



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): July 23, 2020

ORM Number: LRB-2015-00231

Associated JDs: LRB 2015-00231 (2015 AJD)

Review Area Location¹:

State/Territory: NY City: East Amherst County/Parish/Borough: Erie County

Center Coordinates of Review Area: Latitude 43.040912 Longitude -78.667827

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 1A	1.16 acres	(b)(1) Non-adjacent wetland	<p>Wetland 1A has expanded from the extent originally delineated in support of the DA permit issued for the subdivision in 1999 (LRB 1999-01616). The wetland is bounded to the north by a man made berm which separates it from a mitigation wetland constructed for the 1999 permit (Wetland 2, which is outside the review area). There is no direct hydrologic surface connection through or over the man-made berm via an artificial feature in a typical year between Wetland 1 and Wetland 2. The site is bounded to the south by Hearthstone Drive. To the east and west are developed residential lots, which are raised above the grade of the review area and appear to consist entirely of upland. Evidence from on-site observations and available online resources indicates that an off-site wetland that begins in the back of the lot to the east of the review area. This off-site wetland is on property to which the Corps does not have access. Based upon Corps site visit on 14 July 2020, Wetland 1A is separated from this off-site wetland by an artificial barrier (raised area apparently created for vehicle access); no artificial structure was observed between Wetland 1A and the off-site wetland that could allow for a direct hydrologic surface connection through or over the artificial barrier in a typical year.</p> <p>Wetland 1A does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water would be a drainage ditch to the east (previously determined to be non-jurisdictional). Wetland 1A does not abut this feature.</p> <p>Wetland 1A is not inundated by any a(1)-a(3) water. As indicated above, there is no evidence to indicate that the drainage ditch inundates any part of Wetland 1A during a typical year. The drainage ditch is approximately 420' from Wetland 1A.</p> <p>Wetland 1A, as indicated above, is not separated from an adjacent wetland by a natural berm or feature. The area on all four sides of Wetland 1A have been manipulated by grading and development.</p> <p>Wetland 1A is separated from potential adjacent wetlands by manmade features. However, there is no indication in any of the existing resources or onsite</p>

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			observations that any artificial structure exists between Wetland 1AA and the other wetlands that could allow for a direct hydrologic surface connection through or over the artificial barrier in a typical year.
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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: *Delineation letter from Wilson Environmental Dated April 15, 2015.*
- This information is sufficient for purposes of this AJD.
- Rationale:
- _____ Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *Google Earth images 9/2009, 10/2011, 7/2013, 6/2014, 6/2015, 9/2015, 5/2016, 10/2016, 3/2017, 9/2018*
- Corps Site visit(s) conducted on: *Date(s). 4/24/2015 10/15/2015, and 7/14/2020.*
- Previous Jurisdictional Determinations (AJDs or PJDs): *January 2016 LRB 2015-00231*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *USDA Web Soil Survey (<https://websoilsurvey.nrcs.usda.gov/app/>) Accessed 15 JUL 2020*
- USFWS NWI maps: *Clarence Center, NY (ORM data, accessed 15 JUL 2020)*
- USGS topographic maps: *Clarence Center, NY 1:24000 (ORM data, accessed 15 JUL 2020)*
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Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	
USDA Sources	
NOAA Sources	N/A.
CorpsMap ORM Map Layers	USACE ORM Federal USGS 24K Quad Layer accessed 17JUL2020
State/Local wetland inventory maps	NYS Wetland Map (NYSDEC Environmental Resource Mapper website accessed 17 JUL 2020) https://gisservices.dec.ny.gov/gis/erm/
Other Sources	N/A.

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

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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 attached table summarizes the APT results for each aerial photograph reviewed. None of the photographs showed any evidence that the drainage ditch flooded into Wetland 1A. It is notable that none of the images were from dryer than normal conditions, and two of the images were from wetter than normal conditions. The geographic region single point. The weather station used was Buffalo, NY. The typical year assessment is primarily needed for this JD to assess whether or not the drainage ditch has the potential to inundate Wetland 1A. The most telling of the results would be the 9/1/2009 date, as the sample is both during the wet season, but also during a time had exceptionally high precipitation (approximately 1.37X the 70th percentile value). There is no indication of inundation anywhere near the location of Wetland 1A. In addition, the aerial from this date shows the access road/separation at the back of the lot to where Wetland 1A eventually expands.

On July 14, 2020 a site visit was made and confirmed the presence of the barrier/separation between Wetland 1A and the wetland to the east. There was no indication of a direct surface water connection over or through the barrier. The APT tool indicated that the conditions were normal for this time of year (dry season), but there had been substantial rainfall in the 48 hours before the site visit.

Latitude	Longitude	Date	Image Source	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.04091	-78.6678	9/1/2009	Google Earth	3.36	Severe wetness	Wet Season	16	Wetter than Normal
43.04091	-78.6678	10/1/2011	Google Earth	3.41	Severe wetness	Wet Season	14	Normal Conditions
43.04091	-78.6678	7/1/2013	Google Earth	2.04	Moderate wetness	Dry Season	18	Wetter than Normal
43.04091	-78.6678	6/1/2014	Google Earth	2.98	Moderate wetness	Dry Season	14	Normal Conditions
43.04091	-78.6678	6/1/2015	Google Earth	1.71	Mild wetness	Dry Season	11	Normal Conditions
43.04091	-78.6678	9/1/2015	Google Earth	1.6	Mild wetness	Wet Season	14	Normal Conditions
43.04091	-78.6678	5/1/2016	Google Earth	-1.44	Mild drought	Wet Season	13	Normal Conditions
43.04091	-78.6678	10/1/2016	Google Earth	0.81	Incipient wetness	Wet Season	13	Normal Conditions
43.04091	-78.6678	3/1/2017	Google Earth	1.22	Mild wetness	Wet Season	12	Normal Conditions
43.04091	-78.6678	9/1/2018	Google Earth	0.78	Incipient wetness	Wet Season	10	Normal Conditions
43.04091	-78.6678	9/1/2018	Site visit		Mild wetness	Dry Season	14	Normal Conditions

B. Additional comments to support AJD: The USGS Map (ORM) showed no wetlands at the project site. A wetland area is shown to the south, but there is no corresponding connection shown between this wetland and any tributary to a navigable water. The NWI wetland map (ORM) shows a large palustrine, emergent wetland in the vicinity of the project area, but also shows no connection between the wetland and any tributary to a navigable water. The drainage ditch is not shown on either the USGS or NWI maps. The soils maps show the entire project area to

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be Cheektowaga fine sandy loam, which contains 95% hydric components. The NYSDEC Environmental Resource Mapper shows no wetland or streams in the vicinity of the project site. The aerial photographs show Wetland 1A on the subject parcel, as well as the separation between Wetland 1A and Wetland 2, as well as the potential wetland to the east of the project site. The aerial photographs do not show any inundation from the drainage ditch into Wetland 1A.

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