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): 12/21/2020
ORM Number: LRB-2019-01598
Associated JDs: N/A
Review Area Location[1]: State/Territory: New York City: Lockport County/Parish/Borough: Niagara
Center Coordinates of Review Area: Latitude 43.168294 Longitude -78.667691

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.	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.	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.	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
N/A.	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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Wetland 1	1.45	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 Niagara County, and USFWS NWI maps, Wetland 1 is surrounded by uplands and residential development. The closest (a)(1)-(a)(3) water (Unnamed Tributary to the Erie Canal) is approximately 400 linear feet to the north. In addition, there is a ditch that is adjacent to Wetland 1 but as explained in the excluded ditch category below, the ditch is not a tributary, nor a ditch constructed in wetlands and therefore not a regulated water of the U.S. All evidence indicates that Wetland 1 does not abut 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. Wetland 1 is located within the FEMA 100-year floodzone and Regulatory floodway. However, nothing was observed during the site visit to show evidence of flooding. In addition, aerial imagery does not indicate that Wetland 1 is flooded from an (a)(1)-(a)(3) water in a typical year. 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,

[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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				such as through a culvert, flood or tide gate, pump, or similar artificial feature. Roadways, development and upland areas separate Wetland 1 from the closest (a)(2) water. No outlets were observed in Wetland 1 going away from the wetland to the closest (a)(2) water. There is no evidence of a direct hydrological surface connection through a culvert or similar artificial feature to an (a)(2) water.
Wetland 2	8.62	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 2 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 Niagara County, and USFWS NWI maps, Wetland 2 is surrounded by uplands, residential development and roadways. The closest (a)(1)-(a)(3) water (Unnamed Tributary to the Erie Canal) is approximately 430 linear feet to the north. All evidence indicates that Wetland 2 does not abut 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. Wetland 2 is located within the FEMA 100-year floodzone and Regulatory floodway. However, nothing was observed during the site visit to indicate 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 2 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 2 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

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				artificial feature. A roadway and upland areas separate Wetland 2 from the closest (a)(2) water. No outlets were observed in Wetland 2 going away from the wetland to the closest (a)(2) water. There is no evidence of a direct hydrological surface connection through a culvert or similar artificial feature to an (a)(2) water.
Ditch 1	N/A.	acre(s)	(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).	Based on data contained in the wetland delineation report, site visit observations and a review of remote tools, the ditch isn't an (a)(1) or it's not an (a)2) as the ditch did not relocate a tributary, was not constructed in a tributary, or was not constructed in an adjacent wetland (a)(4). The ditch is situated in a narrow scrub hedgerow in between apartment complex buildings. It appears to have been historically manmade as a means to improve drainage on the site. Based on site visit observations, the ditch has intermittent flow and drains east toward a golf course, where it is presumed to discharge into the unnamed tributary to Erie Canal. A review of remote tools including USGS topographical maps, historical and aerial imagery and soils data show no evidence that the ditch is a tributary or had been a tributary that was relocated or constructed in a wetland. The ditch is considered to be an excluded water.
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 July 2020 submitted by Labella Associates, D.P.C.

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 1995, 2008, 2014, 2018.

☒ Corps site visit(s) conducted on: October 8, 2020

☒ Previous Jurisdictional Determinations (AJDs or PJDs): N/A

☐ Antecedent Precipitation Tool: *provide detailed discussion in Section III.B*.

☒ USDA NRCS Soil Survey: NRCS Websoils Survey Accessed 14DEC2020 https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx

☒ USFWS NWI maps: USFWS National Wetlands Inventory Mapper, Accessed 14DEC2020 https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/

☒ USGS topographic maps: USGS 2016 Lockport 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 2019, 2001, 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 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
43.168294	-78.667691	3/27/1995	-1.26	Mild drought	Wet Season	8	Drier than Normal
43.168294	-78.667691	10/6/2008	2.99	Moderate wetness	Wet Season	12	Normal Conditions
43.168294	-78.667691	6/21/2014	2.98	Moderate wetness	Dry Season	15	Wetter than Normal
43.168294	-78.667691	9/22/2018	0.78	Incipient wetness	Dry Season	11	Normal Conditions

An APT evaluation was run, associated with Google Earth Aerial photos for 1995, 2008, 2014 and 2018. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate normal conditions for years 2008 and 2018, drier than normal for 1995 and wetter than normal for 2014. The aerials for all years suggest no inundation of Wetland 1 and Wetland 2 from the Unnamed Tributary to the Erie Canal.

C. Additional comments to support AJD: Based on the site visit observations on October 8, 2020, data reviewed from the delineation report and a review of remote tools which included aerial photography, soils data and maps, and topographical maps, Wetland 1 and Wetland 2 do not meet the definition of an (a)(4) adjacent wetland as the wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). Ditch 1 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). Therefore Wetland 1, Wetland 2 and Ditch 1 are not jurisdictional waters of the U.S.