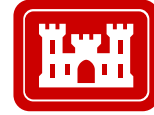




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Regulatory Program



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INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): October 22, 2018

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): LRB-2016-01278

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: NY County/parish/borough: Oswego City: Town of Sandy Creek

Center coordinates of site (lat/long in degree decimal format): Lat. 43.672683, Long. -76.173199.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled Devine Review Area - wetland 0.17 acre.

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: .

Office (Desk) and Field Determination. Office/Desk Dates: October 12, 2108 Field Date(s): May 4, 2018.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: .

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: .

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: May 4, 2018.

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: .

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: .

USGS 8, 10 and/or 12 digit HUC maps. HUC number: HUC 12 - 041401020402 Lindsey Creek.

USGS maps. Scale & quad name and date: 1:24K Ellisburg, NY. Site is located on Lindsey Creek about 0.2 miles to the east of its outlet into North Sandy Pond, an embayment of Lake Ontario. Mud Creek converges with Lindsey Creek to the east near State Route 3. The house is shown to be just above the 250 ft. elevation. The review area in question is located in a flat area adjacent to the Lindsey Creek. The first contour crosses the creek channel upstream at NYS Rt 3. Therefore, the ordinary highwater elevation of North Sandy Pond/Lake Ontario of 247.3 ft. is expected to extend into Lindsey Creek to at least this contour crossing.

USDA NRCS Soil Survey. Citation: Oswego County Sheet 4 and Websoil survey accessed April 13, 2018 & August 3, 2018 - majority of the review area is mapped as HW (Humaquepts & fibrists, ponded) with 100% hydric rating. The northern section to house is mapped as Fr (Fredon, gravelly fine sandy loam) with 60 % hydric rating. The 1975 aerial shows a finger of open water extending along the review area. This finger coincides with a lagoon area that the applicant uses as a boat docking area along his dock.

- USFWS National Wetlands Inventory maps. Citation: Ellisburg Quad based on October 1978 aerials - Lindsey Creek identified as R2OWH (riverine, lower perennial, open water, permanently flooded) and the review area to the north as PEM5F (palustrine, emergent, phragmites, semi-permanently flooded) & USFWS Wetland Mapper- this version identifies Lindsey Creek and the lagoon area as L2AB3H (lacustrine, littoral, aquatic bed, rooted vascular, permanently flooded). The review area is not included within the estimated limits of PEM1F (palustrine, emergent, persistent, semi-permanently flooded) wetland. PEM1F is also noted to the east of the open water lagoon area.
- State/Local wetland inventory maps. Citation: NYSDEC Environmental Resource Mapper - site contains a portion of and is within the checkzone of State Wetland EL-2, Class 1, ~440.72 acres.
- FEMA/FIRM maps. Citation: Town of Sandy Creek FIRM 360661 - 36075C0016G effective 6/18/2013. Site is located within Special Flood Hazard Area (SFHA) Zone AE elevation 249. SFHA are defined as the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or 100-year flood.
- Photographs: Aerial. Citation: 6/12/17 - entire review area inundated; Google Earth from applicant: 4/29/2006, 11/9/2011, 5/26/2013 - All three photos show review area as mowed. 2013 photo lagoon area fully vegetated no open water evident., 9/5/2016 - review area mowed and lagoon area fully vegetated to end of docks; May 2, 1994 - quality poor - review area mowed and lagoon open water; NYSGIS Clearing house: 2003 - wetland vegetation appears to extend from open water area of lagoon to the west and south. Review area does not appear to be mowed. 2006; 1973 soil survey aerial; Bing Maps - undated - review area is mowed, docks present open water in lagoon) . or Other. Citation: Applicant photos: June 5, 2018 - area inundated with wetland vegetation throughout area. June 27, 2018 - area heavily vegetated with wetland species, some ponded water evident., April & May, 2018- area inundated and vegetated, May/June/August 2015 - review area mowed however it appears that it may not be upland vegetation, October 2016, May/July 2017 - review area inundated; Site visit photos - May 4, 2018 - portions of review area ponded, evidence of recent inundation .
- LiDAR data/maps. Citation: .
- Previous JDs. File no. and date of JD letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): NYS Department of State Coastal zone management NYSDOS online mapping tool - a portion of the site occurs within the Significant Coastal Fish and Wildlife area, the entire site is locations within the NYS coastal zone. USGS Oswego, NY water level gage data - water levels from the gage were added to all dated photos. May 4, 2018 USACE/NYSDEC site visit confirmed that the area beginning at the toe of the slope to the south of the house and extending west, east and south to Lindsey Creek met the parameters of the federal and state wetland criteria.

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

- "navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

- This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

- (a)(2): All interstate waters, including interstate wetlands.
 - **Complete Table 2 - Required**
- (a)(3): The territorial seas.
 - **Complete Table 3 - Required**
- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
 - **Complete Table 4 - Required**
- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 5 - Required**
- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
 - **Complete Table 6 - Required**
 - Bordering/Contiguous.
 - Neighboring:
 - (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
 - (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
 - (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.
- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
 - **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
 - Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
 - **Complete Table 10 - Required**
 - (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of

the CWA.

- (b)(2): Prior converted cropland.
 - (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
 - (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
 - (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
 - (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
 - (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
 - (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
 - (b)(4)(iv): Small ornamental waters created in dry land.¹
 - (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
 - (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
 - (b)(4)(vii): Puddles.¹
 - (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
 - (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
 - (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

• **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: North Sandy Pond is included on the Buffalo District list of navigable waters. North Sandy Pond is an embayment of Lake Ontario, which is a navigable water of the US. The approximate 0.17 review area is a portion of a parcel that borders Lindsey Creek, a tributary to North Sandy Pond, which has an extensive wetland complex. Lindsey Creek at the project review area is located below the lateral limits of the ordinary high water (OHW) elevation of North Sandy Pond/Lake Ontario (247.3 ft. IGLD 85). A lagoon/navigation channel appears to have been constructed through the wetland complex prior to 1978. Based on a review of historic aeriels and soil survey, it is estimated that the review area in question is wetland that was filled with dredged wetland soil during the creation of the lagoon, slightly raising the elevation. The limit of the wetland within the review area was flagged by USACE on May 4, 2018. The entire 0.17 acre review area from the toe of the bank slope was determined to be wetland. The wetland extends beyond the review area. Water elevation at the time of the May 4 site visit was 246.7 ft. IGLD 85 based on the USGS Oswego NY gage station. Only portions of the wetland within the review area had ponded water at that time. However, wetland areas just outside the review area, as well as the lagoon area, were inundated and were only slightly lower in elevation. The applicant provided photos of the site taken on June 5, 2018 showing the entire wetland within the review area is inundated. The water elevation for Lake Ontario at the USGS Oswego gage station for that day was recorded as 247.1 ft. IGLD 85 which is below the OHW of North Sandy Pond/Lake Ontario of 247.3 IGLD 1985. Aerial photos showed that the area in question had been maintained by mowing. The current owner purchased the property in 2012. Prior to the 2017 high water event that began in April and extended through most of 2017 and during periods of 2018, which exceeded 247.3 ft., water levels only briefly reached 247.3 ft. on June 4-9, 2011 and prior high water events occurred in Spring 1998, 1997 & 1993. Therefore, the current owner would not have experienced OHW since his purchase prior to the 2017 event. As the water levels are often lower than OHW, the area would have been mowable and useable during the summer months. Site photos provided by the applicant confirmed that the area has been regularly mowed and is was also evident that likely wetland vegetation was being mowed. Based on the above review, the wetland area is located below OHW of a navigable water and is therefore regulated under both Section 10 and Section 404.

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
LRB-2016-01278-Wetland1	The waterbody is subject to Section 9 or 10 of the Rivers and Harbors Act	North Sandy Pond is included on the Buffalo District list of navigable waters as an embayment of Lake Ontario. The project location includes wetlands along Lindsey Creek, which are located below the lateral limits of the ordinary high water elevation of North Sandy Pond (247.3 ft. IGLD 85)

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

Waters_Name State Cowardin Code Hgm Code Meas Type Amount Units Waters_Type Latitude Longitude Local Waterway
LRB-2016-01278-Wetland 1 NY PEM-PALUSTRINE, EMERGENT AREA 0.17 ACRES A1 43.67258 -76.1732 Lindsey Creek