



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): March 9, 2021

ORM Number: LRB-2020-00877

Associated JDs: LRB-2011-00623

Review Area Location¹:

State/Territory: NY City: Ontario County: Wayne County

Center Coordinates of Review Area: Latitude 43.226787 Longitude -77.359097

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
Drainageway 1	538 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Drainageway 1 appears as a perennial stream flowing from south to north through the review area on USGS maps dating back to 1900. The tributary appears on maps from 1900 and 2016 but is absent on 1979 maps. The tributary is also represented on the 2019 USGS Online National Map as a perennial stream, on NHD data from 3/17/2012 as a perennial stream flowing north, and on the USFWS NWI maps as an ephemeral (Cowardin Class R5) stream. The stream does not appear on any other resource map. The stream can be seen on aerial photography dating back to 1960. Based on maps and aerial photos, the stream contributes flow

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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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			<p>to an impoundment and in turn contributes flow to Fourmile Creek which empties directly into Lake Ontario, a Federally Navigable a(1) waterway.</p> <p>The drainageway has been relocated, altered, excavated, and maintained as a drainage ditch in the past, but as a relocated or altered stream, the drainageway is regulated provided it meets the flow regime required for it to be considered an intermittent or perennial stream.</p> <p>A preliminary Jurisdictional Determination was completed by the Corps of Engineers on 7/25/2011. The delineation from 2011 separated the two drainages differently than this delineation but both drainages were identified as intermittent tributaries by the delineators. The Corps of Engineers annotated that the drainages were perennial and/or intermittent on the preliminary JD form. The prior determination confirms the intermittent nature of the feature. The stream was identified as an intermittent feature by different delineators again in 2020, even though it did not contain water during the delineation.</p> <p>Flow regime was determined primarily by a review of aerial photography. Based on the reviewed aerial photography, the stream channel has water in it during late winter and early spring months but normally stops flowing during June of most years. The APT was run (results are included below) for nine reference dates, which include seven aerial photos, the delineation date, and the date of a site visit by the Corps of Engineers. Five of the nine dates were considered normal conditions and water is present only during late winter and early spring and the channel is dry during summer months. Three of the nine dates had wetter than normal conditions, the most important date for the determination of flow regime is the aerial photo dated 7/19/2015, this photograph was taken during wetter than normal conditions during the normal dry season. In the 7/19/2015 photograph very little water can be seen in the channel even with the wet conditions This helps to confirm the intermittent nature of the tributary. Aerial photos were reviewed from four different years and all photos taken during the spring have evidence of water which demonstrates that the tributary contributes downstream flow in a typical year.</p> <p>Based on available resources, Drainageway 1 is an intermittent tributary that contributes downstream flow to an a(1) water in a typical year.</p>
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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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Drainageway 2	458 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>Drainageway 2 does not appear on any resources except for aerial photography, which helps support that the ditch is not a relocated tributary.</p> <p>The ditch was constructed before 1960 and can be seen in aerial photographs as a small agricultural ditch that follows a tree line and property line. Based on aerial photographs, sometime between 1994 and 2005 the ditch was enlarged and deepened to handle an increase in storm water runoff from development to the east of the review area. During a site visit by the Corps of Engineers on August 13, 2020 there was standing water in sections of Drainageway 2 that are likely due to irregularly digging out sections of the drainageway during maintenance, resulting in numerous low spots. There is evidence of spoil piles near the drainageway and in other locations on the property, which supports the determination that the drainageway is a constructed feature.</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 10. There are no indicators of any wetland characteristics adjacent to the ditch based on the Corps of Engineer site visit conducted on August 13, 2020. This supports the determination that the ditch was not constructed in an a(4) wetland.</p> <p>Based on the same flow regime resources reviewed for Drainageway 1, Drainageway 2 is an intermittent feature, but cannot be considered an a(1) - a(4) waterway due to the b(5) exclusion for ditches, so the feature is not also a b(1) exclusion.</p> <p>All resources reviewed support the determination that Drainageway 2 is a ditch that was constructed in upland and is not a relocated or altered tributary.</p>
Wetland 1	0.06 acres	(b)(1) Non-adjacent wetland	Wetland 1 does not abut any (a)(1)-(a)(3) water. The

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			<p>nearest (a)(1)-(a)(3) water is Drainageway 1, more than 400 feet from Wetland 1. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 1 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 1 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 1 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland 1 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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland 2	0.02 acres	(b)(1) Non-adjacent wetland	<p>Wetland 2 does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) water is Drainageway 1, more than 300 feet from Wetland 1. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 2 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 2 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 2 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once</p>

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			<p>in a typical year.</p> <p>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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland 3	0.02 acres	(b)(1) Non-adjacent wetland	<p>Wetland 3 does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) water is Drainageway 1, more than 30 feet from Wetland 3. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 3 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 3 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 3 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland 3 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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland 4	0.02 acres	(b)(1) Non-adjacent wetland	<p>Wetland 4 does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) water is Drainageway 1, more than 400 feet from Wetland 4. Wetland 4 does extend out of the review area by approximately 10 feet, but during a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 4 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is</p>

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			<p>no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 4 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 4 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland 5	0.09 acres	(b)(1) Non-adjacent wetland	<p>Wetland 5 does not abut any a(1)-(a)(3) water. The nearest a(1)-(a)(3) water is Drainageway 1, more than 25 feet from Wetland 5. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 5 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 5 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 5 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland 5 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 a man-made barrier which has an engineered feature that allows water exchange at least</p>

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Wetland 6	0.27 acres	(b)(1) Non-adjacent wetland	<p>once in a typical year.</p> <p>Wetland 6 does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) water is Drainageway 1, more than 300 feet from Wetland 6. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water within the review area. Wetland 6 does extend to the east, outside of the review area, but there are no potential for Wetland 6 to abut an a(1)-a(3) waters to the east of the wetland before being separated by multiple manmade features and upland.</p> <p>Wetland 6 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 6 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 6 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland 7	0.05 acres	(b)(1) Non-adjacent wetland	<p>Wetland 7 does not abut any (a)(1)-(a)(3) water. The nearest (a)(1)-(a)(3) water is Drainageway 1, more than 30 feet from Wetland 7. During a site visit on August 13, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 7 is not inundated by any a(1)-a(3) water during a typical year. Based on a review of aerial photography, on-site visits, and the delineation, there is no evidence of Wetland 1 being inundated during any year by any water.</p> <p>Wetland 7 is not separated from an adjacent water by a natural berm or feature. Wetland 1 is a depressional feature surrounded by upland with no natural berm or</p>

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		<p>feature that separates it from an adjacent water.</p> <p>Wetland 7 is separated from the nearest a(1) – a(3) water by uplands, it is not separated from Drainageway 1, an a(2) water by any artificial feature and there are no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland 7 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 a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
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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 Report 360 Timothy Lane, dated June 2020.*

This information *is and is not* sufficient for purposes of this AJD.

Rationale: *The information in the delineation report included interpretations of previous rules for determining waters of the US. The wetland boundaries were accurate and confirmed at a site visit conducted by the Corps.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *Historical Aerial Photography retrieved from: <https://earthexplorer.usgs.gov/> dated: 5/6/1960; 6/9/1969; 5/7/1971. Google Earth Pro Aerial Photography dated: 6/21/2014; 7/19/2015; 4/19/2016; 6/28/2018. ConnectExplorer Oblique Photography dated: 2/15/2015; 4/22/2018.*

Corps Site visit(s) conducted on: *August 13, 2020*

Previous Jurisdictional Determinations (AJDs or PJDs): *PJD for LRB 2011-00623 dated 7/25/2011*

Antecedent Precipitation Tool: *see Section III.B.*

USDA NRCS Soil Survey: *NRCS Online Soil Mapper retrieved from <https://websoilsurvey.sc.egov.usda.gov/app/HomePage.htm>*

USFWS NWI maps: *USFWS NWI Online Map retrieved from <https://www.fws.gov/wetlands/data/Mapper.html>*

USGS topographic maps: *USGS 1900 1:62500K Macedon Quad; USGS 1979 edition 1:24K Ontario Quad; USGS 2016 1:24K Ontario Quad; USGS Online - The National Map retrieved from <https://apps.nationalmap.gov/viewer/>*

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 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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Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS NHD Data	Data retrieved from The National Map at https://apps.nationalmap.gov/viewer/ , which shows Drainageway 1 as a Perennial Stream. Drainageway 2 is not present. NHD data is dated 3/7/2012.
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):

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 WebWIMP.

The attached table summarizes the APT results for each aerial photograph reviewed and site visits by the consultant. This information is referenced above.

Evaluated dates include: Google Earth Aerial photos for 2014, 2015, 2016, 2018; ConnectExplorer oblique photos for 2015 and 2018; the date of delineation in June 2020; and the date of the site visit conducted by the Corps of Engineers in August 2020. Results indicate various conditions: five dates with normal conditions, one date with drier than normal conditions, and two dates with wetter than normal conditions. Water is present in the channel in all three photos taken during the wet season in winter and early spring months. Water is not present in either channel during the dry season for two photos and was not present during either the delineation or site visit all occurring in June through August, although there was some standing water in drainageway 2 during the site visit due to the irregularly constructed bottom. The only exception is the aerial photograph taken during July 2015 during wetter than normal conditions, a small amount of water can be seen in the channels. The lack of water during dry months and presence of water during wet months help demonstrate the intermittent nature of the features. Aerials for all years support that there is no inundation to or from any wetland in a typical year.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.22679	-77.3591	6/21/2014	2.98	Moderate wetness	Dry Season	11	Normal Conditions

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43.22679	-77.3591	2/15/2015	-0.58	Incipient drought	Wet Season	10	Normal Conditions
43.22679	-77.3591	7/19/2015	1.7	Mild wetness	Dry Season	17	Wetter than Normal
43.22679	-77.3591	4/19/2016	-0.83	Incipient drought	Wet Season	10	Normal Conditions
43.22679	-77.3591	4/22/2018	3.58	Severe wetness	Wet Season	15	Wetter than Normal
43.22679	-77.3591	6/28/2018	1.91	Mild wetness	Dry Season	13	Normal Conditions
43.22679	-77.3591	6/17/2020	-0.79	Incipient drought	Dry Season	9	Drier than Normal
43.22679	-77.3591	8/13/2020	-0.6	Incipient drought	Dry Season	14	Normal Conditions

- C. Additional comments to support AJD:** Historical photos from 1960, 1969, and 1971 were not included in the APT, but were used to evaluate historic conditions, specifically, to determine if the drainageways were relocated tributaries.

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