



**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): 11/18/2020
 ORM Number: LRB-2014-00384 (Carwell Products, Inc.)
 Associated JDs: An AJD under Rapanos (2014-00384) for a different applicant (Lake Erie Industrial Park) just to the east of the project site was issued in 2014.
 Review Area Location¹: State/Territory: New York City: Hamburg County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 42.78065 Longitude -78.85063

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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland 1	4.39 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 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). It doesn't abut a water identified in paragraph (a)(1), (2), or 3. As per on-site observations, data and photos within the delineation report and a review of remote tools including USGS topographical maps, the NRCS Websoil survey for Erie County, and USFWS NWI maps, Wetland 1 is completely surrounded by uplands and major roadways. The closest (a)(1)-(a)(3) water (Lake Erie) is approximately 1100 linear feet to the west. All evidence indicates that Wetland 1 does not abut Lake Erie or another an (a)(1), (2) or (3) water. ii. Are inundated by flooding from a water identified in paragraph (a)(1), 2 or 3 in a typical year. Nothing was observed during the site visit to show evidence of flooding. Aerial imagery does not indicate that Wetland 1 is flooded from an (a)(1)-(a)(3) water in a typical year. In addition, data from the NRCS Websoil Survey indicate that the soils mapped in the project area have no frequency of flooding. iii. There is no evidence that indicates Wetland 1 is physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune or other natural feature. iv. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland 1 is physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and 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. A major roadway and development separates Wetland 1 from Lake Erie. There is no evidence of a direct hydrological surface connection through a culvert or similar artificial feature. In addition, there are a couple of ditches that are

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	
				visible on aerial imagery on the western portion of Wetland 1 (near Route 5) that run from the wetland to the roadway, but these serve as ditches, therefore are not regulated waters of the U.S.
N/A.	N/A.	acre(s)	N/A.	N/A.
N/A.	N/A.	acre(s)	N/A.	N/A.
N/A.	N/A.	acre(s)	N/A.	N/A.

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 dated September 18, 2020 submitted by Earth Dimensions, Inc.](#)

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: Photographs within the Delineation report and review of Google aerial imagery from years 2017, 2016 and 2014.](#)

Corps site visit(s) conducted on: [October 8, 2020](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [LRB-2014-00384 Approved JD under Rapanos](#)

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

USDA NRCS Soil Survey: [NRCS Websoils 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/>

USGS topographic maps: [USGS 2016 Buffalo SE Quadrangle](#)

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 and FEMA Flood Maps, Regulatory Flood Zones
State/Local/Tribal Sources	N/A.
Other Sources	HistoricalAerials.com review of Topo and Aerials for years 2020 and 1963.

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



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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
42.78065	-78.85063	4/17/2017	1.99	Mild wetness	Wet Season	14	Normal	Conditions
42.78065	-78.85063	9/22/2016	-2.75	Moderate drought	Wet Season	11	Normal	Conditions
42.78065	-78.85063	6/21/2014	2.98	Moderate wetness	Dry Season	13	Normal	Conditions

An APT evaluation was run, associated with Google Earth Aerial photos for 2014, 2016 and 2017. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate normal conditions for all years. The aerials for all years suggest no inundation of Wetland 1 from any nearby tributary.

- C. Additional comments to support AJD:** Based on the site visit observations on October 8, 2020, data reviewed from the delineation report and mapping and a review of remote tools which included aerial photography, soils data, and topographical maps, Wetland 1 does not meet the definition of an (a)(4) adjacent wetland as the wetland does not meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). Wetland 1 is an excluded water and therefore is not a jurisdictional water of the U.S.