.

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): *N/A* or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.

Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition	Resource
7/17/2020	1.39	Mild wetness	Dry Season	15	Wetter than Normal	Google Earth Aerial
7/16/2020	1.39	Mild wetness	Dry Season	15	Wetter than Normal	Google Earth Aerial
9/26/2019	2.93	Moderate wetness	Dry Season	13	Normal Conditions	Google Earth Aerial
9/14/2015	-0.89	Incipient drought	Dry Season	11	Normal Conditions	Google Earth Aerial
4/5/2012	-1.64	Mild drought	Wet Season	12	Normal Conditions	Google Earth Aerial

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10/27/2011	5.84	Extreme wetness	Wet Season	18	Wetter than Normal	Google Earth Aerial
6/4/2009	2.26	Moderate wetness	Dry Season	12	Normal Conditions	Google Earth Aerial
7/26/2006	3.34	Severe wetness	Dry Season	18	Wetter than Normal	Google Earth Aerial
2/28/2006	-0.29	Normal	Wet Season	11	Normal Conditions	Google Earth Aerial
6/20/2005	-1.25	Mild drought	Dry Season	11	Normal Conditions	Google Earth Aerial
6/3/2004	3.57	Severe wetness	Dry Season	18	Wetter than Normal	Google Earth Aerial
4/19/1994	1.42	Mild wetness	Wet Season	12	Normal Conditions	Google Earth Aerial

- C. Additional comments to support AJD:** Streams E1, E2, E3 and E4 lack a defined bed and bank. These features do not contain indications of saturation or inundation during the wetter time periods than normal time periods in July 2020, October 2011, and July 2006. The wetland delineation was conducted during the dry season in July 2020 and the conditions were determined to be wet during the delineation and normal 30 and 60 days prior to the site visit. The features are not visible in the 2011 aerial and the APT determine that site conditions were wet during at the time of the photograph and wet 30 and 60 days prior to the site visit.

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