



**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): 8/6/2020
 ORM Number: LRB-2020-00166
 Associated JDs: N/A
 Review Area Location¹: State/Territory: NY City: Rushville County/Parish/Borough: Ontario
 Center Coordinates of Review Area: Latitude 42.806601 N Longitude -77.22990 W

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.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

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

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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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
Ephemeral Stream 1	1700	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The ephemeral stream contains pooling or flowing surface water only in direct response to precipitation. The ephemeral nature of the stream was determined by evaluation of historic aerial photographs, photographs taken at the time of the inspection, statements by the landowner and on-site observations by the Corps of Engineers. The stream originates at the mouth of a roadside culvert (Middle Road) which captures run-off from the adjacent farm fields. The stream was re-located in 2017 and consists of open and piped channel. The original channel flowed from the roadside culvert into a pond and then exited the pond and flowed north/northwest. It should be noted that the original channel and pond no longer exists. Therefore the focus of this investigation/determination in regards to flow regime was on the re-located channel. The new channel was completely dry and contained no vegetation at the time of inspection. The stream flows off-site into Deep Run, a perennial stream, via the piped portion of the channel. The channel shows no evident scour which is significant as the piped portion of the channel is only 6-inches in diameter while the open channel is approximately 4-feet wide at the base and 8-feet wide at the top of bank. The original channel and the re-located channel are located in non-hydric soils (4% hydric rating according to the web soil survey). The original channel is not mapped on the topo map or the National Hydrologic Data (NHD) layer. No obvious indication of flow was observed. Based on the overall assessment of this stream there is no evidence to support that the stream is intermittent or perennial. Therefore it has been determined to be ephemeral and therefore excluded (b)(3).
Artificial Pond 1	0.35	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in	Pond that was located within ephemeral stream 1 that was filled in 2017 and no longer exists. See rationale above for ephemeral stream 1.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	

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: [Title\(s\) and date\(s\)](#)
This information [Select.](#) sufficient for purposes of this AJD.
Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Google Earth Pro; 7/15/2015, 9/24/2013, 5/26/2011, 4/21/1994 and photos taken during June 25, 2020 site visit.](#)
- Corps site visit(s) conducted on: [June 25, 2020](#)
- 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: [USDA NRCS Web Soil Survey](#)
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx> accessed July 24, 2020
- USFWS NWI maps: [USFWS NWI Web Mapper](#) <https://www.fws.gov/wetlands/Data/Mapper.html> accessed July 24, 2020
- 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.
CorpsMap ORM Map Layers	USACE ORM Federal USGS 24K Quad Layer Accessed July 24, 2020
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): [APT Methodology](#)

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,"



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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.

An APT evaluation was run, associated with Google Earth Aerial photos for 1994, 2011, 2013, and 2015 as well as the date of inspection, 25 June 2020. The evaluation was run for weather stations in the vicinity of the site. Results indicate two years normal and three years wetter than normal conditions. Although aerial photos were observed under Wetter than Normal conditions in 1994, 2011 and 2015, there is no direct evidence of visible water within the subject stream or the roadside ditch on the east side of the road.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	APT Condition
42.80668	-77.22990	4/21/1994	1.76	Mild Wetness	Wet Season	16	Wetter than Normal
42.80668	-77.22990	5/26/2011	4.71	Extreme Wetness	Dry Season	18	Wetter than Normal
42.80668	-77.22990	9/24/2013	2.4	Moderate Wetness	Dry Season	13	Normal Conditions
42.80668	-77.22990	7/15/2015	3.11	Severe Wetness	Dry Season	17	Wetter than Normal
42.80668	-77.22990	6/25/2020	1.44	Mild Wetness	Dry Season	10	Normal Conditions

C. Additional comments to support AJD: Although aerial photos were observed under Wetter than Normal conditions in 1994, 2011 and 2015, there is no direct evidence of visible water within the subject stream or the roadside ditch on the east side of the road. The ditch is the primary source of water for the stream as it collects runoff from the adjacent agricultural lands. There is water within the pond located within the stream however this pond has been backfilled and no longer exists. The 1994 photo may show water within the stream however it is unclear whether the dark signature is actually water or the shadow of the channel. The stream was re-located in 2017 and now runs along the southern perimeter of the property from east to west and then turns to the north. This portion of the channel is piped. The site visit was conducted during the dry season however the APT condition was determined to be normal. The landowner indicated that the stream contains water after precipitation events but for no more than 1-2 days. As previously noted, the re-located channel shows no evident scour which is significant as the piped portion of the channel is only 6-inches in diameter while the open channel is approximately 4-feet wide at the base and 8-feet wide at the top of bank. This suggests that any flow within the channel is adequately conveyed by the small pipe. Based on the overall assessment of this stream there is no evidence to support that the stream is intermittent or perennial. Therefore it has been determined to be ephemeral and therefore excluded (b)(3)