



**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): 9/21/2020
 ORM Number: LRB-2020-00932
 Associated JDs: N/A
 Review Area Location¹: State/Territory: NY City: Clarence County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 43.082445 Longitude -78.674869

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.



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

D. Excluded Waters or Features

Excluded waters (b)(1) – (b)(12): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Unnamed Ditch	1100	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	<p>The ditch that was relocated in July 2020 was approximately 1100 linear feet in size within the review area and extends to the south and north outside of the review area. The ditch was an existing agriculture ditch that is visible in aerials back to 1972 and is shown on the USGS Quad for Clarence Center dated 1950. Google Earth allowed access to aerial imagery with dates of 22Sep2018, 16MAR2017, and 14OCT2016. The 14OCT2016 aerial shows the ditch work conducted by the Town on the property (recent disturbance and fill piles visible in aerial); no water was shown in the ditch at the time of the aerial. The 16MAR2017 aerial is a winter aerial and the channel appears dark suggesting water in the ditch channel. The 22SEP2018 aerial shows disturbance of the channel that was relocated recently, but no water within the channel. A site visit was conducted on 20AUG2020 by USACE staff in which the recent channel relocation was observed. There was no water in the new channel or the channel outside the review area to the south; vegetation was prominent in the channel suggesting it had been quite some time since there was flow.</p> <p>The new 48-inch culvert outlet to the northern extent of the review area did not have any water in it and there was evidence of pooling at the outlet, but it did not appear that water flowed further to the north off-site. Furthermore, there were sediment lines on the bottom of the culvert measuring approximately 2 feet wide, suggesting a 3-inch depth of water drying inside of the culvert.</p> <p>Considering the aerials showing the channel always dry, the channel being dry at the time of the site visit, and comparing these resources to the APT report, the channel has been determined to have ephemeral flow. Furthermore, this channel is a ditch that was dug in uplands (not an (a)(4) wetland) and appears to have been constructed for agriculture purposes.</p>

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**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			Therefore, it has been determined that this waterway is a (b)(5) excluded ditch that is not an (a)(1), (a)(2), or (a)(3) water with ephemeral flow.

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: 22Sep2018, 16MAR2017, and 14OCT2016, accessed from Google Earth.**
- Corps site visit(s) conducted on: **Date(s).**
- 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: **<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – accessed on 16JUL2020**
- USFWS NWI maps: **<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - accessed 16JUL2020.**
- USGS topographic maps: **<https://livingatlas.arcgis.com/topoexplorer/index.html> – accessed 31AUG2020. Reviewed USGS topographics from 1950 (Quad:NY – Clarence Center).**

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	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. The Antecedent Precipitation Tool (APT) was run for three dates: October 14, 2016 (aerial), March 16, 2017 (aerial), September 22, 2018 (aerial), and August 20, 2020 (Corps site visit).



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

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
43.082445	-78.674869	9/22/2018	0.78	Incipient wetness	Dry Season	11		Normal Conditions
43.082445	-78.674869	3/16/2017	1.22	Mild wetness	Wet Season	15		Wetter than Normal
43.082445	-78.674869	10/14/2016	0.81	Incipient wetness	Wet Season	10		Normal Conditions
43.082445	-78.674869	8/20/2020	1.41	Mild wetness (2020-07)	Dry Season	9		Drier than Normal

For August 20, 2020, the date of the Corps of Engineers' site visit, the APT indicates that the year has had mild wetness in July, but was drier than normal at the time of the site visit. The site visit was conducted during the dry season. Thus, the time of the site visit would have included observations that are not within a typical year. Thus, the dry observations of the ditch may have been due to the dry conditions at the time. However, since the report indicated mild wetness for July 2020, it is likely conditions are more normal than the report indicates.

The aerial photographs for October 14, 2016 (wet season) and September 22, 2018 (dry season) had APT report conditions of normal conditions. No water, saturation or inundation, was viewed within the channel in question in these aerial photographs. Since these aerial photographs indicate typical years then this supports that the channel only has ephemeral flow.

The APT assessment for March 16, 2017 indicated that the aerial was taken during the wet season in a time where things were 'wetter than normal.' This aerial had very dark signatures in the channel in question suggesting inundation, which would be consistent with the time being a part of the wet season and during a year where it is 'wetter than normal.'

The evaluation of these resources related to the APT supports the jurisdictional determination that the filled and relocated channel is a (b)(5)ditch that is not an (a)(1) or (a)(2) water and was not constructed in an (a)(4) wetland, and that the fact that the ditch has ephemeral flow [a (b)(3) exclusion], and is therefore, 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, the August 20, 2020 site visit observations, and the APT report, it has been determined that the relocated channel ditch is an excluded feature under (b)(5) and (b)(3) of the Navigable Waters Protection Rule.