



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): 18-MAR-2021  
ORM Number: LRB-2020-01276 (Thomas Johnson Realty (0 Ellicott Road))  
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)  
Review Area Location<sup>1</sup>:  
State/Territory: NY City: Orchard Park County/Parish/Borough: Erie County  
Center Coordinates of Review Area: Latitude 42.79514 Longitude -78.73469

**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
Wetland 1	0.07 acres	(b)(1) Non-adjacent wetland	A review of the delineation report and NRCS/Web Soil survey indicate the soils are mapped mostly non-hydric with pockets of hydric and potential hydric soils. Also, the delineation indicated the parcel has a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland 1. A review of aerial imagery, Eagle Eye Viewer and Google Earth, indicate no A(1)-A(3) waters or other drainageways directly abutting or adjacent to Wetland 1. The USGS Quad (Colden), USFWS Wetland mapper and NYSDEC Environmental Resource Mapper indicate no streams within the vicinity of the delineated parcel or Wetland 1. Neuman Creek and the South Branch of Smokes Creek, possible A(2) waters, were identified on the USGS Quad and NYSDEC Environmental Resource mapper and are approximately more than 1100-2,000 linear feet to the East and South of Wetland 1. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 1 and A(1) – A(3) waters were found during an in-house review of available resources. It appears the wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 1 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.
Wetland 2	0.04 acres	(b)(1) Non-adjacent wetland	A review of the delineation report and NRCS/Web Soil survey indicate the soils are mapped mostly non-hydric with pockets of hydric and potential hydric soils. Also, the delineation indicated the parcel has a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland 2. A review of aerial imagery, Eagle Eye Viewer and Google Earth, indicate no A(1)-A(3) waters or other drainageways directly abutting or adjacent to Wetland 2. The USGS Quad (Colden), USFWS Wetland mapper and NYSDEC Environmental Resource Mapper indicate no streams within the vicinity of the delineated parcel or Wetland 2. Neuman Creek and the South

<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

			<p>Branch of Smokes Creek, possible A(2) waters, were identified on the USGS Quad and NYSDEC Environmental Resource mapper and are approximately more than 1300-1900 linear feet to the East and South of Wetland 2. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 2 and A(1) – A(3) waters were found during an in-house review of available resources. It appears the wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "...flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 2 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.</p>
Wetland 4	0.02 acres	(b)(1) Non-adjacent wetland	<p>A review of the delineation report and NRCS/Web Soil survey indicate the soils are mapped mostly non-hydric with pockets of hydric and potential hydric soils. Also, the delineation indicated the parcel has a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland 4. A review of aerial imagery, Eagle Eye Viewer and Google Earth, indicate no A(1)-A(3) waters or other drainageways directly abutting or adjacent to Wetland 4. The USGS Quad (Colden), USFWS Wetland mapper and NYSDEC Environmental Resource Mapper indicate no streams within the vicinity of the delineated parcel or Wetland 4. Neuman Creek and the South Branch of Smokes Creek, possible A(2) waters, were identified on the USGS Quad and NYSDEC Environmental Resource mapper and are approximately more than 550-2800 linear feet to the East and South of Wetland 4. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 4 and A(1) – A(3) waters were found during an in-house review of available resources. It appears the wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "...flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 4 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not</p>

<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

Wetland 5	0.15 acres	(b)(1) Non-adjacent wetland	<p>adjacent to an A(1)-A(3) waters.</p> <p>A review of the delineation report and NRCS/Web Soil survey indicate the soils are mapped mostly non-hydric with pockets of hydric and potential hydric soils. Also, the delineation indicated the parcel has a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from Wetland 5. A review of aerial imagery, Eagle Eye Viewer and Google Earth, indicate no A(1)-A(3) waters or other drainageways directly abutting or adjacent to Wetland 5. The USGS Quad (Colden), USFWS Wetland mapper and NYSDEC Environmental Resource Mapper indicate no streams within the vicinity of the delineated parcel or Wetland 5. Neuman Creek and the South Branch of Smokes Creek, possible A(2) waters, were identified on the USGS Quad and NYSDEC Environmental Resource mapper and are approximately more than 775-2850 linear feet to the East and South of Wetland 5. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 5 and A(1) – A(3) waters were found during an in-house review of available resources. It appears the wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 5 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.</p>
-----------	------------	-----------------------------	--

**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: *Delineation report submitted on behalf of Thomas Johnson Realty by EDI dated September 9, 2020.* This information is sufficient for purposes of this AJD.

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

Photographs: Photographs included with the delineation report and additional information; Google Earth; ESRI

Corps Site visit(s) conducted on: *Date(s).*

Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

<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

- USDA NRCS Soil Survey: *NRCS/USDA Web Soil Survey accessed March 24, 2021*
- USFWS NWI maps: *USFWS Wetland Mapper accessed March 24, 2021*
- USGS topographic maps: *USGS Colden Quad reviewed; delineated parcel located*

**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	ORM Maps accessed March 24, 2021
State/Local/Tribal Sources	NYSDEC Freshwater Wetland Maps – no State regulated wetlands are within the vicinity of the delineated parcel – Accessed March 24, 2021
Other Sources	N/A.

- B. Typical year assessment(s):** N/A
- C. Additional comments to support AJD:** Please note, Wetland 3 will be reviewed under a PJD.

<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.