



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): December 8, 2020

ORM Number: LRB-2020-00313

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Ogdensburg County: St. Lawrence County

Center Coordinates of Review Area: Latitude 44.696917 Longitude -75.502607

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
Stream 1	700 feet	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act	The St. Lawrence River is identified by Buffalo District as a Federally Navigable Waterway from the head of the River to the Canadian Border. The review area is located on the St. Lawrence River.
Stream 2	775 feet	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act	The Oswegatchie River is identified by Buffalo District as a Federally Navigable Waterway from the mouth of the River at the St. Lawrence River upstream 111.2 miles to the confluence of Cranberry Lake. The review area is located at the mouth of the River.

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
Stream 1	700 feet	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act	The Saint Lawrence River is identified as a Federally Navigable waterway and also is subject to Section 404 of the Clean Water Act.
Stream 2	775 feet	(a)(1) Water is also subject to Sections 9 or 10 of the Rivers and Harbors Act	The Oswegatchie River is identified as a Federally Navigable waterway and also is subject to Section 404 of the Clean Water Act.

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 and 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 independent 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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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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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
Wetland B	0.01 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland B is adjacent to and abuts the Ordinary High Water line of the St. Lawrence River.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.4 acres	(b)(1) Non-adjacent wetland	<p>Wetland A does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) waters are the St. Lawrence River, an (a)(1) water, approximately 175 feet from Wetland A and the Oswegatchie River, an (a)(1) water, approximately 300 feet from Wetland A. Wetland A does not abut the St. Lawrence River or the Oswegatchie River.</p> <p>Wetland A is not inundated by any a(1)-a(3) water during a typical year. There is no evidence to indicate that the St. Lawrence River or the Oswegatchie River inundates any part of Wetland A during a typical year. The St. Lawrence River experienced record high water levels of any year in history on 6/15/2019 and oblique aerial photographs taken on 6/26/2020 at water levels approximately five inches lower show that even during extreme high water, the St. Lawrence and Oswegatchie Rivers do not inundate Wetland A. There is no evidence of Wetland A being inundated during any other year.</p> <p>Wetland A is not separated from an adjacent water by a natural berm or feature. The area on all four sides of Wetland A have been manipulated by grading and development, to include historical development dating back to at least the War of 1812, development as the primary rail depot and port along the St. Lawrence River, and recent development of driveways and walking trails on all sides of Wetland A.</p> <p>Wetland A is separated from potential adjacent waters by manmade features. As stated above, Wetland A is surrounded on all sides by at least two manmade</p>

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			<p>features to include a driveway and walking trails, there is no culvert or other connection that connects Wetland A to any other feature. The current manmade features were recently installed, and there is no record of permits for them or other work on the peninsula. In Oblique photography from ConnectExplorer, dated 6/26/2019, water levels were near an all time high on the St. Lawrence River and the Oswegatchie River, even at these high water levels, there is no direct connection between Wetland A and any other water and Wetland A is separated by manmade features.</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: *Initial Drawing Set and Wetland Delineation Map submitted 02/10/2020 by Chazen Engineering. Full Wetland Delineation Report, revised after the virtual site visit, dated 6/5/2020 by Chazen Engineering.* 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: *Google Earth Pro Aerial Photos dated: 5/13/2014; 9/25/2015; 9/18/2017; and 7/3/2018. Oblique photography from ConnectExplorer dated: 6/26/2019.*
- Corps Site visit(s) conducted on: *Virtual Site Visit conducted on 4/14/2020.*
- 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: *USDA Web Soil Survey (<https://websoilsurvey.nrcs.usda.gov/app/>) Accessed November 10, 2020*
- USFWS NWI maps: *National Wetland Inventory Map (<https://www.fws.gov/wetlands/data/Mapper.html>) accessed November 10, 2020.*
- USGS topographic maps: *Ogdensburg West Quad, USGS 1:24K*

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	N/A.
State/Local/Tribal Sources	NYS Wetland Map (NYSDEC Environmental Resource Mapper website accessed November 10, 2020) https://gisservices.dec.ny.gov/gis/erm/
Other Sources	NOAA Water Gauge water levels for Ogdensburg, NY (https://tidesandcurrents.noaa.gov/waterlevels.html?id=8311030) accessed November 10, 2020.

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B. Typical year assessment(s): N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.

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.

The attached table summarizes the APT results for each aerial photograph reviewed and one site visit. None of the photographs showed any evidence that Wetland A was connected to any other water, and it is notable that all the photographs and the site visit were conducted during normal conditions or wetter than normal conditions. During even the wettest conditions, there is no apparent connection between Wetland A and any other water. On April 14, 2020 a virtual site visit was conducted with the consultant walking the site with the consultant’s wetland scientist while on camera and video conference. The separation between Wetland A and other waters was confirmed and there is no indication of a direct surface water connection over or through the barrier. The APT tool indicated that the conditions were normal for this time of year during the wet season.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
44.69566	-75.5031	5/13/2014	2.79	Moderate wetness	Dry Season	15	Wetter than Normal
44.69566	-75.5031	9/25/2015	1.69	Mild wetness	Wet Season	14	Normal Conditions
44.69566	-75.5031	9/18/2017	2.91	Moderate wetness	Wet Season	12	Normal Conditions
44.69566	-75.5031	7/3/2018	-0.93	Incipient drought	Dry Season	11	Normal Conditions
44.69566	-75.5031	6/26/2019	1.65	Mild wetness	Dry Season	17	Wetter than Normal
44.69566	-75.5031	4/14/2020	-0.51	Incipient drought	Wet Season	12	Normal Conditions

C. Additional comments to support AJD:

The USGS Map (ORM) showed no wetlands at the project site. The NWI wetland map (ORM) shows only the St. Lawrence River and the Oswegatchie River and no other wetland within the review area. The NRCS soils maps show the entire project area to be Udorthents, loamy, which contains 1% hydric components, flooding and ponding frequency as none, and the depth to water table as 122 centimeters. The NYSDEC Environmental Resource Mapper shows no wetlands in the vicinity of the project site. Aerial photographs only show Wetland A in the Oblique photograph from June of 2019 when waters of the St. Lawrence River were near an all-time recorded high levels and the wetland

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was inundated with water with no apparent connection to any other water, but Wetland A is not easily discernable on any other aerial photograph.

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