



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): May 10, 2021

ORM Number: **LRB-2020-01618**

Associated JDs: **N/A**

Review Area Location<sup>1</sup>: **Richland Estates Housing Development, Fairbourne Park Road**

**State/Territory: NY City: Henrietta County: Monroe**

Center Coordinates of Review Area: **Latitude 43.216371 Longitude -77.709032**

**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

<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

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
2020-01618 Wetland A Richland Estates	0.304 acres	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) sub-categories	<p>The site is the last undeveloped site within the interior of the Richland Estates Development. Hydrologic source appears to be an excavated stormwater management (SWM) pond associated with housing developments to the south. Discharge from the SWM pond is directed north through an early successional scrub/shrub forested area dominated by buckthorn. The northern end of the drainage is confined by a fill pile greater than 20-feet high at the eastern Fairbourne Park stub road. A review of Google Earth historic photos suggest that the stub road/fill pile was not present in 2002. However, the 2005 aerial depicts a highly disturbed site with on-going development of half the oval internal road labeled as Fairbourne Park with two stub roads to complete the oval in the future.</p> <p>A site visit was made on May 6, 2021. It had been raining for three days, and the area was inundated. A drainage pathway through the early successional area was readily identified and appears to be braided and ephemeral. This pathway is not identified in the 2002 aerial; but appears to have established over time via discharge from the SWM pond to the south. The delineation followed the braided pathway and encompassed a fringe area wetland area beyond the pathway.</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

			<p>The U.S. Fish and Wildlife National Wetland Inventory map shows a substantial scrub/shrub wetland that encompasses both the previously developed portion of Fairbourne Park Road extending into the current parcel (identified as Section 10 of the development – not a Section 10 water). Although a wetland is mapped in this area, it should be noted that the soils are mapped as Claverack soils with a hydric soil rating of “0”</p> <p>A drop in culvert was identified in the undeveloped area behind a residence. The hydrologic input from the SWM pond to the south appears to flow to the north through the parcel, encounters the fill at the northern end and circles to the west to the culvert. The culvert outfall could not be traced to an outfall on the adjacent streets, as there are no roadside ditches; the maintained lawn extends to the roadside. There are no culvert outfalls at either of the stub roads. Lack of culvert outfalls suggests that the drainage system is buried throughout the complex and a review of historic photos failed to identify the flow path out of the various housing developments.</p> <p>Contours on the USGS topographic map suggests a flow pattern from the direction of the existing SWM pond north to the NWI mapped wetland, but it is not apparent as to where/how hydrology might have been directed out of the wetland area in the past; prior to installation of the drop in culvert.</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

			<p>There is no record of permit(s) issued for the previously developed parcel (Section 9). File No. 2003-00409 appears to be associated with Section 9 with SHPO questions that were resolved. No evidence that a permit was generated.</p> <p>Upon review of the NWI/topographic map, we can only speculate that the water is piped underground and eventually reaches one of the several mapped streams that occur in each direction; all of which are greater than ½ mile away from the subject parcel (as measured in Google Earth).</p> <p>Therefore, I have determined that this wetland/drainage system would be considered as excluded because:</p> <p style="padding-left: 40px;">It does not abut an (a)(1) – (a)(3) water</p> <p style="padding-left: 40px;">It is not adjacent to an (a)(1) – (a)(3) water. Inundation of the wetland from an (a)(1) – (a)(3) water does not occur.</p> <p style="padding-left: 40px;">There is more than one man-made barrier between the system and an (a)(1) – (a)(3) water, over ½ mile from the site.</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.

<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

- Information submitted by, or on behalf of, the applicant/consultant: **Environmental Resources, LLC. Received on 12/01/2020**  
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: **Google Earth aerial photos 03/31/2002, 03/31, 2005, 04/13/2005, 04/19/2016, other photos submitted with delineation report**
- Corps Site visit(s) conducted on: **May 6, 2021**
- 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: **Web Soil Survey (on line) May 5, 2021**
- USFWS NWI maps: **Identified in the legend as dated in the 1990's**
- USGS topographic maps: **Rochester West, New York Quad.**

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

Data Source (select)	Name and/or date and other relevant information
USGS Sources	
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Maps and information available in the ORM database
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

**B. Typical year assessment(s):** N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.

**Although several point-in-time resources were evaluated for this review, they were not needed to determine whether inundation occurred from an a(1-3) water into onsite wetlands. Aerial photos were used to evaluate historic conditions. These determinations did not require a typical year assessment.**

**C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.

<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.