



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): 17-MAY-2021

ORM Number: LRB-1993-97690

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Grand Island County/Parish/Borough: Erie

Center Coordinates of Review Area: Latitude 43.0196 Longitude -78.9234

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
Intermittent Drainageway	175 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	This has been determined to be an intermittent a(2) tributary. Water was not observed flowing within the stream channel at the time of the site visit. However, at the time of the site visit the channel was saturated (the site visit was conducted during a period of normal precipitation (see Typical Year

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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>Assessment below)). It had not rained immediately prior to the site visit. The tributary channel is approximately 1-2 feet in width with a substrate comprised predominantly of gravel-sized particles. The stream originates at Wetland L, a 0.018-acre forested wetland, and is estimated to have a watershed of 1-2 acres. The stream channel is not depicted on the USGS maps, NWI, or soil survey. Regardless, it has been determined the watershed feeding this tributary is not large enough to create a 1-2-foot channel with gravel substrate without the presence of groundwater. This determination, coupled with the presence of a saturated channel, no precipitation immediately preceding the site visit, and normal precipitation leads to the conclusion that this is an intermittent tributary.</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
Wetland L	0.018 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland L was observed to physically abut the onsite a(2) intermittent tributary.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	1.232 acres	(b)(1) Non-adjacent wetland	This wetland does not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction

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			under Section 404 of the Clean Water Act. This wetland was circumnavigated during the Corps' October 23, 2020 site visit. This wetland was observed to be isolated, disconnected from any (a)(1-3) water. Additionally, no defined channels/tributaries/ditches were observed connecting this wetland to any (a)(1-3) water. Based on site observations, the nearest a(1-3) water would not flood this wetland at least once during a typical year. There were no observed signs (i.e. leaf wracking, sediment deposits, debris lines) of flow from the nearest tributary to this wetland. Plus, this wetland is located updrift from the nearest tributary. There were no other onsite connections observed to any tributary. Also, no natural or manmade berms or the like were observed located between the nearest a(1-3) water and this wetland.
Wetland B	0.637 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland C	0.433 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland D	0.036 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland E	0.315 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland F	0.152 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland G	0.14 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland H	0.319 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland I	0.694 acres	(b)(1) Non-adjacent wetland	Same as above.

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Wetland J	0.152 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland K	0.118 acres	(b)(1) Non-adjacent wetland	Same as above.

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 for Park Place Patio Homes, Grand Island, NY, prepared for David Homes, prepared by Wetlands Investigation Co., August 2018.*

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.*

Corps Site visit(s) conducted on: *October 23, 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: *Title(s) and/or date(s).*

USFWS NWI maps: *Erie County, NY.*

USGS topographic maps: *Tonawanda West, NY 7.5 min.*

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	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The subject parcel's latitude/longitude was entered into the Antecedent Precipitation Tool (APT) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps' site visit, and whether the site visits were conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest two weather stations – N Tonawanda and Niagara Falls. The APT shows that normal precipitation is between the 30th (1.9") and 70th (5.2") percentiles. The APT indicates that 0-30 days prior to the site visit precipitation was 4.2" which is between the 30th and 70th percentiles. Thirty to 60 days prior to the visit the APT indicates that precipitation was 2.2" which is also between the 30th and 70th percentiles, and 60 to 90 days prior precipitation was 1.6" which is below the 30th percentile. Therefore, one to two months prior to the site

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visit precipitation was normal, and three months prior to the site visit precipitation was considered below normal for that time of year.

The APT, using a weighted approach, indicates that the site visit was conducted during a period of normal precipitation.

- C. Additional comments to support AJD:** The onsite intermittent tributary flows into Spicer Creek, which continues northeast until joining the Niagara River, an a(1) navigable waterway.

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