



**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): 11/9/2020

ORM Number: LRB-1993-976112

Associated JDs: N/A.

Review Area Location¹: State/Territory: New York City: Hamburg County/Parish/Borough: Erie

Center Coordinates of Review Area: Latitude 42.77590 Longitude -78.84936

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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 1	995	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Onsite observations indicate that Stream 1 is a perennial a(2) tributary. Water was observed flowing within this stream channel during the November 4, 2020 site visit. The Antecedent Precipitation Tool (See Typical Year Assessment below) indicates that the site visit was conducted during a period of drier than normal precipitation. In addition, fish were observed within this stream channel. Based on the above it was determined Stream 1 is a perennial a(2) tributary.

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**

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 W1, W2 and W3	4.63, 0.15 and 0.30 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Onsite observations indicate that Wetlands W1, W2 and W3 directly abut Stream 1, a Clean Water Act Section 404 a(2) tributary.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland W4	0.36 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Onsite observations indicate that Wetland W4 extends offsite to the north, into a linear wetland along Lakeshore Road, then under Lakeshore Road via culvert into a linear wetland that extends to the west approximately 600 linear feet and extends all the way to an unnamed perennial a(2) waterway. Therefore, Wetland W4 is an a(4) wetland that abuts a Clean Water Act Section 404 a(2) tributary.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland W5	2.18 acre(s)	(b)(1) Non-adjacent wetland.	Wetland W5 does 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. Wetland W5 was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from Wetland W5 to any (a)(1-3) water. Wetland W5 is located approximately 1200 LF from the nearest a(1-3) water. Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland area at least once during a typical year. Also, there are no natural berms or the like located between the a(1-3) water and wetland.

III. SUPPORTING INFORMATION

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**

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 Waterbodies Delineation Report for 0 Lakeshore Road SBL# 159.00-1-33.11, Town of Hamburg, Erie County, New York, prepared for Walden Development Group, LLC, prepared by Earth Dimensions, LLC, September 28, 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 and Other: Title\(s\) and/or date\(s\)](#).
- Corps site visit(s) conducted on: [November 4, 2020](#)
- 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: [Buffalo SE, NY 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 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 \(2.3"\) and 70th \(4.7"\) percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 3.5" which is between the 30th and 70th percentiles. Thirty to 60 days prior the APT indicates that precipitation was 3.6" which is also between the 30th and 70th percentiles and 60 to 90 days prior precipitation was 1.3" which is below the 30th percentile. Therefore, one to two months prior to the site visit precipitation was normal, and three months prior to the date of the site visit precipitation was considered to be 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: [Streams 1 flows north for approximately 1185 feet to the southwest, into an unnamed tributary to Lake Erie, an a\(2\) perennial tributary, which flows north approximately 2175 feet into Lake Erie, an a\(1\) navigable water.](#)