



**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): 11/4/2020
 ORM Number: LRB-2020-00591
 Associated JDs: N/A
 Review Area Location¹: State/Territory: NY City: Royalton, Lancaster, and Elma
 County/Parish/Borough: Niagara and Erie
 Center Coordinates of Review Area: Latitude 43.10897 Longitude -78.56312

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
Mud Creek	1,000 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Mud Creek is shown as a perennial stream on the USGS topo map, water can be seen in the stream in all aerial photos going back to 1995, regardless of time of year.
S-T01-003	725 linear feet	(a)(2) Perennial tributary	This unnamed tributary to Little Buffalo Creek is shown on the USGS topo map as perennial and was

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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
			contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	determined in the field investigation by the wetland delineators to be perennial.
N/A.	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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
W-T01-003	0.53	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	The wetland directly abuts Stream S-T01-003.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
W-T03-004	0.13	acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of this wetland. 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 any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and the closest stream which is Mud Creek. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The wetland is within the 100-year flood zone, which mean the chance of flooding is 1% in any year. All resources reviewed support the determination that this wetland does not 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
W-T13-006	0.04	acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of this wetland.

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
				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 any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and the closest stream which is Mud Creek. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is 0% in any year. All resources reviewed support the determination that this wetland does not 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
W-T03-006	0.06	acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of this wetland. 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 any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and the closest stream which is Mud Creek. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is 0% in any year. All resources reviewed support the determination that this wetland does not 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
W-T03-005	0.13	acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of this wetland. 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 any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and the closest stream which is Mud Creek. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			The chance of flooding is 0% in any year. All resources reviewed support the determination that this wetland does not 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
S-T03-002	830	linear 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). There is no indication on USGS topo maps or old soil surveys that indicate this was ever a natural stream. Based on aerial photos, it appears this was dug sometime in the late 1930's to drain the farm field to the north. Based on this information, it has been determined this stream was excavated solely from uplands and is excluded.
S-T01-015	100	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. S-T01-015 is an ephemeral roadside ditch that was excavated from dry land (uplands) at the time of road construction.

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 Report for the Empire State Line Project, March 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [The wetland delineation was conducted by Ecology and Environment, Inc. and was submitted with accurate and complete data sheets, photographs, NWI and NYSDEC maps, web soil survey and other supporting information.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Aerial and site photos provided in delieation report](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Niagara and Erie Counties](#)
- USFWS NWI maps: [Niagara and Erie Counties](#)
- USGS topographic maps: [1:24K Wolcottsville and East Aurora](#)

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.



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Data Source (select)	Name and/or date and other relevant information
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
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 (PDSI) and the University of Delaware WebWIMP.

Inputs/Data Sources:

Latitude(s)/Longitude(s): 43.10801, -78.56256
 Observation Date(s): 10/14/2016, 9/18/2018, 5/24/2020
 Geographic Area(s) (Scope): HUC 12 watershed
 Weather Station(s): N Tonawanda and Niagara Falls Intl Airport

Latitude	Longitude	Date	PDSI Value	WebWIMP	APT Result
43.10801	-78.56256	10/14/2016	Incipient Wetness	Wet Season	Normal Conditions
43.10801	-78.56256	9/18/2018	Incipient Wetness	Dry Season	Normal Conditions
43.10801	-78.56256	5/24/2020	Moderate Wetness	Dry Season	Normal Conditions

Conclusion: The wetland delineation was conducted over a few years from 2017 through 2019, so the closest dates available for aerial photos were also looked at and used for input into the APT. Results of the APT evaluation indicate that the data was collected during a wet season and dry seasons with all under normal conditions. Based on this and the information in the wetland delineation report, it is unlikely inundation would occur in a typical year. Thus, wetlands W-T03-004, W-T13-006, W-T03-006, and W-T03-005 do not meet the criteria for adjacency to an a(1)-a(3) water. As stated above, the other resources reviewed support the determination that these wetlands do not directly abut an a(1)-a(3) waters and are not separated from an a(1)-a(3) waters by a natural or man-made feature. Therefore, these wetlands are excluded from jurisdiction. This jurisdictional determination only evaluated the waters listed in Section II above. Other wetlands and streams shown on the wetland delineation maps are not included because no potentially regulated activities are proposed in these waters.

C. Additional comments to support AJD: [N/A or provide additional discussion as appropriate.](#)