



**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): 1/27/2021
 ORM Number: LRB-2019-00768
 Associated JDs: N/A
 Review Area Location¹: State/Territory: NY City: Marathon County/Parish/Borough: Cortland
 Center Coordinates of Review Area: Latitude 42.42460 N Longitude -76.02079 W

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
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
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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral Stream 1	370	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	N/A. The ephemeral stream contains pooling or flowing surface water only in direct response to precipitation. The ephemeral nature of the stream was determined by evaluation of historic aerial photographs, photographs taken at the time of the inspection, statements by the landowner and on-site observations by the Corps of Engineers. In addition, Keystone Associates maintained a daily log of stream conditions from July 17, 2020 through December 2, 2020. This included weather information for each day, specifically, the amount of rain/snow fall for each day. The stream originates off-site, approximately 1600 feet to the east and is culverted under Interstate 81 and the Route 11 where it enters the subject property. The stream primarily captures runoff from the highways and hillside which runs downhill from east to west. The portion of the stream (370 linear feet) on the subject property was re-located in 2017-2018 and consists of a combination of piped and open channel. The original channel flowed from the roadside culvert, through the site in an east to west path and then emptied into a combination of agricultural land and wetland. The current flow path has been shifted to the south. There was no visible surface water connection from the stream to any downstream waters either before or after it was relocated. It should be noted that the original channel no longer exists. Therefore, the focus of this investigation/determination with regard to flow regime was on the re-located/piped channel. The culvert under Route 11 is 36-inches in diameter as is the pipe that the landowner installed. The open channel is approximately 6-8 feet in width and no more than 1-2 feet in depth. The new channel was completely dry and contained no vegetation at the time of inspection. No obvious indication of flow was observed. Based on the overall assessment of this stream there is no evidence to support that the stream is intermittent or

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			perennial. Therefore, it has been determined to be ephemeral and therefore excluded (b)(3).

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: [Flow and Precipitation Analysis December 11, 2020](#)

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: Google Earth Pro; 10/2/2017, 5/13/2015, 10/5/2011, 3/31/2006, 3/27/1995 and photos taken on 6/25/2019](#)

Corps site visit(s) conducted on: [July 9, 2019](#)

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](#)

<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx> accessed June 18, 2019

USFWS NWI maps: [USFWS NWI Web Mapper https://www.fws.gov/wetlands/Data/Mapper.html](#) accessed June 18, 2019

USGS topographic maps: [Title\(s\) and/or date\(s\)](#).

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.
CorpsMap ORM Map Layers	USACE ORM Federal USGS 24K Quad Layer Accessed June 25, 2019
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): APT Methodology

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 (PDSI) and the University of Delaware WebWIMP.

An APT evaluation was run, associated with Google Earth Aerial photos for 1995, 2006, 2011, 2015, and 2017 as well



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as initial observation by engineer on 6/24/2019 and representative dates when water was observed in the channel during the flow regime/precipitation analysis; . The evaluation was run for weather stations in the vicinity of the site. Although all sample dates were identified within the West Season, with the exception of one, results indicate a wide range of precipitation conditions with five of dates falling within the Drier than Normal range, two within the Normal range and two within the Wetter range.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
42.4246	-76.02079	6/25/2019	3.96	Severe wetness	Dry Season	17	Wetter than Normal	
42.4246	-76.02079	10/2/2017	-0.04	Normal	Wet Season	8	Drier than Normal	
42.4246	-76.02079	5/13/2015	-1.79	Mild drought	Wet Season	8	Drier than Normal	
42.4246	-76.02079	10/5/2011	7.83	Extreme wetness	Wet Season	16	Wetter than Normal	
42.4246	-76.02079	3/31/2006	1.14	Mild wetness	Wet Season	11	Normal Conditions	
42.4246	-76.02079	3/27/1995	-1.53	Mild drought	Wet Season	8	Drier than Normal	
42.4246	-76.02079	10/30/2020	1.38	Mild wetness	Wet Season	9	Drier than Normal	
42.4246	-76.02079	11/13/2020	0.75	Incipient wetness	Wet Season	9	Drier than Normal	
42.4246	-76.02079	11/28/2020	0.75	Incipient wetness	Wet Season	14	Normal Conditions	

C. Additional comments to support AJD: Wetter than normal conditions existed during the on-site observation on June 25, 2019 and the Google Earth Pro aerial photo dated October 5, 2011. Water was evident during the on-site inspection but not in the aerial photo. However, it should be noted that the on-site inspection was during the dry season while the aerial photo was during the wet season. This does not support that the stream is intermittent or perennial. Water was also observed in the 2006 and 1995 aerial photo which were both taken within the wet season, albeit during normal and drier than normal conditions respectively. The aerial photos from 2017, 2015 and 2011 do not show any water within the channel even though each of those photos were taken within the wet season, with the 2011 photo taken during wetter than normal conditions. The daily analysis provided by Keystone Associates, comparing channel conditions relative to precipitation, indicate that water was observed within the channel 18-days out of 139-days from 7/17/2020 to 12/2/2020.. The 18-days took place within three separate periods; from 10/30-10/31, 11/12-11/17 and 11/23-12/2 Each of those periods was defined by consecutive days of precipitation in the form of rain and/or snow. The October period consisted of 1.15-inches of rain, the November period consisted of 1.48-inches of rain while the November to December event consisted of 1.78-inches of rain and/or snow. It should also be noted that there were 50 additional days where precipitation was recorded without any evidence of water/flow within the channel. Many of these events were during consecutive days with two periods exceeding 1-inch of rain. These findings corroborate the landowner’s contention that the stream channel was primarily dry throughout year except after runoff was collected during/after precipitation events. The analysis provided by Keystone Associates confirms that the channel dries up within a day or two after the precipitation events. indicated that the stream contains water after precipitation events but for no more than 1-2 days. Based on the overall assessment of this stream there is no evidence to support that the stream is intermittent or perennial. Therefore it has been determined to be ephemeral and therefore excluded (b)(3)