



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-2021-00032
Associated JDs: N/A
Review Area Location¹:
State/Territory: NY City: Tonawanda County/Parish/Borough: Erie
Center Coordinates of Review Area: Latitude 42.98233 Longitude -78.93941

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
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 2	0.267 acres	(a)(4) Wetland abuts an	Wetland 2 has been determined to

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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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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		(a)(1)-(a)(3) water	<p>physically but the Niagara River. Only a small portion of Wetland 2 is located within the subject parcel. However, observations from onsite to the adjacent offsite parcel show that Wetland 2 extends offsite to the north and then west into the Niagara River. Wetland 2 is located at the toe of slope of a capped landfill. Based on site observations, <i>Phragmites</i> and willow trees were observed at the toe of slope from the onsite portion to the Niagara River. A review of imagery shows consistent vegetation from the onsite portion, north approximately 2000 feet and then west approximately 700 feet to the Niagara River. In addition, the USGS Quad and NWI show an intermittent tributary flowing offsite from the east into Wetland 2 and continuing to the Niagara River. This helps demonstrate that there is sufficient hydrology to meet wetland criteria throughout. Based on site observations, the continuing offsite observations, and aerial, USGS Quad, and NWI confirmation, it has been determined Wetland 2 physically abuts the Niagara River.</p>
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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland 1	0.058 acres	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff	Wetland 1 was observed to be a constructed stormwater pond. The wetland was observed to be linear in shape, excavated approximately 10 feet below existing grade, lined with rip rap, surrounded by a chain link fence, and had an outlet feature which was located a few feet above the observed water level. It appeared that the feature was constructed for the purpose of storing stormwater for the now defunct industrial operations that once occurred onsite. Down gradient from the outlet structure a concrete

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			<p>flume and sheet pile were observed that also appeared associated with the stormwater feature identified as Wetland 1. No streams or linear features were observed connected to Wetland 1. A review of the Buffalo West USGS Quad confirmed the absence of onsite channels. Therefore, Wetland 1 is not an impoundment of a tributary. The area had been historically operated as an industrial site since the early 20th century. Since this is the only wetland observed in the vicinity and aerial imagery was not readily available prior to the mid-20th century it has been determined that Wetland 1 was constructed in uplands. Based upon the above, it has been determined that Wetland 1 is a stormwater control feature constructed in uplands to store/treat stormwater.</p>
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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: *Report Summarizing the Results of a Wetland Delineation Survey of 4002 & 4100 River Road, Town of Tonawanda, Erie County, New York, prepared for Arthur Kwitchoff, prepared by Earth Dimensions, Inc., December 17, 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: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*

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: *Title(s) and/or date(s).*

USFWS NWI maps: *Erie County, NY.*

USGS topographic maps: *Buffalo 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.

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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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