



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): **8 MAR 2021**  
 ORM Number: **LRB-2020-01486**  
 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: County/Parish/Borough: **Niagara County**  
 Center Coordinates of Review Area: Latitude **43.21034** Longitude **-78.98598**

**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
Ditch 1	1032 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The delineation report stated this feature flowed northerly along the western edge of the property and identified the feature as an intermittent tributary to Fourmile Creek.  Historical topography maps ( <a href="http://www.historicalaerials.com">www.historicalaerials.com</a> ) (years 1897 and 1925) show a “blue line” labeled as Sixmile Creek in the location of this feature. Sixmile creek flows north into Lake Ontario (Section 10 RHA water). However, Stream Stats (USGS website) and historical aerials (1958 to present) show an open feature flowing north that connects to an unnamed

<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

			<p>tributary of Fourmile Creek. This unnamed trib then flows to the northwest and into Fourmile Creek, which ultimately flows north into Lake Ontario at Fourmile Creek State Park. Ditch 1 and all downstream tributaries before they connect into Fourmile Creek appear channelized.</p> <p>The 1938 aerial photo in the 2009 Niagara Falls Storage Site Historical Photos Analysis Report (NFSS HPA) and 1938 aerial photo in the Niagara County GIS (website) shows the property was farmed prior to development. It appears there is a tributary in the location of the feature (NFSS HPA Photo 25 SEP 1938: APT Condition – Wetter Than Normal, PDSI Class – Mild wetness). The 1938 aerial photo from the Niagara County GIS (date unknown) appears to show channel in the area of the feature that extends from the property south of Pletcher Road, north through the subject property, to the property to the north. The 1942 aerial photo of the 2009 NFSS HPA shows a channelized open tributary in the location of the feature extending from Pletcher Road north to the northern property line (APT Condition – Normal Conditions, PDSI Class - Normal). Aerial photos between 1944 and 1985 do not show an open channel in the location of the feature. However, the NFSS HPA contains a map showing “Major Utility” Lines” and depicted a “pipe” in the location of the feature. In considering this information and the historical aerial photos, it appears there was a culvert installed in the location of the feature between 1942 and 1944 that carried water from under Pletcher Road north to the channelized tributary that flows off the property. Aerial photos in years 1958, 1963, 1966, and 1972 (historicalaerials.com) confirm there is no open feature in the location of Ditch 1, however there is a linear signature that likely is the reclaimed area of the culvert installation.</p> <p>In the 1990 aerial photo of the NFSS HPA, the property appeared to be highly disturbed and the location of the feature appears disturbed as well. All historical aerial photos “with leaf-off” show an open channel in the location of the feature (Google Earth - 7 NOV 2002, 19 APR 2006, 6 OCT 2008, 17 APR 2017; Connect Explorer – APR-May 2013).</p> <p>The NFSS HPA also contained a map of drainages that depicts a “man-made ditch” in the location of the feature between 1938 and 2005.</p> <p>During the 18 NOV 2020 Corps inspection (APT Condition – Drier than Normal, PDSI Class – Mild drought), surface water was observed in the channel</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 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>flowing to the north off the site. In the days leading up to the inspection, the area did receive measurable rainfall. The on-site channel dimensions of Ditch 1 were observed to be approximately eight feet wide by six inches deep during the inspection.</p> <p>Based on the dimensions of the flowing water in the feature during Corps and Consultant field inspections and as can be viewed in historical aerials, the resources provide strong indication that the downstream tributaries are perennial and classified as (a)(2) waters that ultimately connect to Lake Ontario.</p> <p>The historic resources indicate this was Sixmile Creek that flowed to Lake Ontario. And since surface water flow was observed during a "drier than normal" period, it has been determined by this office that this feature has intermittent flow and an (a)(2) water.</p>
--	--	--	--

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))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ditch 2	826 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>The NFSS HPA contains a map that shows the feature was a "man-made ditch" sometime between 1938 (predevelopment) and 2005.</p> <p>The 1938 NFSS HPA aerial (APT – Wetter than Normal, PDSI Class – Mild wetness) shows a farm road in the location of the feature. Since the area was wetter than normal during the time of this photo and a saturated signature was not located, it appears this area was upland and no channel existed. In addition, the 1938 Niagara County GIS aerial photo (date unknown) also confirms a road in the location of the feature. The property was developed in the 1942 aerial (APT – Normal Conditions, PDSI Class – Normal) and a channel appears in the north portion of the property. This channel (in the northern portion of the property) can be clearly viewed in the 1944 aerial (APT – Normal Conditions, PDSI Class – Normal), 1956 aerial (APT – Wetter than Normal, PDSI Class – Moderate wetness) aerials, and 1990 aerial (APT – Wetter than Normal,</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 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>PDSI Class – Mild wetness). The feature is not present in the 1985 aerial (APT – Drier than Normal, PDSI Class – Mild Drought), but this is consistent since the area was experiencing a drought.</p> <p>No tributaries were present in the historical topographical maps in years 1897 and 1925 (<a href="http://www.historicalaerials.com">www.historicalaerials.com</a>). Stream Stats (USGS) mapped a tributary that begins where the feature is located as viewed in the 1944 and 1956 aerial photos and indicates it flows into an unnamed tributary to Fourmile Creek, and ultimately to Lake Ontario (Section 10 RHA).</p> <p>The channel appears to have been extended to the south approx. 500 feet as shown in the Google Earth 7 NOV 2002 aerial photo between 1995 and 2002 and the culvert was installed under the road (coming from the east). The channel appears consistent with all later Google Earth photos (2002 to present), Connect Explorer 2013 aerial photos, and with the results of the delineation report.</p> <p>During the field inspection on 18 NOV 2020 (APT Condition – Drier than Normal), no pooling or surface water flow was observed in the channel, even though the area received measurable rainfall in the weeks leading up to the visit. While the APT rated this area as “drier than normal”, the precipitation was within the 30-day normal range. In addition, the consultant described this feature in the delineation report as an “ephemeral channel” during their 23 OCT 2020 field reconnaissance (APT – Drier than Normal, PDSI Class – Incipient drought). The APT information for the consultant’s inspection date revealed that the area received approximately one inch of rainfall in the days leading up to the consultant’s inspection.</p> <p>The channelized feature does have a surface water connection to the ditch off the site to the north. However, based on the 1938 aerial photographs, there was no aquatic feature located in the area. Based on this information, this office has determined the feature was a ditch constructed in uplands and not an (a)(1) or (a)(2) water. Therefore, it is not a Water of the United States and excluded under (b)(5).</p>
Ditch 3	490 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>No tributaries were present in the historical topographical maps in the predevelopment years of 1897 and 1925 (<a href="http://www.historicalaerials.com">www.historicalaerials.com</a>).</p> <p>A “drainage” was not mapped on the historical drainage map in the NFSS HPA report. The 1938 NFSS HPA aerial (APT – Wetter than Normal, PDSI Class – Mild</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 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>wetness) and 1938 Niagara County GIS aerial photo (date unknown) shows a “dark line” in the location of the feature. However, the resolution of the photo prevents a determination to be made on if a channel was located.</p> <p>Considering recent “leaf off” aerial photographs the channel often does not appear to either be defined or have saturation during drier, normal, and mild wet conditions, Google Earth Photos dated 7 NOV 2002 (APT – Normal Conditions, PDSI Class – Mild Drought), 4 MAY 2013 (APT – Normal Conditions, PDSI – Normal) and 6 OCT 2008 (APT – Normal Conditions, PDSI Class – Moderate Wetness). The only aerial photo showing saturation was under “wetter than normal” precipitation conditions, Photo 17 APR 2017 (APT – Wetter than Normal, PDSI Class – Mild wetness). This information suggests under normal precipitation the channel is typically not saturated or have flow.</p> <p>During the Corps field inspection on 18 NOV 2020 (APT Condition – Drier than Normal), no flow or saturation was observed in the channel, even though the area had received measurable rainfall in the weeks leading up to the visit. While the APT rated this area as “drier than normal”, the precipitation was within the 30-day normal range. In addition, during the consultant’s wetland delineation field work on 23 OCT 2020, they observed “no apparent flow” in the channel, while the area received approximately one inch of rainfall in the days leading up to their inspection.</p> <p>Currently, this channel is connected to a culvert (approx. 18” in diameter) to the north under a small gravel road on the Niagara Falls Storage Site (18 NOV 2020 Inspection Photo 5). However, the culvert is approximately 80% plugged with sediment and it is unclear if water can flow into the culvert in a typical year from the feature.</p> <p>Based on review of historical resources, there is no evidence that a stream channel existed in the location of the feature. Based on this information, this office has determined the feature was a ditch constructed in uplands and not an (a)(1) or (a)(2) water. Therefore, it is not a Water of the United States and excluded under (b)(5).</p>
Wetland W1	0.14 acres	(b)(1) Non-adjacent wetland	<p>During the field inspection, no drainages or tributaries were located within the vicinity of Wetland W1. The wetland is a shallow surface concave depression that collects water and retains long enough to develop wetland characteristics but does not outlet to any (a)(1)-</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 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>(a)(3) waters. The nearest tributary (Ditch 1) is approximately 180 feet to the west. The feature appears to have been created from historical grading as can be seen in aerial photos of the area. There is an earthen berm in between Ditch 1 and Wetland W1. In addition, during a time of severe wetness, the 2009 Google Earth aerial photo does not show any saturation, inundation, or any tributaries flowing from the area to Ditch 1 or 2 (APT Condition – Wetter than Normal; PDSI Class – Severe wetness). It appears this feature is a result of historical grading and does not connect to a tributary.</p> <p>The Corps site inspection confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. In addition, the feature does not become inundated by flooding from Ditch 1 [nearest (a)(2) water] in a typical year, since there is a large man-created berm located immediately to the west of the feature. There is no natural berm, bank, or dune separating the feature from Ditch 1. The man-created berm to the west does not allow for a direct hydrologic surface water connection between the feature and Ditch 1 in a typical year (i.e. no culvert). It should be noted there was no culvert under Pletcher Road that would connect the feature to any ditches south of the road.</p>
Wetland W2	0.08 acres	(b)(1) Non-adjacent wetland	<p>During the field inspection, no drainages or tributaries were located within the vicinity of Wetland W2. The wetland is a shallow surface concave depression that collects water and retains long enough to develop wetland characteristics but does not outlet to any (a)(1)-(a)(3) waters. The nearest (a)(2) water (Ditch 1) is approximately 800+ feet to the west. The area appears to be disturbed (possible grading) in the 2002 Google Earth aerial photo. Saturation in the location of the wetland appears to show up in the JUN 2006 aerial photo (APT Condition– Normal Conditions). No tributaries or drainages connecting to the feature show up in any of the aerial photos 1995-2018.</p> <p>The Corps site inspection confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. In addition, the feature does not become inundated by flooding from Ditch 1 [nearest (a)(2) water] in a typical year, since there is a large man-created berm located approx. 1,000 feet to the west of the feature. There is no natural berm, bank, or dune separating the feature from Ditch 1. The man-created berm to the west does not allow for a direct hydrologic surface water connection between the feature and Ditch 1 in a typical year (i.e. no culvert). It should be noted there was no culvert under Pletcher Road that would connect the feature to any ditches south of the road.</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 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**

Wetland W3	0.27 acres	(b)(1) Non-adjacent wetland	<p>During the field inspection, no drainages or tributaries were located within the vicinity of Wetland W3. The wetland is a shallow surface concave depression that collects water and retains long enough to develop wetland characteristics but does not outlet to any (a)(1)-(a)(3) waters. The nearest (a)(2) water is approximately 1,300 feet to the west. The area appears to be disturbed (possible grading) in the 2002 aerial photo. Saturation in the location of the wetland appears to show up in the JUN 2014 aerial photo (APT Condition – Normal Conditions). No tributaries or drainages connecting to the feature show up in any of the aerial photos 1995-2018.</p> <p>The Corps site investigation confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. In addition, the feature does not become inundated by flooding from Ditch 1 [nearest (a)(2) water] in a typical year, since there is a large berm located approx. 1,200 feet to the west of the feature. There is no natural berm, bank, or dune separating the feature from Ditch 1. The man-created berm to the west does not allow for a direct hydrologic surface water connection between the feature and Ditch 1 in a typical year (i.e. no culvert). It should be noted there was no culvert under Pletcher Road that would connect the feature to any ditches south of the road.</p>
Wetland W4	0.01 acres	(b)(1) Non-adjacent wetland	<p>Wetland W4 abuts Ditch 3, and this was confirmed during the NOV 2020 site inspection. However, Ditch 3 was determined to be an excluded feature [(b)(1) exclusion].</p> <p>The Corp site inspection confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. In addition, the feature does not become inundated by flooding from Ditch 1 [nearest (a)(2) water], since there is a large berm located approx. 1,200 feet to the west of the feature. There is no natural berm, bank, or dune separating the feature from Ditch 1. The man-created berm to the west does not allow for a direct hydrologic surface water connection between the feature and Ditch 1 in a typical year (i.e. no culvert). It should be noted there was no culvert under the Access Road to the NFSS that would connect the feature to any ditches east of the property.</p>

**III. SUPPORTING INFORMATION**

<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

**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 and Waterbodies Delineation Report for Modern Community Recycling Center” dated 28 OCT 2020**

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: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*

- 1) **Niagara Falls Storage Site Historic Photos Analysis Report (2009), Photos dated: 25 SEP 1938, 23 APR 1942, 19 MAR 1944, 27 SEP 1956, 3 MAY 1985, 20 JUN 1990.**
- 2) **Google Earth Aerial Photos, Photos dated: 22 SEP 2018, 21 SEP 2017, 17 APR 2017, 30 OCT 2016, 14 OCT 2016, 20 JUL 2015, 5 JUN 2015, 21 JUN 2014, 4 MAY 2013, 5 OCT 2011, 30 JUL 2009, 6 OCT 2008, 9 AUG 2007, 4 JUN 2006, 19 APR 2006, 7 NOV 2002, 27 MAR 1995.**
- 3) **Wetland Delineation Report, Photos dated: 23 OCT 2020.**
- 4) **Corps Site Investigation Photos, Photos dated: 18 NOV 2020.**
- 5) **Historicalaerials.com, Photos dated: 1958, 1963, 1966, 1972, 1995.**
- 6) **Connect Explorer Aerial Photos website (explorer.pictometry.com), Photos dated APR to MAY 2013.**
- 7) **Niagara County GIS (arcgis.com) Aerial Photo: Photo dated 1938, 2020.**

Corps Site visit(s) conducted on: **18 NOV 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: **Niagara County Soil Survey, issued OCT 1972**

USFWS NWI maps: **NWI Wetlands Mapper (usfs.gov), evaluated on 11 FEB 2021**

USGS topographic maps: **USGS Topography Map from ORM, evaluated on 11 FEB 2021**

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Stream Stats Website (streamstats.usgs.gov), evaluated on 11 FEB 2021
USDA Sources	On-Line Soils Mapper (nrsc.usa.gov)
NOAA Sources	N/A.
USACE Sources	Niagara Falls Storage Site Historic Photos Analysis Report (2009)
State/Local/Tribal Sources	Niagara County GIS (arcgis.com), evaluated on 11 FEB 2021
Historicalaeris.com	Historic Topography Map, Years evaluated: 1897 and 1925

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

<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

**APT Methodology**

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 provides 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 (PDSI) and the University of Delaware WebWIMP.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.21034	-78.98598	11/18/2020	-1.53	Mild drought	Wet Season	9	Drier than Normal
43.21034	-78.98598	10/23/2020	-0.95	Incipient drought	Wet Season	6	Drier than Normal
43.21034	-78.98598	9/22/2018	0.78	Incipient wetness	Dry Season	11	Normal Conditions
43.21034	-78.98598	9/21/2017	3.2	Severe wetness	Dry Season	12	Normal Conditions
43.21034	-78.98598	4/17/2017	1.99	Mild wetness	Wet Season	15	Wetter than Normal
43.21034	-78.98598	10/30/2016	0.81	Incipient wetness	Wet Season	12	Normal Conditions
43.21034	-78.98598	10/14/2016	0.81	Incipient wetness	Wet Season	11	Normal Conditions
43.21034	-78.98598	7/20/2016	-2.65	Moderate drought	Dry Season	7	Drier than Normal
43.21034	-78.98598	7/9/2015	1.7	Mild wetness	Dry Season	14	Normal Conditions
43.21034	-78.98598	6/5/2015	1.71	Mild wetness	Dry Season	11	Normal Conditions
43.21034	-78.98598	6/21/2014	2.98	Moderate wetness	Dry Season	14	Normal Conditions

<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

43.21034	-78.98598	5/4/2013	0.15	Normal	Dry Season	14	Normal Conditions
43.21034	-78.98598	4/23/2013	0.24	Normal	Wet Season	11	Normal Conditions
43.21034	-78.98598	10/5/2011	3.41	Severe wetness	Wet Season	15	Wetter than Normal
43.21034	-78.98598	7/30/2009	3.38	Severe wetness	Dry Season	17	Wetter than Normal
43.21034	-78.98598	10/6/2008	2.99	Moderate wetness	Wet Season	13	Normal Conditions
43.21034	-78.98598	8/9/2007	-2.39	Moderate drought	Dry Season	9	Drier than Normal
43.21034	-78.98598	6/4/2006	0.33	Normal	Dry Season	10	Normal Conditions
43.21034	-78.98598	4/19/2006	-1.13	Mild drought	Wet Season	9	Drier than Normal
43.21034	-78.98598	11/7/2002	-1.6	Mild drought	Wet Season	11	Normal Conditions
43.21034	-78.98598	3/27/1995	-1.26	Mild drought	Wet Season	11	Normal Conditions
43.21034	-78.98598	6/20/1990	1.93	Mild wetness	Dry Season	15	Wetter than Normal
43.21034	-78.98598	5/3/1985	-1.24	Mild drought	Dry Season	9	Drier than Normal
43.21034	-78.98598	9/27/1956	2.83	Moderate wetness	Dry Season	18	Wetter than Normal
43.21034	-78.98598	3/19/1944	0.23	Normal	Wet Season	11	Normal Conditions
43.21034	-78.98598	4/23/1942	-0.46	Normal	Wet Season	12	Normal Conditions

<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

43.21034	-78.98598	9/25/1938	1.41	Mild wetness	Dry Season	17	Wetter than Normal
----------	-----------	-----------	------	--------------	------------	----	--------------------

**C. Additional comments to support AJD:**

The site visit confirmed the aquatic feature boundaries described in the delineation report and support documents/maps.

The Soils Mapper has three soils types mapped in the location of this feature: 1) Madalin silt loam, 2) Made land, and 3) Rhinebeck silt loam 0-2% slopes. All mapped soils have a low likelihood of hydric or hydric inclusions. The Niagara County Soil Survey did not map any tributaries, and the associated aerial photo did not provide any information of the location of features.

The NWI mapped two wetlands, both R4SBCx (Riverine Intermittent Streambed Seasonally Flooded Excavated), in the location of Ditch 1 and the northern portion of Ditch 2.

<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.