



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): 12-MAY-2021
ORM Number: LRB-2020-01359
Associated JDs: LRB-2020-00749
Review Area Location¹:

State/Territory: NY City: Hamburg County/Parish/Borough: Erie
Center Coordinates of Review Area: Latitude 42.76537 Longitude -78.80251

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
tributary to Rush Creek	600 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	According to the Buffalo SE USGS Quad, this tributary is identified as intermittent. However, during the field visit, water was observed flowing within the tributary. Cobble/gravel substrate with riffle/pool complexes were observed. The tributary was approximately 5-10 feet in width and water depth ranged from a few inches to a few feet. According to the Antecedent

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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			Precipitation Tool (See Section III B below for additional data), the site visit was conducted during a period of drier than normal precipitation. Based on observed flow, channel width, and water depth, coupled with the precipitation data, leads to the conclusion that this is a perennial tributary.
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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 B	0.644 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland B was observed to physically abut the tributary to Rush Creek, an a(2) perennial 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	0.063 acres	(b)(1) Non-adjacent wetland	Wetland A extends offsite to the west. An AJD was issued on April 9, 2021 for the immediately adjacent parcel to the west (LRB-2020-00749) that includes the offsite portion of Wetland A. That AJD determined the offsite portion of Wetland A is an excluded b(1) non-adjacent wetland. As such, the onsite portion of Wetland A is also considered an excluded b(1) non-adjacent wetland.

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.

X Information submitted by, or on behalf of, the applicant/consultant: *Wetland Delineation for Parker Rd., Hamburg, NY 14075, prepared for Parker Rd. Development, LLC, prepared by Wetlands Investigation Co., May & September 2020.*

This information is sufficient for purposes of this AJD.

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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).*
- Corps Site visit(s) conducted on: *November 18, 2020.*
- Previous Jurisdictional Determinations (AJDs or PJDs): *LRB-2020-00749.*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s).*
- USFWS NWI maps: *Title(s) and/or date(s).*
- USGS topographic maps: *Buffalo SE, 7.5 min Quad.*

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 weather station – Buffalo. The APT shows that normal precipitation is between the 30th (2.2”) and 70th (5.0”) percentiles. The APT indicates that 0-30 days prior to the site visit precipitation was 3.1” which is between the 30th and 70th percentiles. Thirty to 60 days prior to the visit the APT indicates that precipitation was 3.7” 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 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 below normal precipitation.

C. Additional comments to support AJD: The tributary to Rush Creek flows into Rush Creek, which flows into Lake Erie, an a(1) navigable waterway.

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