



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): August 2, 2021

ORM Number: LRB-2020-01553

Associated JDs: N/A

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

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

Center Coordinates of Review Area: Latitude 41.4032 Longitude -81.8754

**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
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))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Stormwater Basin 1 (2020-01553)	0.068 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Stormwater Basin 1 is a feature constructed for the purpose of collecting, treating, and storing stormwater from the adjacent commercial building and parking lots. Based on aerial photographs, the basin was constructed between 2006 and 2009 and no previous DA permit actions were found. USGS topographic maps from 2000 and 1989 do not depict any streams or wetlands in the area where the basin was constructed. Based on available information, the basin appears to have been constructed/excavated in uplands.
Stormwater Basin 2 (2020-01553)	0.101 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Stormwater Basin 2 is a feature constructed for the purpose of collecting, treating, and storing stormwater from the adjacent commercial building and parking lots. Based on aerial photographs, the basin was constructed between 2006 and 2009 and no previous DA permit actions were found. USGS topographic maps from 2000 and 1989 do not depict any streams or wetlands in the area where the basin was constructed. Based on available information, the basin appears to have been constructed/excavated in uplands.
Stream 1 (2020-01553)	332 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Stream 1 is a stream channel that only exhibits ephemeral flow to the east through forested wetland and then along an existing parking lot before draining into a catch basin. The catch basin outlets to the north/northeast into Abrams Creek. The consultant did not identify this stream during their September 24, 2019 delineation site visit. The delineation was performed during the dry season during a drier than normal period. During the April 21, 2021 Corps site visit, the upper end of the channel was flowing slightly but the flow ceased towards the lower end where the channel connected to the catch basin, even though a snowfall event occurred the night prior to the visit and snowmelt was actively taking place. The water within the channel appeared to dissipate towards the downstream end with flow going subsurface. The Corps conducted a site visit during a drier than normal period during the wet season. No evidence of flowing water was observed in leaf-off aeriels on Connect Explorer 11/12/2020, 11/17/2019, 3/27/2019, 12/3/2017, and 4/12/2015. These were in the wet season under wetter than normal, normal, and drier than normal conditions. Aeriels from 12/20/2018 and 3/30/2016, under normal and wetter than normal conditions during the wet season, show flowing water within the channel. Precipitation events occurred in the days preceding that date. These items support that flow occurs only in response to direct precipitation events. Therefore, Stream 1 is an excluded (b)(3)

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Stream 2 (2020-01553)	57 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	<p>ephemeral feature.</p> <p>Stream 2 is a stream channel that only exhibits ephemeral flow to the south into Stream 1. The consultant did not identify this stream during their September 24, 2019 delineation site visit. The delineation was performed during the dry season during a drier than normal period. During the April 21, 2021 Corps site visit, the channel was not flowing, even though a snowfall event occurred the night prior to the visit and snowmelt was actively taking place. Evidence of flow, including erosion, sediment sorting, and disturbed/lack of leaf litter, was observed. The Corps conducted a site visit during a drier than normal period during the wet season. No evidence of flowing water was observed in leaf-off aerials on Connect Explorer 11/12/2020, 11/17/2019, 3/27/2019, 12/3/2017, and 4/12/2015. These were in the wet season under wetter than normal, normal, and drier than normal conditions. Aerials from 12/20/2018 and 3/30/2016, under normal and wetter than normal conditions during the wet season, show flowing water within the channel. Precipitation events occurred in the days preceding that date. These items support that flow occurs only in response to direct precipitation events. Therefore, Stream 2 is an excluded (b)(3) ephemeral feature.</p>
Wetland A (2020-01553)	8.279 acres	(b)(1) Non-adjacent wetland	<p><b>(a)(1) Assessment:</b> 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><b>(a)(2) Assessment:</b> 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><b>(a)(3) Assessment:</b> 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><b>(a)(4) Assessment:</b> The subject wetland has been</p>

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			<p>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"> <li>• (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 south which is part of a separate jurisdictional determination under LRB-2014-00543. The delineation under LRB-2014-00543 was reviewed on the same day as this site. The wetland (including the off-site wetland covered by LRB -2014-00543) 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. Streams 1 and 2 were determined to be ephemeral streams and are excluded (see rationales above).</li> <li>• (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.</li> <li>• (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</li> </ul>
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			<p>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"> <li>• (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 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 Stream 1, 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 meet this adjacency criteria. The wetland is not part of a larger wetland divided by a road or similar artificial structure.</li> </ul>
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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, 14.3 Acres, Ruple Parkway and Apollo Drive, 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):

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

USDA NRCS Soil Survey: *Title(s) and/or date(s).*

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     USFWS NWI maps: *Title(s) and/or date(s)*.  
  X   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 <a href="https://gis.cuyahogacounty.us">https://gis.cuyahogacounty.us</a> accessed 6/4/2021 *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	9/24/2019	2.93	Moderate wetness	Dry Season	9	Drier than Normal	Delineation
41.40229	-81.876	3/13/2021	-1.77	Mild drought	Wet Season	7	Drier than Normal	ConnectExplorer Aerial
41.40229	-81.876	11/20/2020	2	Moderate	Wet	15	Wetter than	ConnectExplorer

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				wetness	Season		Normal	Aerial
41.40229	-81.876	1/7/2020	2.49	Moderate wetness	Wet Season	7	Drier than Normal	ConnectExplorer Aerial
41.40229	-81.876	3/27/2019	2.98	Moderate wetness	Wet Season	10	Normal Conditions	ConnectExplorer Aerial
41.40229	-81.876	11/12/2020	2	Moderate wetness	Wet Season	14	Normal Conditions	ConnectExplorer Aerial
41.40229	-81.876	11/17/2019	2.28	Moderate wetness	Wet Season	9	Drier than Normal	ConnectExplorer Aerial
41.40229	-81.876	12/20/2018	2.76	Moderate wetness	Wet Season	11	Normal Conditions	ConnectExplorer Aerial
41.40229	-81.876	12/3/2017	0.34	Normal	Wet Season	16	Wetter than Normal	ConnectExplorer Aerial
41.40229	-81.876	3/30/2016	-1.01	Mild drought	Wet Season	16	Wetter than Normal	ConnectExplorer Aerial
41.40229	-81.876	4/12/2015	1.81	Mild wetness	Wet Season	9	Drier than Normal	ConnectExplorer 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 an (a)(2) tributary that is approximately 60-foot 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. The East Branch Rocky River flows northwest into the Rocky River (mainstem), an (a)(1) water which is listed on the LRB Section 10 list further downstream. Abrams Creek flows north into the Rocky River as well.

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