



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): June 4, 2021

ORM Number: LRB-2014-00543

Associated JDs: N/A

Review Area Location¹:

State/Territory: OH City: Brook Park County/Parish/Borough: Cuyahoga County

Center Coordinates of Review Area: Latitude 41.402289 Longitude -81.875981

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
- 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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A (2014-00543)	1.649 acres	(b)(1) Non-adjacent wetland	<p>(a)(1) Assessment: The wetland is not an (a)(1) traditional navigable water or a water subject to the ebb and flow of the tide. The wetland 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 wetland 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 wetland does not support navigation of any sort and is hundreds of miles from the nearest tidal water.</p> <p>(a)(2) Assessment: The wetland is not a naturally occurring surface water channel, or a constructed or excavated channel used to convey water and therefore, is not an (a)(2) water.</p> <p>(a)(3) Assessment: The wetland does not meet the definition of an (a)(3) water as it is not a lake, pond, or impoundment of a jurisdictional water. The wetland is not a standing body of open water. Mapping resources do not indicate that a water of the U.S. previously existed in this location.</p> <p>(a)(4) Assessment: The subject wetland has been determined to not be “adjacent” to a paragraph (a)(1), (2), or (3) water. Each adjacency criteria is assessed below:</p> <ul style="list-style-type: none"> • (i) The wetland does not abut/touch a water identified in paragraph (a)(1), (2), or (3) at any point or any side. The wetland is surrounded by upland on all sides as verified by the Corps in the field during the April 21, 2021 site visit. The nearest potential (a)(1), (2), or (3) water is 820 feet away, Abrams Creek to the east, (See Section IIIC) from the wetland and is separated by a road, parking lot, and forest. A review of the USGS map and aerial photographs do not indicate the presence of any other potential (a)(1), (2), or (3) waters near Wetland A. • (ii) The wetland is not inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) in a typical year. The wetland is located within FEMA Flood Zone X (area of minimal flood hazard, usually depicted on FIRMs as above the 500-year flood level). The wetland is surrounded by upland on all

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			<p>sides as verified by the Corps in the field during the April 21, 2021 site visit. The nearest potential (a)(1), (2), or (3) water is 820 feet away, Abrams Creek to the east, (See Section IIIC) from the wetland and is separated by a road, parking lot, and forest. The wetland is located at an elevation approximately 80 feet higher than the elevation of Abrams Creek. Because the nearest potential (a)(1), (2), or (3) water is located at such a distance away, the wetland is within a designated FEMA zone with minimal flooding potential, and any flooding from the (a)(1), (2), or (3) water would have to extend over elevated adjacent areas, it is unlikely that the wetland would be inundated by flooding from an (a)(1), (2) or (3) water in a typical year. No evidence of inundation by flooding was observed during the April 21, 2021 site visit nor on any aerial photographs...</p> <ul style="list-style-type: none"> • (iii) The wetland is not physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. The wetland is surrounded by upland on all sides as verified by the Corps in the field during the April 21, 2021 site visit. No berms, banks, dunes, or other natural features persist along the wetland boundary. The nearest potential (a)(1), (2), or (3) water is 820 feet away, Abrams Creek to the east, (See Section IIIC) from the wetland and is separated by a road, parking lot, and forest. • (iv) The wetland is not physically separated from a water identified in paragraph (a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure. The wetland is surrounded by upland on all sides as verified by the Corps in the field during April 21, 2021 site visit. No artificial dike, barrier, or similar artificial structure persist immediately along the wetland boundary. The nearest potential (a)(1), (2), or (3) water is 820 feet away, Abrams Creek to the east, (See Section IIIC) from the wetland and is separated by a road, parking lot, and forest. The wetland is not part of a larger wetland divided by a road or similar artificial structure.
Wetland B (2014-00543)	10.283 acres	(b)(1) Non-adjacent wetland	<p>The subject wetland has been determined to not be "adjacent" to a paragraph (a)(1), (2), or (3) water. Each adjacency criteria is assessed below:</p> <ul style="list-style-type: none"> • (i) The wetland does not abut/touch a water identified in paragraph (a)(1), (2), or (3) at any point or any side. This wetland is part of a larger wetland complex that extends off-site to the north which is part of a separate jurisdictional determination under LRB-2020-01553. The delineation under LRB-2020-01553 was reviewed on the same day as this site. The wetland (including the off-site wetland covered by LRB -2020-01553) is surrounded by upland on all

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			<p>sides as verified by the Corps in the field during the April 21, 202-site visit. The nearest potential (a)(1), (2), or (3) water is 150 feet away, East Branch Rocky River to the west, (See Section IIIC) from the wetland and is separated by a roadside ditch, a catch basin, the road, and a steep cliff.</p> <ul style="list-style-type: none"> • (ii) The wetland is not inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) in a typical year. The wetland is located within FEMA Flood Zone X (area of minimal flood hazard, usually depicted on FIRMs as above the 500-year flood level). The wetland is surrounded by upland on all sides as verified by the Corps in the field during the April 21, 2021 site visit. The nearest potential (a)(1), (2), or (3) water is 150 feet away, East Branch Rocky River to the west, (See Section IIIC) from the wetland and is separated by a roadside ditch, a catch basin, the road, and a steep cliff. The East Branch Rocky River is approximately 90-100 feet lower in elevation than the wetland as there is a steep cliff to the west. Because the nearest potential (a)(1), (2), or (3) water is located at such a distance away, the wetland is within a designated FEMA zone with minimal flooding potential, and any flooding from the (a)(1), (2), or (3) water would have to exceed the height of the steep cliff, it is unlikely that the wetland would be inundated by flooding from an (a)(1), (2) or (3) water in a typical year. No evidence of inundation by flooding was observed during the April 21, 2021 site visit. • (iii) The wetland is not physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune, or similar natural feature. The wetland is surrounded by upland on all sides as verified by the Corps in the field during the April 21, 2021 site visit. No berms, banks, dunes, or other natural features persist along the wetland boundary. The nearest potential (a)(1), (2), or (3) water is 150 feet away, East Branch Rocky River to the west, (See Section IIIC) from the wetland and is separated by a roadside ditch, a catch basin, the road, and a steep cliff. • (iv) The wetland is not physically separated from a water identified in paragraph (a)(1), (2), or (3) only by an artificial dike, barrier, or similar artificial structure. The wetland is surrounded by upland on all sides as verified by the Corps in the field during April 21, 2021 site visit. No artificial dike, barrier, or similar artificial structure persist immediately along the wetland boundary. The nearest potential (a)(1), (2), or (3) water is 150 feet away, East Branch Rocky River to the west, (See Section IIIC) from the wetland and is separated by a roadside ditch, a catch basin, the
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			<p>road, and a steep cliff. Water from the wetland does drain into a roadside ditch and then a catch basin on the west side, nearest the East Branch Rocky River along Ruple Parkway, and also drains into a catch basin on the east side through a ditch located off-site, just south of a parking lot of a commercial business located along Apollo Drive. The water ultimately routes through culverts and outlets into the East Branch Rocky River and Abrams Creek, both (a)(2) waters. On the west side, there are several manmade barriers including a roadside ditch, road, and narrow road right-of-way, thereby the wetland does not meet this adjacency criteria. On the east side, there are several manmade barriers including a road, parking lot, and commercial development, thereby the wetland does not meeting this adjacency criteria. The wetland is not part of a larger wetland divided by a road or similar artificial structure.</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: *Water Resource Delineation Report, 23 Acres, Aerospace Parkway City of Brook Park, Cuyahoga County, Ohio November 2020*
 This information *is* sufficient for purposes of this AJD.
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *(NA, aerial, other, aerial and other) ORM2 Mapbox Aerial (date not specified), ConnectExplorer aerial photographs dated 3/13/2021, 11/20/2020, 1/7/2020, 3/27/2019*
- Corps Site visit(s) conducted on: *April 21, 2021*
- Previous Jurisdictional Determinations (AJDs or PJDs): *AJD under LRB-2014-00543 dated 19 SEP 2014*
- 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: *7.5 Minute Lakewood Quad (accessed in ORM2 on 6/4/2021)*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS NHD Layer (ORM2 accessed 6/4/2021)
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	AJD for LRB-2020-01553
State/Local/Tribal Sources	N/A.
Other Sources	Cuyahoga County- GIS https://gis.cuyahogacounty.us accessed 6/4/2021

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	*2006 2-foot Elevation Contours *Fall 2020 Aerial (date not specified)
FEMA/FIRM Maps	FEMA's National Flood Hazard Layer (NFHL) accessed 6/4/2021 in ORM2

B. Typical year assessment(s): The Corps Antecedent Precipitation Tool was used to complete typical year assessments. 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 (PDSI) and the University of Delaware WebWIMP. The latitude/longitude for the subject parcel was input into the APT and "single" point was chosen for the geographic area. A "single point" geographic area was used, using the center coordinates of the review area (41.402289, -81.875981). Results and assessments are provided below:

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Conditions	Resource
41.40229	-81.8759	04/21/2021		Mild Drought	Wet Season	6	Drier than Normal	Site visit
Assessment: The 4/21/2021 site visit was conducted during drier than normal conditions. A small amount of precipitation 2-3" of snow fell immediately preceding the date of the site visit and was melting during the site visit.								
41.40229	-81.876	9/29/2020	1.5	Mild wetness	Dry Season	18	Wetter than Normal	Delineation
41.40229	-81.876	3/13/2021	-1.77	Mild drought	Wet Season	7	Drier than Normal	Aerial
41.40229	-81.876	11/20/2020	2	Moderate wetness	Wet Season	15	Wetter than Normal	Aerial
41.40229	-81.876	1/7/2020	2.49	Moderate wetness	Wet Season	7	Drier than Normal	Aerial
41.40229	-81.876	3/27/2019	2.98	Moderate wetness	Wet Season	10	Normal Conditions	Aerial

C. Additional comments to support AJD: Abrams Creek is an (a)(2) tributary that is approximately 20-foot wide and is identified as a blue-line stream on the USGS Quad Map. East Branch Rocky River is

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an (a)(2) tributary that is approximately 60-feet wide and is identified as a blue-line stream on the USGS Quad Map. Both tributaries had water observed in their channels on all aerial photographs and are larger-sized streams. This indicates that more than ephemeral flow is present within both streams.

- A previous Approved Jurisdictional Determination dated 19 SEP 2014 was completed for this site. The AJD determined that Wetland A was isolated, and Wetland B was jurisdictional (under 1986 Regulations and Rapanos/SWANCC Guidance). The Wetland B determination was administratively appealed on 14 JUL 2015; the same determination that it was jurisdictional was made with further justification and documentation.

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