



**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): 9/25/2020
 ORM Number: LRB-2020-01026
 Associated JDs: N/A.
 Review Area Location¹: State/Territory: New York City: Lancaster County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 42.95270 Longitude -78.61744

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
Wetlands 1 and 25	2.3 and 0.02	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water. Based off of aerial imagery, it was determined that Wetlands 1 and 25 extend offsite to the east and north into a large wetland complex located at the

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**

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			Tillman Road Wildlife Management Area which directly abuts Ransom Creek, a Clean Water Act Section 404 a(2) tributary (Ransom Creek is identified on the Clarence USGS 7.5 min Quad as a blue line perennial stream), at Bergtold Road, approximately 0.9 miles north of the subject parcel. On September 16, 2020 a site visit was conducted along Bergtold Road. It was determined that the contiguous wetland extends north to Bergtold Road, then along Bergtold Road to the east for approximately 330 feet before turning north, under Bergtold Road at which point the wetland disappears and stream channel forms. Water observed flowing in the stream channel north from Bergtold Road at the time of the site visit. The Antecedent Precipitation Tool (see Section III B for discussion) indicates that the site visit was conducted during drier than normal precipitation conditions. This further demonstrates that Ransom Creek has perennial flow.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24	N/A.	acre(s)	(b)(1) Non-adjacent wetland.
			Wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 do not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 were circumnavigated by LaBella Associates on April 20, 21, and 24, 2020 during the water resource delineation. No defined channels/tributaries/ditches were observed flowing from wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 to any (a)(1-3) water. Based on aerial imagery, the Corps has determined that the onsite observations by LaBella Associates are accurate. Aerial imagery depicts saturation at 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.



**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
			location of the delineated wetlands. Saturation in the aerial imagery was not observed within the adjacent upland areas. Uplands that were identified between wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 are located approximately 1 mile from the nearest a(1-3) water (Ransom Creek, an a(2) tributary) located offsite. Based on a resource review, the nearest a(1-3) water (Ransom Creek) would not flood any of the wetland areas at least once during a typical year. Also, there are no natural berms or the like located between Ransom Creek and Wetlands 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

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: [Wetland and Stream Delineation Report, Landcaster Landfill Solar Array, Gunnville Road, Lancaster, New York 14086, LaBella Project No. 2201371, June 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial: Corps of Engineers, ORM Database, 2020](#)
- Corps site visit(s) conducted on: [Title\(s\) and/or date\(s\)](#).
- Previous Jurisdictional Determinations (AJDs or PJDs): [Title\(s\) and/or date\(s\)](#).
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [Clarence, OH 7.5 min](#)

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 subject parcel's latitude/longitude was entered into the Antecedent Precipitation Tool (APT) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps' site visit, and whether the site visit was conducted under dry, normal or wet



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

conditions. The APT pulled precipitation data from the nearest weather station – Buffalo. The APT shows that normal precipitation at the location of the site is between the 30th (2.6”) and 70th (4.1”) percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 1.8” which is below the 30th percentile. Thirty to 60 days prior the APT indicates that precipitation was 2.4” which is also below the 30th percentile and 60 to 90 days prior precipitation was 3.7” which is between the 30th and 70th percentiles. Therefore, three months prior to the site visit precipitation was normal, and one to two months prior to the site visit precipitation was below normal for that time of year.

The APT, using a weighted approach, indicates that the site visit was conducted during a period of drier than normal precipitation.

- C. Additional comments to support AJD:** Ransom Creek, an a(2) perennial water, flows approximately 25-30 miles to the northwest into Tonawanda Creek / Erie Canal, an a(1) navigable waterway.