



**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): 1/21/2021  
 ORM Number: LRB-2018-01177  
 Associated JDs: LRB-2018-01777 PJD, 12/13/2018  
 Review Area Location<sup>1</sup>: State/Territory: NY City: Orchard Park County/Parish/Borough: Erie  
 Center Coordinates of Review Area: Latitude 42.79146 Longitude -78.74426

**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
Smoke Creek/Stream 1	538 linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Smoke Creek is shown as a perennial stream on the USGS topo map.
Smoke Creek/Stream 2	2290 linear feet	(a)(2) Perennial tributary contributes	Smoke Creek is shown as a perennial stream on the USGS topo map.

<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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Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
		surface water flow directly or indirectly to an (a)(1) water in a typical year.	

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 1	0.201 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 directly abuts both sides of Smoke Creek/Stream 1
Wetland 5	2.75 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 5 directly abuts both sides of Smoke Creek/Stream 1
Wetland 7	0.077 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 7 directly abuts Smoke Creek/Stream 1
Wetland 10	0.354 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature.	Wetland 10 directly touches the top of the stream bank of Smoke Creek/Stream 1, which is steep. This natural stream bank is the only feature separating the wetland from the perennial stream.
Wetland 11	0.241 acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 11 continues offsite where it meets and abuts Smoke Creek/Stream 1
Wetland 3	0.160 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature.	Wetland 3 directly touches the top of the stream bank of Smoke Creek/Stream 1, which is steep. This natural stream bank is the only feature separating the wetland from the perennial stream.

**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 2	0.659 acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of Wetland 2. The wetland is a shallow surface concave depression that collects water and holds it long

<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.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			enough to provide wetland characteristics but do not drain to any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and Smoke Creek, nor were any observed during the site visit. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is nearly 0 percent in any year. All resources reviewed support the determination that Wetland 2 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.
Wetland 4	0.663	acre(s)	(b)(1) Non-adjacent wetland.  The delineation indicated no drainages or tributaries are within the vicinity of Wetland 4. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but do not drain to any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and Smoke Creek, nor were any observed during the site visit. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is nearly 0 percent in any year. All resources reviewed support the determination that Wetland 4 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.
Wetland 6	0.027	acre(s)	(b)(1) Non-adjacent wetland.  The delineation indicated no drainages or tributaries are within the vicinity of Wetland 6. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but do not drain to any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			report show no natural or artificial barrier between this wetland and Smoke Creek, nor were any observed during the site visit. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is nearly 0 percent in any year. All resources reviewed support the determination that Wetland 6 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.
Wetland 8	0.164	acre(s)	(b)(1) Non-adjacent wetland. The delineation indicated no drainages or tributaries are within the vicinity of Wetland 8. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but do not drain to any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and Smoke Creek, nor were any observed during the site visit. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is nearly 0 percent in any year. All resources reviewed support the determination that Wetland 8 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.
Wetland 9	0.115	acre(s)	(b)(1) Non-adjacent wetland. The delineation indicated no drainages or tributaries are within the vicinity of Wetland 9. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but do not drain to any (a)(1)-(a)(3) waters. Photos and aerial imagery included within the delineation report show no natural or artificial barrier between this wetland and Smoke Creek, nor



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			were any observed during the site visit. The NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means flooding is not probable. The chance of flooding is nearly 0 percent in any year. All resources reviewed support the determination that Wetland 9 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.

**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 Delineation Report for Rudra Management, submitted in 2018](#)

This information is sufficient for purposes of this AJD.

Rationale: [The wetland delineation was conducted by EDI, Inc. and was submitted with accurate and complete data sheets, photographs, NWI and NYSDEC maps, web soil survey and other supporting information.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Provided in the wetland delineation](#)
- Corps site visit(s) conducted on: [10/15/2018](#)
- 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: [Erie County](#)
- USFWS NWI maps: [Erie County](#)
- USGS topographic maps: [1:24K Orchard Park](#)

**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>

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



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**C. Additional comments to support AJD:** [N/A or provide additional discussion as appropriate.](#)