



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): 09-FEB-2021

ORM Number: LRB-2018-00808

Associated JDs: N/A

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

State/Territory: NY City: Clarence County/Parish/Borough: Erie County

Center Coordinates of Review Area: Latitude 42.967717 Longitude -78.667169

**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

<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 and 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 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.

<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.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**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
Stream	350 feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) sub-categories	Stream is an approximately 350-foot-long intermittent stream flowing from the east into the center of the property, where it drains into a sink hole. There is no evidence of the water resurfacing in the surrounding area. The Stream is located over 4,100 linear feet southeast from the nearest a(1)-a(3) water (unnamed tributary to Got Creek). Based on the review of available resources, no evidence was found that this Stream contributes surface water flow to a territorial sea or traditional navigable water downstream in a typical year either directly or indirectly through other tributaries, jurisdictional lakes, ponds, or impoundments, or adjacent wetlands. The Stream does not contribute flow to a jurisdictional water through a channelized non-jurisdictional surface water feature, a subterranean river, a culvert, dam, tunnel, or other similar artificial feature, or through a debris pile, boulder field, or similar natural feature in a typical year.
Wetland A	0.916 acres	(b)(1) Non-adjacent wetland	Wetland A is a 0.916 acre PFO depressional wetland, located in the southwestern part of the property, with no connection to an a(1)-a(3) water. Wetland A is located over 4,000 feet southeast of an a(1)-a(3) water (unnamed tributary to Got Creek). The wetland is separated by a school and several developed streets from the a(1)-a(3) water. 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 aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland A 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 B	4.272 acres	(b)(1) Non-adjacent wetland	Wetland B is a 4.272 acre PFO depressional wetland, located in the northwestern part of the property, with no connection to an a(1)-a(3) water. The wetland potentially extends west off the property. However, based on review of aerial photography, the investigation site is bordered by developed properties with maintained lawns on the west and a school with maintained athletic fields to the north, with no signs of wetland continuation. Wetland B is located over 3,900 feet southeast of an a(1)-a(3) water (unnamed tributary to Got Creek). The wetland is separated by multiple

<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 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.

<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.



U.S. ARMY CORPS OF ENGINEERS  
 REGULATORY PROGRAM  
 APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
 NAVIGABLE WATERS PROTECTION RULE

			roads with developed properties from the a(1)-a(3) water. 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 B 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.
--	--	--	---

**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" conducted by Wetland Investigation Co. and submitted in June of 2018 with accurate, complete data sheets, and photographs.*

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 (2021), ESRI, Eagleview (2010, 2013, 2016, 2018, 2019, 2020).*

Corps Site visit(s) conducted on: *08/14/2018 and 09/01/2020.*

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: *Web Soil Survey reviewed.*

USFWS NWI maps: *USFWS online map reviewed.*

USGS topographic maps: *Lancaster, 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	N/A.
State/Local/Tribal Sources	NYS DEC on-line Environmental Recourse Map reviewed.
Other Sources	ORM2.

<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 and 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 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.

<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.



U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

**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 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 Web WIMP.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.96772	-78.6672	11/8/2010	2.27	Moderate wetness	Wet Season	7	Drier than Normal
42.96772	-78.6672	4/23/2013	0.24	Normal	Wet Season	13	Normal Conditions
42.96772	-78.6672	4/15/2016	-0.83	Incipient drought	Wet Season	13	Normal Conditions
42.96772	-78.6672	6/1/2018	1.91	Mild wetness	Dry Season	13	Normal Conditions
42.96772	-78.6672	8/14/2018	1.32	Mild wetness	Dry Season	11	Normal Conditions
42.96772	-78.6672	11/21/2019	3.12	Severe wetness	Wet Season	16	Wetter than Normal
42.96772	-78.6672	5/2/2020	-0.2	Normal	Wet Season	12	Normal Conditions
42.96772	-78.6672	9/1/2020	-1.33	Mild drought	Wet Season	10	Normal Conditions

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 wetter than normal conditions, 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 3,900 feet from the closest delineated wetland.

**C. Additional comments to support AJD:** N/A.

<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 and 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 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.

<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.