



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): 17-NOV-2020
ORM Number: LRB-2017-01107 Summit Outlet, LP - Summit East
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
Review Area Location¹:
State/Territory: NY City: County/Parish/Borough: Niagara County
Center Coordinates of Review Area: Latitude 43.068802 Longitude -78.916126

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
Wetland B	0.311 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland B is an scrub/shrub pocket in the northwest corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation dominated by invasive species. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland B. This was confirmed during the site visit. Wetland B is more than 150 linear feet from an offsite, excavated ditch along the railroad corridor to the West. No A(1)-A(3) waters were identified within the vicinity of Wetland B during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland B and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland B 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.
Wetland C	0.302 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland C is an forested/scrub/shrub pocket in the northwest corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland C. This was confirmed during the site visit. Wetland C is more than 200 linear feet from an offsite, excavated ditch along the railroad corridor to the West. No A(1)-A(3) waters were identified within the vicinity of Wetland C during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland C and

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			A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland C 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.
Wetland D	2.03 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland D is an emergent/forested pocket in the northwest corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland D. This was confirmed during the site visit. Wetland D is more than 250 linear feet from an excavated ditch along the railroad corridor to the West. No A(1)-A(3) waters were identified within the vicinity of Wetland D during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland D and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland D 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.
Wetland G	0.16 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland G is an emergent pocket in the West of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland G. This was confirmed during the site visit. Wetland G is more than 500 linear feet from an excavated ditch along the railroad corridor to the Northwest. No A(1)-A(3) waters were identified within the vicinity of Wetland G during the site visit or an in-house review of aerial imagery, topo maps, the

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			<p>NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland G and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland G 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.</p>
Wetland H	3.66 acres	(b)(1) Non-adjacent wetland	<p>In the delineation report, it states Wetland H is an emergent pocket in the west and southwest corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland H. This was confirmed during the site visit. Wetland H is more than 850 linear feet from an excavated ditch along the railroad corridor to the Northwest. No A(1)-A(3) waters were identified within the vicinity of Wetland H during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland H and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland H 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.</p>
Wetland I	0.53 acres	(b)(1) Non-adjacent wetland	<p>In the delineation report, it states Wetland I is a scrub-shrub pocket in the middle of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland I. This was confirmed during the site visit. Wetland I is more than 1000 linear feet from</p>

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			<p>an excavated ditch along the railroad corridor to the West. No A(1)-A(3) waters were identified within the vicinity of Wetland I during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland I and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland I 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.</p>
Wetland J	0.92 acres	(b)(1) Non-adjacent wetland	<p>In the delineation report, it states Wetland J is an emergent pocket towards the East of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland J. This was confirmed during the site visit. Wetland J is more than 1200 linear feet from an excavated ditch along the railroad corridor to the West. No A(1)-A(3) waters were identified within the vicinity of Wetland J during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland J and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland J 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.</p>
Wetland K	0.04 acres	(b)(1) Non-adjacent wetland	<p>In the delineation report, it states Wetland K is a forested pocket in the Southeast corner of the site. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-</p>

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			<p>house resources show no drainage patterns coming or going from Wetland K. This was confirmed during the site visit. Wetland K is more than 2000 linear feet from an excavated ditch along the railroad corridor to the Northwest. No A(1)-A(3) waters were identified within the vicinity of Wetland D during the site visit or an in-house review of aerial imagery, topo maps, the NYSEDEC environmental resource or USFWS Wetland mapper. 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. No natural or artificial barriers between Wetland K and A(1) – A(3) waters was found during the site visit. The wetland is not inundated by an A(1) – A(3) waters because none are within the vicinity of the wetland. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland K 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.</p>
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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: Delineation report submitted by Davey dated September 18, 2017.
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: Photographs included with delineation report and supplement information dated August 2020.
- Corps Site visit(s) conducted on: October 2018
- Previous Jurisdictional Determinations (AJDs or PJDs):
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: *USDA/NRCS Web Soil Survey accessed Oct 14, 2020*
- USFWS NWI maps: USFWS Wetland Mapper accessed Oct 14, 2020
- USGS topographic maps: USGS Tonawanda West 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.

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USACE Sources	N/A.
State/Local/Tribal Sources	NYSDEC Environmental Resource Mapper accessed Oct 14, 2020.
Other Sources	N/A.

B. Typical year assessment(s): N/A

C. Additional comments to support AJD: Evaluation of the on-site conditions during the October 2018 site-visit and presented in the submittal, substantiated by the photographs and data summary sheets appear to be clear and straight-forward. The review area is approximately 327 acres and does not present complicated details. The delineated parcel is surrounded by residential development, open fields, farms, railroad tracks and wooded areas. A review of in-house resources, USFWS NWI Maps, USGS Quad Map and NRCS Web Soil Survey indicated mapped potential hydric soils and wetlands in the Northern section of the delineated parcel. All resources reviewed including the delineation report support the determination that Wetlands B, C, D, G, H, I, J and K don't 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 and are not inundated by an A(1)-A(3) water in a typical year. Therefore, wetlands B, C, D, G, H, I, J and K are "excluded" and are not jurisdictional waters of the United States. The remaining waters on the site will be evaluated under a Preliminary Jurisdictional Determination.

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