



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): 07-OCT-2020

ORM Number: LRB-2020-00026 NYSEG Erie St Substation

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Lancaster County: Erie County

Center Coordinates of Review Area: Latitude 42.90718 Longitude -78.6627

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
Wetland B	4.08 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	In the delineation report, Wetland B is a PFO wetland complex in the Northwest corner of the property. Stated

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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.

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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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			by the delineator, Wetland B continues offsite and directly abuts a perennial tributary to Plum Bottom Creek. During the August 2019 site visit, water was observed flowing within the tributary and stream was observed flowing to the west then northwest towards Wetland B. Water from Wetland B makes its way to Lake Erie, a Section 10 waterway.
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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
Ditch 1	~925 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)	The ditch is a maintained, man-made feature, excavated in soil identified as non-hydric that begins at the Southern end of Wetland A and heads South. A review of Aerial imagery and confirmed by delineator (email dated 9/16/2020) is the ditch was constructed with the substation back in the 1960s. The ditch carries surface water discharge from impervious areas from the surrounding substation, storage area and Wetland A to a Tributary to Plum Bottom Creek, a A(2) water. A review of past aerial imagery and in-house resources no evidence of a stream in this area. In addition, a review of past USGS Topos indicates no evidence of a stream within the area. The ditch doesn't contribute direct flow to an A(1) water or is an A(1) water, the ditch was not constructed in a tributary, doesn't relocate a tributary nor or was the ditch constructed in an adjacent wetland. Finally, the ditch doesn't contribute perennial or intermittent flow during a particular year. During the August 2019 site visit, very minor to no flow was observed in the ditch.
Wetland A	5.16 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland A is a scrub/shrub pocket in the northeast corner of the site. The soils are mapped non-hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. Wetland A is surrounded by a public park/pool to the East, NYSEG storage yard, substation and support facilities to the West/South and railroad tracks to the North. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland A except Ditch 1. However, Ditch 1 was determined not to be either an A(1), A(2) or an A(3) waters. 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. The tributary to Plum Bottom Creek is approximately 650 feet to the Southwest of Wetland A. There is no indication that any other 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

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			probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland A doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters. In addition, the wetland does not meet a category of excluded waters and features under paragraphs (b)(2) through (b)(12). Finally, no water was observed flowing from Wetland A to Ditch 1 during the August 2019 site visit.

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 conducted by LaBella Associates, was submitted on July 2019 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: Aerial and Other: Global Earth, ESRI, Google Earth aerial review*
- Corps Site visit(s) conducted on: August 2019
- Previous Jurisdictional Determinations (AJDs or PJDs): None
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: USDA/NRCS Web Soil Survey – Accessed October 7, 2020
- USFWS NWI maps: USFWS Wetland Mapper – Accessed October 7, 2020
- USGS topographic maps: Lancaster Quad

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	ORM Maps – Accessed October 7, 2020
State/Local/Tribal Sources	NYSDEC Freshwater Wetland Maps – no State regulated wetlands are within the vicinity of the delineated parcel – Accessed October 7, 2020
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

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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.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.9071	-78.6027	3/1/1995	-1.26	Mild drought	Wet Season	14	Normal Conditions
42.9071	-78.6027	9/1/2002	-1.63	Mild drought	Wet Season	8	Drier than Normal
42.9071	-78.6027	11/1/2006	3.91	Severe wetness	Wet Season	18	Wetter than Normal
42.9071	-78.6027	7/1/2013	2.04	Moderate wetness	Dry Season	18	Wetter than Normal
42.9071	-78.6027	9/1/2018	0.78	Incipient wetness	Wet Season	10	Normal Conditions

An APT evaluation was run, associated with Google Earth Aerial photos for 1995, 2002, 2006, 2013, and 2018. The evaluation was run for the HUC 12 watershed, since there were no weather stations in the immediate vicinity of the site. Results indicate one year of drier than normal conditions, two years of wetter than normal conditions and two years of normal conditions. Aerials for all years suggest no inundation to the subject wetland from the Tributary to Plum Bottom Creek, Ditch 1 or any other a(1)-a(3) water. For each aerial photo reviewed, water was visible within the Tributary to Plum Bottom Creek.

- 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 23 acres and does not present complicated details. Review of the NWI and the NYS DEC Freshwater Wetland maps suggest that Ditch 1 was excavated in a non-wetland area which also was not a stream. Further, the soil map shows that the ditch was excavated in an area identified non-hydric. Aerial photographs over a range of 50 years shows the progressive development of the parcel as an electrical substation and the construction of the ditch to convey surface water runoff from the surrounding impervious surfaces. All resources reviewed support the determination that Ditch 1 is “excluded” and is not a jurisdictional waters of the United States.

All resources reviewed including the delineation report support the determination that Wetland A 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 A is “excluded” and is not a jurisdictional water of the United States.

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