



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-2020-01703

Associated JDs: N/A

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

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

Center Coordinates of Review Area: Latitude 43.02796 Longitude -78.920077

**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
Wetland W10	19.47 acres	(a)(4) Wetland abuts an	This wetland extends offsite. Water was

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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.

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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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		(a)(1)-(a)(3) water	observed flowing within the wetland from west to east. The entirety of the wetland was not walked as it extended offsite. Therefore, additional resources were reviewed to determine whether the wetland abuts a regulated tributary. Based on review of the following resources it was determined that this wetland is a regulated a(4) wetland. Aerial imagery identifies wetland signatures extending north and east and abutting, offsite, an unnamed tributary to Spicer Creek. The Tonawanda West Quad identifies the unnamed offsite tributary as perennial. Furthermore, the NWI depicts wetland extending from onsite to the north and west all the way to the unnamed offsite perennial tributary. Moreover, the NRCS Soil Survey depicts hydric soils extending offsite to the north and west up to the offsite perennial tributary. In addition, the NYSDEC Environmental Resource Mapper depicts wetland extending offsite to the north and abutting the offsite unnamed perennial tributary.
Wetland W11	0.02 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Same as the above.
Wetland W12	1.08 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Same as the above.
Wetland W13	0.45 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Same as the above.
Wetland W14	0.002 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Same as the above.
Wetland W9	6.62 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Same as the above.

**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
Wetland W1	0.05 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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			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.
Wetland W15	0.05 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W16	0.22 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W2	0.05 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W3	0.1 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W4	0.07 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W5	0.02 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W6	0.02 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W7	1.52 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland W8	0.11 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 and Waterbodies Delineation Report for Grand Island Community Solar Project A&B, Town of Grand Island, Erie County, New York, for Greenman Pederson, Inc., by Earth Dimensions, Inc., December 23, 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://explorer.pictometry.com/index.php#>, 4/15/2013*

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- 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: *Erie County, NY.*
- USFWS NWI maps: *Erie County, New York.*
- USGS topographic maps: *Tonawanda West, 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	NYSDEC Environmental Resource Mapper, <a href="http://www.dec.ny.gov/imsmaps/ERM/viewer.htm">http://www.dec.ny.gov/imsmaps/ERM/viewer.htm</a> (Visited 12/2/20)

**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 three weather stations – N Tonawanda, Tonawanda 1.5 NNE, and Niagara Falls. The APT shows that normal precipitation is between the 30th (2.1”) and 70th (3.9”) percentiles. The APT indicates that 0-30 days prior to the site visit precipitation was 3.0” which is between the 30<sup>th</sup> and 70<sup>th</sup> percentiles. Thirty to 60 days prior to the visit the APT indicates that precipitation was 1.8” which is below the 30<sup>th</sup> percentile, and 60 to 90 days prior precipitation was 1.9” which is also below the 30<sup>th</sup> percentile. Therefore, one month prior to the site visit precipitation was normal, and two to 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 offsite unnamed perennial tributary flows into Spicer Creek, which continues east until joining the Niagara River, an a(1) navigable waterway.

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