



**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): [8/10/2020](#)
 ORM Number: [LRB-2020-00387](#)
 Associated JDs: [LRB-2011-00233](#) (See Rationale for Exclusion Determination)
 Review Area Location¹: State/Territory: [New York](#) City: [Canandaigua](#) County/Parish/Borough: [Enter.](#)
 Center Coordinates of Review Area: Latitude 42.883696 Longitude -77.311806

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
Canandaigua Highway Department filled Wetland	0.36	acre(s)	(b)(1) Non-adjacent wetland.	A site visit conducted on June 25, 2020 confirmed that the area is wetland, but could not confirm any areas where the subject wetland directly abuts an (a)(1), (a)(2), or (a)(3) water. Further, there was no evidence based on the field visit and review of office resources that the wetland is inundated by flooding from an (a)(1) through a(3) water, is not separated from an (a)(1) through (a)(3) water via a natural berm or barrier, and is not separated from an (a)(1) through (a)(3) water via an artificial structure/feature. The filled wetland area is a portion of a larger wetland on-site that extends to the east that abuts an ephemeral stream an ‘unnamed tributary to Sucker Brook’ that flows to the east and north and then into a tributary named ‘Sucker Brook.’ These areas were not part of the review area, but are important to include in determining the waters jurisdictional status. Under a previous JD (LRB-2011-00233, dated June 30, 2011), a stream was identified that was identified as having ephemeral flow. The stream was viewed by a Regulatory project manager on June 25, 2011 and confirmed the flow to be ephemeral due to no flow being observed at that time. Both the wetland and stream were regulated under the regulations in effect at that time and a Nationwide Permit 12 was affirmed on July 19, 2011. The ‘unnamed tributary of Sucker Brook’ was not viewed on June 25, 2020 because it was not easily located on in-office resources looked at prior to the site visit. On aerials dated September 2015 and March 2013 (Maxar Technologies) – both accessed from Google Earth, shows the ‘unnamed tributary to Sucker Brook.’ Most aerials do not show the stream at all. The June 2018 aerial was a leaf-on aerial, but there was little evidence of any saturation or flow for the wetland and did not show the stream. The APT report indicates normal conditions for all three dates that the tool was run for, indicating that the

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
			observations using these resources/site visit date are accurate – see below for the APT methodology and further discussion. Due to the unnamed tributary of Sucker Brook having ephemeral flow, it would not be considered an (a)(2) water under the Navigable Waters Protection Rule. Based on these resources, it has been determined that the subject wetland is a (b)(1) non-adjacent wetland and is an excluded water under the Navigable Waters Protection Rule.

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: Google Earth accessed September 2015, March 2013 \(Maxar Technologies\)](#)
- Corps site visit(s) conducted on: [June 25, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [2011-00233](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> - Hydric Rating by Map Unit – Canandaigua, NY; accessed on March 19, 2020.
- USFWS NWI maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - NWI Map; Canandaigua, NY; accessed on March 19, 2020.
- USGS topographic maps: [7.5 minute series, NY- Canandaigua.](#)

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.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Ontario County Parcel Viewer - http://oncorng.co.ontario.ny.us/Html5Viewer/index.html?viewer=oncor.OnCOR_HTML5 accessed on June 30, 2020. Included a 2014 and 2018 aerial photograph that showed the unnamed tributary to Sucker Brook and the subject wetland beyond the fill area. Contour data available from this resource was also viewed which showed the location of the wetland as the lowest portion.



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B. 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 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 Antecedent Precipitation Tool (APT) was run for three dates: June 25, 2020 – the Corps of Engineers Site Visit, September 10, 2015 – Google Earth aerial photograph, June 1, 2018 – Ontario County aerial photograph.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.883696	-77.311806	6/25/2020	1.44	Mild wetness	Dry Season	10	Normal Conditions
42.883696	-77.311806	9/10/2015	3.01	Severe wetness	Dry Season	13	Normal Conditions
42.883696	-77.311806	6/1/2018	1.79	Mild wetness	Dry Season	11	Normal Conditions

For June 25, 2020, the APT indicates that the year is a typical year and the site visit was conducted during the dry season. Approximately 17 days prior to the site visit, there was very little rain, but over the 90-day average the date still fell in the 30 year-normal for precipitation.

The APT assessment for September 10, 2015 indicated that the aerial was taken during the ‘dry season’ and fell within the 30-year normal, although it appeared in the 90-days preceding that precipitation was heavier than normal. 2018 was also indicated as a typical year

The APT assessment for June 1, 2018 indicated that the aerial photograph was taken during the ‘dry season’ and also was representative of normal conditions for the year – typical year. Precipitation seemed to be quite various throughout the year, but met the 30-year average for a typical year.

The evaluation of these three resources related to the APT supports the jurisdictional determination that the filled wetland is a (b)(1) non-adjacent wetland, not subject to regulation under Section 404 of the Clean Water Act, per the Navigable Waters Protection Rule.

C. Additional comments to support AJD: [Based on the in-office resource review, on-site review on June 25, 2020, and the review as stated above, it has been determined that the stream \(an unnamed tributary to Sucker Brook\) that the wetland abuts outside of the review area has ephemeral flow, thus the subject wetland is a \(b\)\(1\) non-adjacent excluded wetland.](#)