



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-JAN-2021

ORM Number: LRB-2020-01133

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: NY City: Grand Island County/Parish/Borough: Erie County

Center Coordinates of Review Area: Latitude 43.05296 Longitude -78.98584

**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
N/A	N/A	N/A	N/A

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<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 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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<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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**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	2.21 acres	(b)(1) Non-adjacent wetland	Wetland 2 is a 2.21 acre PSS flat wetland, located in the northeastern part of the property, with no connection to an a(1)-a(3) water. The wetland potentially extends east off the property. However, based on review of aerial photography, the undeveloped land is bordered by a housing development on the east, with no signs of wetland continuation. Wetland 2 is located over 1,100 feet south of an a(1)-a(3) water (Burnt Ship Creek). The wetland is separated by a maintained right-of-way, with no signs of wetland presence) and a roadway (East-West Park Road). Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 2 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
Wetland 3	1.38 acres	(b)(1) Non-adjacent wetland	Wetland 3 is a 1.38 acre PEM depressional wetland, located in the southwestern section of the property, with no connection to an a(1)-a(3) water. The wetland extends south off of the property and has been mapped. It appears to be limited to the depressional feature. Wetland 3 is located over 1,800 feet south of an a(1)-a(3) water (Burnt Ship Creek). Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 3 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
Wetland 4	0.22 acres	(b)(1) Non-adjacent wetland	Wetland 4 is a 0.22 acre PEM depressional wetland, located in the center of the property, with no connection to an a(1)-a(3) water. Wetland 4 is located over 1,900 feet south of an a(1)-a(3) water (Burnt Ship Creek). Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent

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			chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 4 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
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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: Wetland delineation named "Wetland Delineation Report for Proposed Solar Installation" was conducted by BE3 Corp and was submitted on August 20, 2020 with accurate, complete data sheets, photographs, NWI map, soil survey map with hydric soil information. 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 (2020), ESRI, Eagleview (2010, 2013, 2016, 2020)
- Corps Site visit(s) conducted on: N/A
- Previous Jurisdictional Determinations (AJDs or PJDs): N/A
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Web Soil Survey reviewed.
- USFWS NWI maps: USFWS online map reviewed.
- USGS topographic maps: Tonawanda West, New York Quad; 24k:1

**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	ORM2 maps.
State/Local/Tribal Sources	NYS DEC Environmental Resource Mapper reviewed. No State regulated wetlands present within the vicinity of the delineated parcel.
Other Sources	N/A.

**B. Typical year assessment(s):** 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

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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.

Evaluation of aerial photographs, delineation report and results from the APT indicate that no signs of inundation of the wetlands from a tributary occurred. One of the years evaluated had drier than normal conditions, the rest were under normal conditions, and there was no inundation visible. As noted above, the nearest tributary is over 1,100 feet from the closest delineated wetland.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.05296	-78.98584	7/18/2020	-0.48	Normal	Dry Season	12	Normal Conditions
43.05296	-78.98584	4/17/2020	-0.17	Normal	Wet Season	13	Normal Conditions
43.05296	-78.98584	4/20/2016	-0.83	Incipient drought	Wet Season	11	Normal Conditions
43.05296	-78.98584	4/17/2013	0.24	Normal	Wet Season	13	Normal Conditions
43.05296	-78.98584	11/12/2010	2.27	Moderate wetness	Wet Season	9	Drier than Normal

**C. Additional comments to support AJD:** Evaluation of the on-site conditions as presented in the submittal and substantiated by the photographs and data summary sheets appear to be clear and straight-forward. The review area is approximately 21 acres and does not present complicated details. The delineated parcel is bordered by undeveloped land on the east, the southern border is occupied by commercial developments, western side is bordered by a highway, and the northern side is bordered by a mowed and maintained transmission line ROW. Based on the review of aerial photography, no evidence was found that any wetland continues north through the maintained ROW. All resources reviewed support the determination that Wetlands 2, 3 and 4 do not abut an a(1)-a(3) water, are not inundated by flooding by an a(1)-a(3) water at least once a typical year, are not separated from an a(1)-a(3) water by a natural berm or barrier and are not separated from an a(1)-

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a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year. Therefore, Wetlands 2, 3 and 4 are not jurisdictional waters of the United States.

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