



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): February 26, 2021

ORM Number: LRB-2020-01377

Associated JDs: N/A

Review Area Location¹:

State/Territory: New York Town: Niles County: Cayuga County

Center Coordinates of Review Area: Latitude 42.813333 Longitude -76.341389

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

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² 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.

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 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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Drainage 1	200 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	<p>At the time the ditch was constructed, the ditch did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland.</p> <p>The ditch can be seen in aerial photographs dating back to at least 6/21/1957 and originates as a roadside ditch upstream of the review area. The ditch is obscured by tree cover in some aeriels, but after a storm in 2017 knocked over a tree seen in the aerial, the ditch can clearly be seen in the 2017 and 2019 aerial photographs. During the Corps of Engineer site visit on October 13, 2020, the ditch was dry with a gravel substrate and located within upland soils.</p> <p>The ditch is not evident on any resources other than aerial photography. The ditch was constructed in three soil types with a hydric rating ranging from 0% to 1%. There are no indicators of any wetland characteristics adjacent to the ditch based on the Corps of Engineer site visit conducted on October 13, 2020. This supports the determination that the ditch was not constructed in an a(4) wetland.</p> <p>All resources reviewed support the determination that Drainage 1 is a ditch that was constructed in upland and is not a relocated or altered tributary.</p>
Drainage 2	200 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	<p>At the time the ditch was constructed, the ditch did not relocate a tributary, was not constructed in a tributary, and was not constructed in an adjacent wetland.</p> <p>The ditch can be seen in aerial photographs dating back to at least 6/21/1957 and originates as a roadside ditch upstream of the review area. During the Corps of Engineer site visit on October 13, 2020, the ditch was dry with a gravel substrate and located within upland soils.</p> <p>The ditch is not evident on any resources other than aerial photography. The ditch was constructed in one soil type with a hydric rating 1%. There are no indicators of any wetland characteristics adjacent to the ditch based on the Corps of Engineer site visit conducted on October 13, 2020. This supports the determination that the ditch was not constructed in an a(4) wetland.</p> <p>All resources reviewed support the determination that Drainage 2 is a ditch that was constructed in upland</p>

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			and is not a relocated or altered tributary.
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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: *Application for permit submitted to the Corps of Engineers on October 9, 2020.*
This information is not sufficient for purposes of this AJD.
Rationale: *The information submitted did not include a full delineation, but after a preliminary review of the application, the NYS Department of Environmental Conservation (the applicant) thought that the project might not include jurisdictional waters. A site visit was conducted which confirmed that there were no wetlands on site (see Section C for additional site visit information), and that the two drainages are man-made ditches.*
- Data sheet prepared by the Corps: *Upland Data Sheet from Corps Site Visit dated 10/13/2020.*
- Photographs: *6/21/1957 aerial photography retrieved from <https://earthexplorer.usgs.gov/>; Google Earth Pro Aerial Photography dated: 3/27/1995; 3/28/2006; 5/28/2015; 4/13/2017; & 10/10/2019.*
- Corps Site visit(s) conducted on: *10/13/2020, See Section C for details.*
- 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 Online Soil map, retrieved from <https://websoilsurvey.sc.egov.usda.gov/app/HomePage.htm>*
- USFWS NWI maps: *USFWS NWI Online mapper, retrieved from <https://www.fws.gov/wetlands/data/Mapper.html>*
- USGS topographic maps: *Spafford Quad 1:24k*

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	National Hydrography Dataset retrieved from https://apps.nationalmap.gov/viewer/
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): Although several point-in-time resources were evaluated for this review, they were used to assess if the drainages were relocated or altered tributaries only. All resources reviewed support that the drainages are excluded as b(5) waters which only require the feature to

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have been constructed in upland and that the feature is not a relocated or altered tributary. This determination did not require a typical year assessment.

- C. Additional comments to support AJD:** During the Corps of Engineer site visit, conducted on 10/13/2020, both features were walked and were completely dry and consisted of gravelly substrate. The channel of drainage 1 is defined after exiting the culvert under the road but becomes diffuse and appears to travel through pile of gravel and silt before exiting the site. The applicant explained that a large storm event had occurred in late 2016 which had uprooted trees and deposited gravel, silt, and debris. The trees and debris have been removed, but the accumulated gravel and silt was still located within the drainage. Drainage 2 was difficult to find due to the heavy plant coverage, to include plants growing within the channel, but is approximately 1 foot wide and well defined. The presence of live plants rooted within the channel suggest that the drainageway does not flow during most of the growing season. The entire review area slopes away from the road and towards Bear Swamp Creek, which is in a ravine approximately 100 feet to the north of the review area. A data point was taken within the lowest point of the review area near drainage 2, the results of the data point concluded that there are no wetlands within the review area. There were no hydrology indicators present outside of the two drainageways, the plant community consisted of upland or facultative upland plants only, and soils were confirmed to be upland soils. Based on the site visit, both drainage features were constructed in upland soils and are not relocated tributaries.

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