



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): 16-DEC-2020
ORM Number: LRB-2020-01383 (LeFrois Builders - Paul Road Industrial Park)
Associated JDs: N/A
Review Area Location¹:
State/Territory: NY City: Chili County: Monroe County
Center Coordinates of Review Area: Latitude 43.10074 Longitude -77.71532

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
Tributary A	1000 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Tributary A, the two (2) branches on the delineated parcel, are intermittent tributaries to Black Creek, are indicated on the USGS West Henrietta Quad as a dash/dot blue line which represents an intermittent stream. The tributaries are indicated on the USFWS wetland Mapper and NYSDEC Environmental Resource Mapper. On the DEC mapper it indicates them as Class C Streams, “waters supporting fisheries...”. According to the delineation report, the streams have defined bed/banks and OHW marks. In the delineation report, the consultant states the tributaries display intermittent flow that are 4 feet wide

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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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.

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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			at bottom of the channel and 1-3 feet deep from top of bank to bottom of channels. It was determined the Tributaries are (a)(2) waters because of the intermittent flow, OHW mark and established bed and banks.
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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 A	4.68 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland A continues offsite and is part of NYSDEC Wetland CI-5, a 449 acre State regulated wetland directly abutting a Tributary to Black Creek.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Stormwater Pond	0.22 acres	(b)(4) Diffuse stormwater run-off and directional sheet flow	According to the consultant, BME, the stormwater pond collects water from the surrounding buildings, roads, and parking areas to the north. The pond retains the stormwater and releases the water to the adjacent swale at a certain elevation. The outlet (swale) (342 LF) discharges the water to the South into the surrounding wetlands. The Industrial Park actively maintains the pond/outlet (swale) in accordance to NYSDEC requirements outlined in its permit. The stormwater pond/swale is constructed within a mapped upland soil, Schohaire silt loam (USDA/NRCS Web Soil Survey). Within the delineation report it shows an upland data point was taken within the vicinity of the stormwater pond/swale. The stormwater pond/swale doesn't convey channelized surface flow or serve as a connection between upstream and downstream jurisdictional waters.
Wetland B	0.17 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland B is a scrub-shrub pocket in the center of the site that appears to be a shallow excavated pit. The soil is mapped Schohaire silt loam, non-hydric soil. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of the delineation map and other in-house resources i.e. aerial imagery, topo maps and the NYSDEC environmental resource mapper indicated no drainage patterns coming, going or adjacent to Wetland B. Also, in the delineation report states no tributaries are within the vicinity of the wetland. No other (a)(1) – (a)(3) waters were identified within the vicinity of the wetland during an in-house

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			review. According to the delineation report, 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 (a)(1) – (a)(3) waters. All resources reviewed support the determination that Wetland B doesn't 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.
Wetland C	0.07 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland C is an emergent pocket on the West side of the site that is a depression pocket. The soils are mapped as nonhydric/potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydrophitic vegetation. A review of the delineation map and other an in-house resources i.e. aerial imagery, topo maps and the NYSDEC environmental resource mapper indicated no drainage patterns coming or going to Wetland C. Wetland C is more than 100 feet away from Tributary A to the South. No other (a)(1) – (a)(3) waters were identified within the vicinity of the wetland during an in-house review. According to the delineation report, the wetland is a shallow surface concave depression that collects water from the surrounding uplands and holds it long enough to provide wetland characteristics but does not drain to (a)(1) – (a)(3) waters. All resources reviewed support the determination that Wetland C doesn't 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.

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:
Rationale: Delineation report submitted by BME dated October 2020
- Data sheets prepared by the Corps: *Title(s) and/or date(s)*.
- Photographs: Google Earth, ESRI
- Corps Site visit(s) conducted on: None
- 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/NRCS Web Soil Survey – Accessed Dec 16, 2020
- USFWS NWI maps: USFWS Wetland Mapper – Accessed Dec 16, 2020
- USGS topographic maps: USGS West Henrietta Quad – delineated parcel located

Other data sources used to aid in this determination:

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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	NYSDEC Environmental Resource Mapper (Accessed Dec 16, 2020)
Other Sources	N/A.

- 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.
- C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.

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