



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): 24-SEP-2020
ORM Number: LRB-2020-00717 Snyder, Christopher
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
Review Area Location¹:
State/Territory: NY City: Alden County: Erie County
Center Coordinates of Review Area: Latitude 42.9209 Longitude -78.49229

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
Stream 1	138 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	According to the delineation report, Stream 1, flows through the Southwest corner of the site before emptying into Ellicott Creek, a perennial A(2) water, then continues and empties into Lake Erie, a Section 10 Waterway or A(1). The delineation report states, the stream has intermittent flow, defined bed/banks and OHW mark. In addition, the tributary displays intermittent flow that is 3-4 feet wide at top of bank and a depth of 6 inches. The bed consists of silt with sparse vegetation along the banks.

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 and 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 independent 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.

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.



U.S. ARMY CORPS OF ENGINEERS
 REGULATORY PROGRAM
 APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
 NAVIGABLE WATERS PROTECTION RULE

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
Wetland 1	0.07 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland 1 directly abuts Stream 1.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland 2	0.92 acres	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) sub-categories	In the delineation report, it states Wetland 2 is a scrub/shrub pocket in the northeast corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland 2. Wetland 2 is more than 450 linear feet from Stream 1 (A-3 water) on the delineation map to the South, greater than 600 linear feet to Ellicott Creek (A(3) water) to the East or any other tributary identified from an in-house review of aerial imagery, topo maps and the NYSDEC environmental resource mapper. No other A-1 to A-3 waters were identified within the vicinity of the wetland during an in-house review. Wetland 2 is approximately 75 feet from road side drainage along North Road to the North. However, in-house review indicates the drainage to be a combination of an open and closed drainage system of ditches and culverts that appear to be maintained over the years. Also, the delineation indicated no drainageways or tributaries are within the vicinity of Wetland 2. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A-1 to A-3 waters. Photos included within the delineation report and a review of aerial imagery show no natural or artificial barrier between Wetland 2 and Stream 1/Ellicott Creek. There is no indication that any a(1)-a(3) water inundates the wetland in a typical year (see ATP discussion below). Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "...flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 2 doesn't directly abut an A(1)-A(3) waters, are not separated from an A(1)-A(3) waters by a natural or man-made feature and are not adjacent to an A(1)-A(3) waters.

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 independent 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.

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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
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: *Earth Dimensions, INC submitted a wetland delineation report was submitted on June 5, 2020 with accurate, completed data sheets, photographs, NWI map, web soil survey with hydric soil ratings and other supporting information.*

_____ Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: Photos included with the delineation report dated May 27, 2020

_____ Corps Site visit(s) conducted on: *Date(s).*

_____ Previous Jurisdictional Determinations (AJDs or PJDs):

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

USDA NRCS Soil Survey: NRCS/USDA Web Soil Survey – Reviewed September 24 & Oct 1, 2020

USFWS NWI maps: USFWS Wetland Mapper – Reviewed September 24, 2020

USGS topographic maps: USGS Ontario Quad – Reviewed September 24, 2020

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	NYSDEC Environmental Resource Mapper – Reviewed September 24, 2020; No State regulated wetlands are within the vicinity of the delineated parcel.
Other Sources	N/A.

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.

An APT evaluation was run, associated with Google Earth Aerial photos for 1995, 2006, 2009, 2015 and 2018. The evaluation was run for the HUC 12 watershed, since there were no weather stations in

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 and 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 independent 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.

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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

the immediate vicinity of the site. Results indicate four years of normal conditions and one year of wetter than normal conditions. Aerials for all years suggest no inundation to the subject wetland from Ellicott Creek, Stream 1 or any other a(1)-a(3) water. For each aerial photo reviewed, water was visible within Ellicott Creek and Stream 1.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.9209	-78.4923	9/1/2018	0.78	Incipient wetness	Wet Season	10	Normal Conditions
42.9209	-78.4923	6/1/2015	1.71	Mild wetness	Dry Season	11	Normal Conditions
42.9209	-78.4923	7/1/2009	3.38	Severe wetness	Dry Season	10	Normal Conditions
42.9209	-78.4923	11/1/2006	3.91	Severe wetness	Wet Season	18	Wetter than Normal
42.9209	-78.4923	3/1/1995	-1.26	Mild drought	Wet Season	14	Normal Conditions

C. Additional comments to support AJD: Evaluation of the on-site conditions as presented in the submittal and substantiated by the photographs and data summary sheets appear to be clear and straight-forward. The review area is approximately 4 acres and does not present complicated details. The delineated parcel is surrounded by residential development, open fields, farms and wooded areas. A review of in-house resources, USFWS NWI Maps, USGS Quad Map and NRCS Web Soil Survey indicated mapped potential hydric soils but no wetlands or streams were identified on the delineated parcel. All resources reviewed including the delineation report support the determination that Wetland 2 doesn't directly abut an A(1)-A(3) water, is not separated from an A(1)-A(3) water by a natural or man-made feature and is not adjacent to an A(1)-A(3) water. Therefore, wetland 2 is "excluded" and is not a jurisdictional water of the United States.

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 and 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 independent 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.

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.