



**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): 4/9/2021

ORM Number: LRB-2020-00749

Associated JDs: N/A

Review Area Location¹: State/Territory: NY City: Hamburg County/Parish/Borough: Erie

Center Coordinates of Review Area: Latitude 42.76688 Longitude -78.80592

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.	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.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Rush Creek	1153	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Rush Creek is a perennial tributary that flows into Lake Erie, a traditionally navigable water.

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 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.

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 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.



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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.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	7.51	acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature.	Wetland 1 is separated from Rush Creek by a berm approximately 25 feet wide.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 2	0.11	acre(s)	(b)(1) Non-adjacent wetland.	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 any (a)(1)-(a)(3) waters. Photos included within the delineation report and a review of aerial imagery show no natural or artificial barrier between the wetland and Rush Creek which is about 100 feet to the north. 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 the wetland doesn’t directly abut an a(1)-a(3) waters, are not separated from an a(1)-a(3) waters by a natural or man-made feature and are not adjacent to an a(1)-a(3) waters.
Wetland 3	0.15	acre(s)	(b)(1) Non-adjacent wetland.	The delineation indicated no drainages or tributaries are within the vicinity of the wetland. 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 any (a)(1)-(a)(3) waters. Photos included within the delineation report and a review of aerial imagery show no natural or artificial barrier between the wetland Rush Creek, which is about 530 feet to the north. The

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			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 the wetland doesn’t directly abut an a(1)-a(3) waters, are not separated from an a(1)-a(3) waters by a natural or man-made feature and are not adjacent to an a(1)-a(3) waters.
Wetland 4	3.26	acre(s)	(b)(1) Non-adjacent wetland. The delineation indicated no drainages or tributaries are within the vicinity of the wetland. 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 any (a)(1)-(a)(3) waters. Photos included within the delineation report and a review of aerial imagery show no natural or artificial barrier between the wetland Rush Creek, which is about 550 feet to the north. 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 the wetland doesn’t directly abut an a(1)-a(3) waters, are not separated from an a(1)-a(3) waters by a natural or man-made feature and are not adjacent to an a(1)-a(3) waters.

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 submitted 6/11/2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [Wetland delineation was submitted with accurate, completed data sheets, photographs, NWI map, web soil survey with hydric soil ratings and other supporting information.](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial: Google earth images from 1985 through 2018](#)
- Corps site visit(s) conducted on: [10/6/2020](#)
- 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: [Erie County, reviewed on 4/9/2021](#)
- USFWS NWI maps: [Reviewed on 4/9/2021](#)



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USGS topographic maps: [Buffalo SE](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
Other USGS data (specify)	N/A
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	N/A
Other Sources	N/A.

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [N/A](#)