



**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): 11/24/2020
ORM Number: LRB 1995-976143

Associated JDs: Preliminary JD issued on 1/10/2019. For the current review, A Preliminary JD will be issued for Wetlands B, BX, C, E, F, G and X and Tributary 1, Tributary 2, Tributary 3 and Slate Bottom Creek are identified on a separate PJD Form. The remaining Wetlands A, D H I and J will be on this AJD Form evaluated under Excluded Waters.

Review Area Location¹: State/Territory: New York City: Lancaster County/Parish/Borough: Erie
Center Coordinates of Review Area: Latitude 42.87661 Longitude -78.6165

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.

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.



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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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland H	0.59 acre(s)	(b)(1) Non-adjacent wetland.	Wetland H does not meet the definition of an (a)(4) adjacent wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). A review of remote tools and observations on the site visit conducted on July 9, 2020 showed evidence that Wetland H is a small isolated pocket scrub-shrub wetland that is entirely surrounded by uplands. Wetland H does not abut a water identified in paragraph(a) (1) (2) or (3). The closest (a)(1)-(a)(3) tributary is 104 linear feet to the west of Wetland H and is Tributary 2 which is visible on aerial photographs and based on site observations has intermittent flow. Wetland H isn't inundated by flooding from the Tributary 2 in a typical year. No indications of flooding such as sediment, debris, wrack lines, scour, etc. were observed between the Tributary 2 and Wetland H. The NRCS soils series identified within this area indicate no frequency of flooding. Also, a review of FEMA maps shows that Wetland H to be well outside the limits of the mapped 500-year floodplain and Regulatory Floodway. As per site observations and a review of remote tools and the delineation report, there is no evidence to show that Wetland H is separated from Tributary 2 to a natural berm, bank dune or similar feature. In addition, there is no evidence that Wetland H is physically separated from Tributary 2 only by an artificial dike, barrier or similar artificial structure. No culvert or similar artificial feature were observed within or outletting from Wetland H to Tributary 2.
Wetland I Wetland J	0.06 0.23 acre(s)	(b)(1) Non-adjacent wetland.	Wetland I and J are situated near each other within the same area on the project site and the review of remote tools and on-site observations provided similar results and therefore the rationale for Wetland I and Wetland J is

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.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>explained for both below. Wetland I and Wetland J do not meet the definition of an (a)(4) adjacent wetland as they don't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). Wetland I and Wetland J are small forested wetlands that lie south of residential development and a roadway and are completely surrounded by uplands. Wetland I and J don't abut an (a)(1)-(a)(3) water. The closest (a)(1)-(a)(3) water is Slate Bottom Creek Tributary which is approximately 1040 feet to the north of the Wetland I and approximately 1200 linear feet north of Wetland J. Based on the on-site observations and a review of remote tools, there is no evidence to indicate that Wetland I and Wetland J are inundated by flooding from Slate Bottom Creek Tributary. The soils that are identified in the NRCS soils survey in this area have no frequency of flooding or ponding as well. Both wetlands are also outside of the mapped 500 year floodplain boundary and Regulatory Floodway. Based on the site visit observations and a review of aerial photography, there is no evidence of a natural berm or natural feature that physically separates Wetland I and Wetland J from the South Branch to Slate Bottom Creek Tributary. As per on-site observations, the delineation report and mapping, and a review of remote tools, Wetland I and Wetland J are surrounded by uplands, There is no evidence that Wetland I and Wetland J are physically separated from a (a)(1)-(a)(3) water by an artificial dike, barrier, or similar artificial structure. No culvert, flood or tide gate, pump, or similar artificial feature were observed within or outletting from Wetland I or Wetland J to Slate Bottom Creek Tributary.</p>
Wetland A	0.24	acre(s)	<p>(b)(1) Non-adjacent wetland.</p> <p>Wetland A does not meet the definition of an (a)(4) adjacent wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). Wetland A is situated in eastern portion of the project site and is a small remote scrub-shrub wetland surrounded by uplands. It is approximately 1040 linear feet south of Slate Bottom Creek, the closest (a)(1)-(a)(3) tributary. Based on site visit observations and a review of aerial photography, Wetland A doesn't abut an (a)(1)-(a)(3) water which would</p>



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			be Slate Bottom Creek. There is no evidence that Wetland A is inundated by flooding from Slate Bottom Creek in a typical year. Wetland A is not located within the 500-year floodplain or Regulatory Floodway and the NRCS Soil survey mapped soils within this area did not show any frequency of flooding. All available evidence indicates that Wetland A is not physically separated from an ((a)(1)-(a)(3) Slate Bottom Creek) water by a natural berm, bank, dune, or similar natural feature. Also, Wetland A is not physically separated from a water identified in paragraph (a) (1), (2) or (3) of this section only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. No culverts or similar artificial structure was observed outletting from Wetland A to Slate Bottom Creek.
Wetland D	0.194	acre(s)	(b)(1) Non-adjacent wetland. Wetland D does not meet the definition of an (a)(4) adjacent wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). As per on-site observations and review of remote tools, Wetland D is completely surrounded by uplands. It doesn't abut an (a)(1)-(a)(3) water. It is approximately 200 linear feet from the closest (a)(1)-(a)(3) tributary and is located upslope of this tributary. Wetland D isn't inundated by flooding from the Tributary 2 in a typical year. No indications of flooding such as sediment, debris, wrack lines, scour, etc. were observed between the Tributary 2 and Wetland D. The NRCS soils series identified within this area indicate no frequency of flooding. Based on the site visit observations and a review of aerial photography, there is no evidence of a natural berm or natural feature that physically separates Wetland D from Tributary 2. As per on-site observations, the delineation report and mapping, and a review of remote tools, there is no evidence that Wetland D is physically separated from an (a)(1)-(a)(3) water by a an artificial dike, barrier, or similar artificial structure. No culvert, flood or tide gate, pump, or



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			similar artificial feature were observed within or outletting from Wetland D to Tributary 2.

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: [The Wetland Delineation Report, date, 02/01/2018, submitted by Wilson Environmental Technologies.](#)

This information is 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 and Other: Review of Google Earth Aerials from 2016, 2011, 2009 and 2005. Other photos within the wetland delineation report.](#)

Corps site visit(s) conducted on: [July 9, 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [LRB-1996-9760197 \(PJD issued on 01/10/2019\).](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [NRCS Websoil Survey Accessed 13NOV2020](#)

<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>

USFWS NWI maps: [USFWS National Wetlands Inventory Mapper, Accessed 13NOV2020](#)

<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> PFO1E wetlands identified within the project site.

USGS topographic maps: [Lancaster USGS Quadrangle accessed in ORM2 on 13NOV2020](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A. USGS National Map, Accessed 13NOV2020, https://viewer.nationalmap.gov/advanced-viewer/
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Federal FEMA National Flood Hazard Layer Zones Accessed 13NOV2020
State/Local/Tribal Sources	NYSDEC Environmental Resource Mapper-Review of NYS DEC state wetlands
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



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Delaware WebWIMP.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
42.87661	-78.61654	7/9/2020	1.41	Mild wetness	Dry Season	11		Normal Conditions
42.87661	-78.61654	9/22/2018	0.78	Incipient wetness	Wet Season	11		Normal Conditions
42.87661	-78.61654	6/15/2015	1.71	Mild wetness	Dry Season	13		Normal Conditions
42.87661	-78.61654	3/31/2005	2.07	Moderate wetness	Wet Season	9		Drier than Normal

An APT evaluation was run, associated with Google Earth Aerial photos for years 2005, 2015, 2018 and 2020. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate normal conditions for 3 years and one year of drier than normal conditions. The aerials for all years suggest no inundation of Wetland H from Tributary 2 or no inundation from Wetland A, I or J from a nearby tributary.

- C. Additional comments to support AJD:** Based on the site visit observations, data reviewed from the delineation report and mapping and a review of remote tools which included aerial photography, soils data, and topographical maps, Wetland A, I, J and H do not meet the definition of an (a)(4) adjacent wetland as both wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). Wetland A, D, I, J and H are excluded waters and therefore are not jurisdictional waters of the U.S.