



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): 06-OCT-2020

ORM Number: LRB-2018-00708

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: County/Parish/Borough: Erie County

Center Coordinates of Review Area: Latitude 42.81442 Longitude -78.73433

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

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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
2018-00708 (W1)	3.251 acres	(b)(1) Non-adjacent wetland	W1 is a 3.251 acre PSS depressional wetland, located in the center of the property (extending east to west), with no connection to an a(1)-a(3) water. The entire perimeter of the wetland on the property was walked on the day of the site visit (8/7/2018). All resources reviewed support the determination that W1 does not abut an a(1)-a(3) water, is not separated and does not contribute flow through a natural or man-made feature. W1 is located over 700 feet north of an a(2) water, separated by a road and situated approximately 10 feet up gradient. There is nearly zero percent chance of flooding from the a(2) water in any year (USDA Web Soil Survey). Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. Therefore it is not adjacent to an a(1)-a(3) water. W1 appears to potentially continue off site to the east and to the south. To the south is a residential property with mowed lawn, showing no existing wetland characteristics. To the east, there is a potential for the wetland to continue off site and the size could not be determined, however there is mowed/maintained land approximately 100 feet to the east of the delineated property boundary that did not show any potential wetland characteristics when reviewing aerial photography. Furthermore there were no observed connections present to an a(1)-a(3) water to the east or to the south.
2018-00708 (W2)	0.828 acres	(b)(1) Non-adjacent wetland	W2 is a 0.828 acre PFO depressional wetland, located on the southern tip of the property, with no connection to an a(1)-a(3) water observed. The entire perimeter of the wetland on the property was walked on the day of the site visit (8/7/2018). All resources reviewed support the determination that W2 does not abut an a(1)-a(3) water, is not separated and does not contribute flow through a natural or man-made feature. W2 is located over 600 feet north of an a(2) water, separated by a road and situated approximately 10 feet up gradient. There is nearly zero percent chance of flooding from the a(2) water in any year (USDA Web Soil Survey). Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. Therefore it is not adjacent to an a(1)-a(3) water. W2 appears to possibly extend off site to the east and west. To the west there is a residential development with mowed/maintained lawn and no signs of a continuing wetland or possible connections to an a(1)-a(3) water. To the east there is potential of wetland extending off

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U.S. ARMY CORPS OF ENGINEERS
 REGULATORY PROGRAM
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			site, however same conditions as mentioned above with W1 exist.
2018-00708 (W3)	3.997 acres	(b)(1) Non-adjacent wetland	W3 is a 3.997 acre predominantly PSS depressional wetland located in the northern section of the property, with no connection to an a(1)-a(3) water. The entire perimeter of the wetland on the property was walked on the day of the site visit (8/7/2018). All resources reviewed support the determination that W3 does not abut an a(1)-a(3) water, is not separated and does not contribute flow through a natural or man-made feature. W3 is located over 1,000 feet north of an a(2) water, separated by a road and situated approximately 10 feet up gradient. There is nearly zero percent chance of flooding from the a(2) water in any year (USDA Web Soil Survey). Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. Therefore it is not adjacent to an a(1)-a(3) water.
2018-00708 (W4)	0.193 acres	(b)(1) Non-adjacent wetland	W4 is a 0.193 acre PFO depressional wetland, located on the western edge of the property, with no connection to an a(1)-a(3) water observed. The entire perimeter of the wetland on the property was walked on the day of the site visit (8/7/2018). All resources reviewed support the determination that W4 does not abut an a(1)-a(3) water, is not separated and does not contribute flow through a natural or man-made feature. W4 is located over 1,100 feet north of an a(2) water, separated by a road and situated approximately 10 feet up gradient. There is nearly zero percent chance of flooding from the a(2) water in any year (USDA Web Soil Survey). Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. Therefore it is not adjacent to an a(1)-a(3) water.

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 delineation named "780 Reserve Road" was conducted by Earth Dimensions, Inc. and was submitted on June 6, 2018, revised and resubmitted on September 30, 2020 with accurate, complete data sheets, photographs, NWI map, soil survey map with hydric soil information*
 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 and other: Google Earth pro (2020), ESRI, Earth Dimensions Inc (2018).*

Corps Site visit(s) conducted on: *08/07/2018*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

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- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Web Soil Survey reviewed.
- USFWS NWI maps: USFWS online map reviewed.
- USGS topographic maps: Orchard Park, New York Quad; 24k:1.

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	ORM2 maps.
State/Local/Tribal Sources	NYS DEC Environmental Resource Mapper reviewed. No State regulated wetlands present 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.

Evaluation of aerial photographs, delineation report and results from the APT indicate that no signs of inundation of the wetlands from a tributary occurred. Two of the years evaluated had drier than normal conditions, one year was under normal conditions but had severe wetness under the PDSI Class and there was still no inundation visible. As noted above, the nearest tributary is over 600 feet from the closest delineated wetland and the site is located approximately 10 feet up gradient as per topographic map.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.81442	-78.7343	9/8/2002	-1.63	Mild drought	Wet Season	8	Drier than Normal
42.81442	-78.7343	3/31/2005	2.07	Moderate wetness	Wet Season	9	Drier than Normal
42.81442	-78.7343	5/3/2009	2.3	Moderate wetness	Wet Season	14	Normal Conditions
42.81442	-78.7343	10/5/2011	3.41	Severe wetness	Wet Season	13	Normal Conditions

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42.81442	-78.7343	10/18/2016	0.81	Incipient wetness	Wet Season	10	Normal Conditions
42.81442	-78.7343	9/22/2018	0.78	Incipient wetness	Wet Season	11	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 16.86 acres and does not present complicated details. The delineated parcel is surrounded by residential developments on all sides. A review of in-house resources, USDWS NWI Maps, USGS Quad Map, NRCS Web Soil Survey and NYSDEC Environmental Resource Mapper indicated no mapped wetlands or streams are located within the vicinity of the delineated parcel. During the field visit, it was determined that none of the wetlands had outlets leading to a connection to an a(1)-a(3) water. Wetlands W1 and W2 potentially extend off site, however, after review of available resources, no offsite connections to an a(1)-a(3) water were located. All resources reviewed support the determination that W1, W2, W3 and W4 do not directly abut an a(1)-a(3) water, are not separated from an a(1)-a(3) water by a natural or man-made feature, do not contribute to flow to an a(1)-a(3) water, are not inundated by flooding from an a(1)-a(3) water. Therefore, W1, W2, W3 and W4 are not jurisdictional waters of the United States.

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