



**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): 12/1/2020

ORM Number: LRB-2020-01470

Associated JDs: N/A.

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

Center Coordinates of Review Area: Latitude 43.2176 Longitude -78.3756

**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
Wetland D	0.82 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland D is a depressional area with an approximate watershed size of 3.5 acres. In addition to precipitation, Wetland D also intercepts

<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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Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			<p>groundwater during the late winter to early summer months. During the November 19, 2020 site visit a small amount of surface water was observed, approximately 2-3 inches deep covering approximately 50-75 square feet. The remainder of Wetland D had no surface water. Onsite observations (water lines and moss trimlines) indicate water fills this wetland to a depth of approximately 24-30 inches. CONNECTExplorer aerial imagery from April 22, 2005, May 10, 2016, April 17, 2020 confirmed this conclusion as each image showed Wetland D inundated with water. Onsite observations, aerial imagery, and the small watershed size indicates that Wetland D is seasonally inundated during the time of year when groundwater is closest to the surface – indicating a groundwater influence. While onsite, Wetland D was observed to be bounded on the north by railroad tracks. However, there was a culvert directly connecting Wetland D to an unnamed intermittent tributary which was fed by the culvert and flows north and emptied into the NYS Barge Canal. There was evidence that water flowed through the culvert at least once in a typical year. At the time of the site visit the tributary was dry. However, the CONNECTExplorer aerial images show water present within this tributary. This supports the case that water flows through the railroad culvert once in a typical year, and that this tributary receives groundwater from at least Wetland D and has more than ephemeral flow. To further document this conclusion, the dates for each of the CONNECTExplorer aerial images were analyzed using the Antecedent Precipitation Tool (APT) to determine whether precipitation was above, below, or normal for that time of year. The APT indicates that for the 2005 and 2020 aerial images precipitation was normal and for the 2016 image precipitation was drier than normal. This further supports the case that Wetland D and the offsite tributary are influenced by groundwater and not just precipitation. Aerial imagery dating as far back as 1972 shows the offsite tributary. Therefore, it has been determined that the offsite tributary is an a(2) intermittent tributary and that Wetland D is an abutting a(4) water.</p>



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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
Wetlands A, B and C	2.77, 1.85 and 0.17	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands A, B and C do 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. These wetlands were circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from these wetlands to any (a)(1-3) water. 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 berms or the like located between any a(1-3) water and these wetlands.

Excluded waters ((b)(1) – (b)(12)): <sup>6</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>7</sup>	Rationale for Exclusion Determination
Stormwater Pond	0.28	acre(s)	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	This feature was constructed in for the express purpose of treating stormwater. It is a rectangular-shaped feature located immediately adjacent to an existing industrial building and parking lot. It has a constructed concrete inlet and outlet structures. Furthermore, this feature does not appear in the 1972 aerial image of the area, but then appears, along with the adjacent industrial building and parking lot as currently situated, in aerial imagery starting in 1992. There were no observed stream channels entering nor exiting the structure and none are readily apparent in historic aerials. As such, it has been determined that Tributary B is b(10) excluded stormwater control feature.

**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: [Federal Wetland Delineation Report for Bernz-O-Matic Drive, prepared for B360 Holdings LLC, prepared by BME Associates, October 2020.](#)

<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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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: Historic Aerials.com dated 1972, and CONNECTExplorer, dated:](#)
- Corps site visit(s) conducted on: [November 19, 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: [Medina NY](#)
- USGS topographic maps: [Medina and Knowlesville, NY 7.5 min](#)

**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="#">US Drought Monitor, week of November 24, 2020</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>

**B. Typical year assessment(s):** [The subject parcel's latitude/longitude was entered into the Antecedent Precipitation Tool \(APT\) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps' site visit, and whether the site visit was conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest ten weather stations – Albion, Medina, Medina 0.5 N, Oakfield 6.5 WNW, Lyndonville, Lockport 4 E, Lockport 2.8 ENE, Lockport 0.8 NE, Lockport 1.1 ENE, and N Tonawanda. The APT shows that normal precipitation at the location of the site is between the 30th \(1.7"\) and 70th \(4.3"\) percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 1.7" which is between the 30th and 70th percentiles. Thirty to 60 days prior the APT indicates that precipitation was 4.0" and 60 to 90 days prior precipitation was 3.3" which are both between the 30th and 70th percentiles. Therefore, one to three months prior to the site visit was considered to be normal for that time of year.](#)

[The APT, using a weighted approach, indicates that the site visit was conducted during a period of normal precipitation.](#)

**C. Additional comments to support AJD:** [The offsite a\(2\) tributary flows north for approximately 3000 feet into the New York State Barge Canal, an a\(1\) navigable water.](#)