



**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): 11/2/2020  
 ORM Number: LRB-2020-00987  
 Associated JDs: NA  
 Review Area Location<sup>1</sup>: State/Territory: New York City: Clarence County/Parish/Borough: Erie  
 Center Coordinates of Review Area: Latitude 43.03206 N Longitude -78.60632 W

**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)<sup>2</sup>**

§ 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): <sup>3</sup>			
(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
Intermittent Tributary to Black Creek	83 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	The Intermittent tributary (Intermittent Tributary to Black Creek) directly abuts Wetland B and flows directly through the Wetland B. On the day of the site visit on September 22, 2020, water was present within the tributary. The Intermittent Tributary is visible on aerial images in years 2020, 2018, 2014 and 2009 and as well as USGS topographical maps USFWS NWI maps and historical aerials. Observations on the day of the site visit and noted in the delineation report indicate that the Intermittent tributary had water in it and it flows from east to west

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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
			through Wetland B for approximately 83 linear feet within the project area and cuts across the northwest corner of the site and has continuous flow through a culvert under Goodrich Road. The USGS and NWI maps show that the Intermittent tributary continues north and empties into Black Creek, a perennial (a)(2) tributary which flows into Lake Erie an (a)(1) water.

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
Wetland B	0.197 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland B is located at the northern portion of the property. It is a small emergent wetland inundated and/or the soil is saturated at or near the soil surface for several weeks in the springtime. Wetland B meets the wetland adjacency criteria in that it is directly abutting the Intermittent Tributary to Black Creek, an (a)(2) water. The Intermittent Tributary to Black Creek flows directly through Wetland B and continues its flow northwest and directly flows into Black Creek, an (a)(2) water, which flows into Lake Erie, an (a)(1) water.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland A	0.023 acre(s)	(b)(1) Non-adjacent wetland.	Wetland A does not meet the definition of an adjacent wetland as the wetland does not meet any of the four adjacency criteria set forth 33CFR328.3 (c)(1) i. Abut, meaning to touch at least on point or side of a water identified in paragraph (a)(1), 2, or 3. As per on site observations, the delineation report and review of aerial imagery, Wetland A is surrounded by uplands on the project sites and doesn't abut any (a)(2) water or the Intermittent Tributary that is located 500 linear feet to the north of Wetland A. There is an Intermittent tributary that is

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			<p>located 70 linear feet offsite to the west and south of the site, but a paved road lies between Wetland A and that Intermittent tributary and there are no connections from Wetland A to that Intermittent Tributary. There is a roadside ditch outside of the project area located to the west. The ditch is not considered a water of the U.S. Review of aerial imagery and historic USGS topo maps do not depict that ditch as modified or relocated tributaries. ii. Are inundated by flooding from a water identified in paragraph (a)(1), (2) or (3) in a typical year. On-site observations indicate that Wetland A isn't inundated by flooding from any nearby (a)(2) water. There was no evidence of flooding such as sediment, debris, wrack lines or scour. Also, several years of aerial imagery do not indicate any visible signs of flooding and FEMA floodmaps depict Wetland A to be outside of the mapped 500-year floodplain and Regulatory floodway. The Websoil Survey data shows that none of mapped soils series located within Wetland A are identified as having no frequency of flooding or ponding. iii Are physically separated from a water identified in paragraph (a)(1), (2), or (3) of this section only by a natural berm, bank, dune, or similar natural feature. There is no evidence of a natural berm, bank dune or similar natural feature iv. There is no evidence that indicates that Wetland A is 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. A culvert is located at the intersection of County Road and Goodrich Road, but Wetland A is 20 linear feet north from the culvert and there is no direct hydrologic surface connection from Wetland A to the culvert. The culvert does allow for flow from the roadside ditch (the ditch isn't a water of the U.S.) to a Tributary that is 70 feet west and south of the project site.</p>

**III. SUPPORTING INFORMATION**



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**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 submitted by Wetlands Investigation Co., Dated JUL2020](#)  
This information is sufficient for purposes of this AJD.  
Rationale: [NA](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial: Google earth aerial imagery 2009, 2014 and 2018](#)
- Corps site visit(s) conducted on: [September 22,2020](#)
- 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: [NRCS Web Soil, Accessed 21OCT2020, Survey,https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx](#)
- USFWS NWI maps: [USFWS National Wetlands Inventory Mapper, Accessed 21OCT2020, https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/](#)
- USGS topographic maps: [USGS 2016 Clarence Center Quadrangle](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">USGS National Map, Accessed 21OCT2020, https://viewer.nationalmap.gov/advanced-viewer/</a>
<a href="#">USDA Sources</a>	N/A.
<a href="#">NOAA Sources</a>	N/A.
<a href="#">USACE Sources</a>	<a href="#">Federal FEMA National Flood Hazard Layer Zones Accessed 21OCT2020</a>
<a href="#">State/Local/Tribal Sources</a>	N/A.
<a href="#">Other Sources</a>	<a href="#">Historical Aerial.com 1958, 1972, 2005 years reviewed Accessed 21OCT2020</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 Delaware WebWIMP

An APT evaluation was run, associated with Google Earth Aerial photos for 2009, 2014 and 2018. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate two years of normal conditions and one year of wetter than normal conditions for the project site. Aerials for all years indicate the presence of water in the Intermittent Tributary to Black Creek onsite. The aerials for all years also suggest no inundation to the subject wetland (Wetland A) from the Intermittent Tributary to Black Creek onsite, or any other a(1)-a(3) waters offsite.



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Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
43.03283	-78.6354	9/22/2018	0.78	Incipient wetness	Wet Season	11	Normal	Conditions
43.03283	-78.6354	6/21/2014	2.98	Moderate wetness	Dry Season	15	Wetter than	Normal
43.03283	-78.6354	5/3/2009	2.3	Moderate wetness	Wet Season	14	Normal	Conditions

- C. Additional comments to support AJD:** Based on an analysis of remote tools including, UGSG current and historical maps, USFWS NWI maps, Erie County Soil Surveys and Aerial Imagery, as well as observations from the site visit conducted on September 22, 2020, the Intermittent Tributary to Black Creek and Wetland B meet the criteria for waters of the U.S under the NWPR and are jurisdictional waters of the U.S. The Intermittent Tributary to Black Creek contributes surface water flow directly or indirectly to an (a)(1) water in a typical year and Wetland B directly abuts an (a)(1)-(a)(3) water. Wetland A is a physically remote isolated wetland and doesn't meet the definition of an (a)(4) wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1) and therefore is an excluded water and not a jurisdictional water of the U.S.