



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): 14-MAY-2021

ORM Number: LRB-2020-01697

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: NY City: Cheektowaga County/Parish/Borough: Erie

Center Coordinates of Review Area: Latitude 42.8701 Longitude -78.69917

**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

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

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<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.



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**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 1	911 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)	This was observed to be a manmade ditch. The ditch runs in a straight line along the northern property boundary from approximately the location of Wetland W1 and Ditch 2, connecting these resources to an offsite tributary located northwest of the parcel. Onsite observations indicate that the ditch was constructed in uplands. Current onsite and offsite (adjacent parcel was able to be viewed from the subject parcel) wetlands do not physically abut this ditch. Also, there were no stream channels observed that would indicate this ditch is a captured stream. To support onsite observations the following resources were reviewed: USGS Quads dating from 1905 show that there were/are no wetlands or streams onsite; NWI shows that there are no onsite wetlands/streams; NRCS historic soil survey indicates that no wetlands or stream channels existed historically on the subject parcel; and aerial imagery dating from 1958 provides no clear evidence of wetland signatures or visible channels. Based on the preponderance of evidence, it has been determined that this ditch was excavated in uplands and is classified as a b(5) exclusion.
Ditch 2	55 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)	Same as above, except Ditch 2 extends north, connecting Wetland W1 to Ditch 1.
Wetland W1	0.76 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 under Section

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<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.



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			404 of the Clean Water Act. This wetland was circumnavigated during the Corps' May 5, 2021 site visit. This wetland was observed connected to an a(2) tributary via Ditch 1 and 2. Please see discussion above regarding the jurisdictional status for Ditches 1 and 2. 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 upgrade from the nearest tributary. There were no other onsite connections other than Ditches 1 and 2 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 W2	0.14 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 under Section 404 of the Clean Water Act. This wetland was circumnavigated during the Corps' May 5, 2021 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 upgrade 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.

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**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 and Waterbodies Delineation Report for 4796-4800 Transit Road, Town of Cheektowaga, Erie County, New York, for Young Development, prepared by Earth Dimensions, Inc., December 21, 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: *aerial, <https://www.historicaerials.com/viewer>, 1958, 1963, 1966, 1995, 2002.*

Corps Site visit(s) conducted on: *May 5, 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: *Historic Soil Survey, Erie County, NY.*

USFWS NWI maps: *Erie County, NY.*

USGS topographic maps: *Orchard Park, NY, 7.5 min, 1905, 1912, 1922, 1930, 1941, 1945, 1950.*

**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):** *N/A.*

**C. Additional comments to support AJD:** *N/A.*

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