



**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): 12/10/2020

ORM Number: LRB-2001-01573

Associated JDs: N/A.

Review Area Location<sup>1</sup>: State/Territory: New York City: Lewiston County/Parish/Borough: Niagara

Center Coordinates of Review Area: Latitude 43.20820 Longitude -79.01909

**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
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.

<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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**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 1	0.286	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 does not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Wetland 1 was circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from Wetland 1 to any (a)(1-3) water. Wetland 1 is located approximately 2000 LF east of the nearest a(1-3) water (Fourmile Creek). Based on site observations there is no evidence that the nearest a(1-3) water would flood any of the wetland area at least once during a typical year. Also, there are no natural / man made berms or the like located between the a(1-3) water and wetland.

Excluded waters ((b)(1) – (b)(12)): <sup>6</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>7</sup>	Rationale for Exclusion Determination
Wetland 2	0.998	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 2, based on best available evidence does not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Onsite observations indicate that Wetland 2 extends offsite to the south and west. However, access to adjacent parcels was not provided so the entire wetland boundary was not circumnavigated during the site visit. The onsite boundary was walked during the site visit and it was determined that there are no defined channels/tributaries/ditches flowing from Wetland 2 to any (a)(1-3) water. In addition to onsite observations, the National Wetlands Inventory (NWI) indicates that the boundary of Wetland 2 extends offsite. However, the NWI does not show the boundary of Wetland 2

<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.

<sup>6</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>7</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>6</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>7</sup>	Rationale for Exclusion Determination
			extending all the way to the nearest a(1-3) (Fourmile Creek) water. The NWI depicts a clear break between these resources. Furthermore, a review of aerial imagery indicates that several single-family residential houses, along with an access road to the adjacent golf course have been constructed between Wetland 2 and Fourmile Creek. Due to the road access and single-family residences it is expected that Fourmile Creek would not flood any of Wetland 2 at least once during a typical year. Also, it has been determined that there are no natural / man made berms or the like located between the a(1-3) water and wetland. Based on site observations along with the NWI and aerial imagery it has been determined that Wetland 2 is a b(1) excluded water.

**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 and Waterbodies Delineation Report 774-796 Pletcher Road & 4274-4286 Creek Road, Town of Lewiston, Niagara County, New York, prepared for Metzger Civil Engineering, Inc., prepared by Earth Dimensions, LLC, November 2, 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: US Army Corps of Engineers, ORM2, 2019](#)
- Corps site visit(s) conducted on: [November 25, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [Title\(s\) and/or date\(s\)](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [Lewiston, NY](#)
- USGS topographic maps: [Lewiston, NY](#)

**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="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>



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

C. Additional comments to support AJD: [N/A](#).