



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): July 15, 2021
 ORM Number: LRB-2021-00080
 Associated JDs: N/A
 Review Area Location¹:
 State/Territory: NY City: County/Parish/Borough: Erie County
 Center Coordinates of Review Area: Latitude 42.997537 Longitude -78.892477

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
N/A	N/A	N/A	N/A

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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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
LRB-2021-00079_Ditch 2	263 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 feature does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. This feature functions as a ditch that was constructed in uplands adjacent to and located within the northwest of the study area and south of an access road. This feature is not a relocated tributary, nor was it constructed in adjacent wetlands [(a)(4) waters]. A June 15, 2021 site visit showed little evidence of any flow or water presence with no hydrophytic vegetation being present in the ditch, except near an existing culvert. Based on an in-office resource review, the submitted report titled “Erie County Water Authority Transmission Main Wetland and Stream Delineation, dated November 20, 2020,” and the June 15, 2021 site visit, it has been determined that this ditch is a (b)(5) excluded ditch.
LRB-2021-00080_Ditch 1	1407 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 feature does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. This feature functions as a ditch that was constructed in uplands located midway through the project area extending to Ditch 1 on the West side of the study area. This feature is not a relocated tributary, nor was it constructed in adjacent wetlands [(a)(4) waters]. During a June 15, 2021 site visit, it was observed that the entire ditch was encompassed by Phragmites australis, did not contain any water, nor any evidence of any flow. These items were also supported by the submitted report titled “Erie County

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			Water Authority Transmission Main Wetland and Stream Delineation, dated November 20, 2020.” Based on an in-office resource review, the submitted wetland and stream delineation report, and the June 15, 2021 site visit, it has been determined that this ditch is a (b)(5) excluded ditch.
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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: Erie County Water Authority Transmission Main Wetland and Stream Delineation, dated November 20, 2020 – field visit date of November 18, 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: *Connect Explorer Oblique Imagery April 25, 2020, November 21, 2019*

Corps Site visit(s) conducted on: *June 15, 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: *Title(s) and/or date(s).*

USGS topographic maps: *Title(s) and/or date(s).*

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):

APT Methodology

The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network.

The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by

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determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of “normal,” “wetter than normal,” or “drier than normal” based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index (PDSI) and the University of Delaware WebWIMP.

Inputs/Data Sources:

Latitude(s)/Longitude(s): single point for the study area - 42.997537, -78.892477
 Observation Date(s): Corps Site Visit 6/15/2021, Consultant Site Visit 11/18/2020, Oblique Imagery 4/25/2020 and 11/21/2019.
 Geographic Area(s) (Scope): See attached map sheet 1 of 1.
 Weather Station(s): N. Tonawanda and Niagara Falls.

Result(s):

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.99754	-78.8925	6/15/2021	-2.71	Moderate drought (2021-05)	Dry Season	9	Drier than Normal
42.99754	-78.8925	11/18/2020	-1.51	Mild drought	Wet Season	10	Normal Conditions
42.99754	-78.8925	4/25/2020	-0.2	Normal	Wet Season	13	Normal Conditions
42.99754	-78.8925	11/21/2019	3.12	Severe wetness	Wet Season	15	Wetter than Normal

Conclusion(s): At the time of the Corps Site Visit, June 15, 2021, the subject area was reported to be within the Dry Season, during a moderate drought, and being drier than normal. The graph indicated that the date was not within the 30-year normal range, falling below it for the preceding 30-days. At the time of the Consultant’s field investigation site visit, the area was reported to be in a mild drought during the wet season, and reportedly had normal conditions. The 2019 and 2020 oblique images from Connect Explorer showed saturation in both Ditches identified and the APT report indicates that these dates were during the wet season. The 2019 oblique image was reported to be during a period that was wetter than normal. The 2020 oblique image was reported to be during a period of normal conditions. Since all of the dates evaluated for this site capture different circumstances (dry through wet) for the subject area, and none of them show any evidence of flow, the determination that these areas are non-regulated ditches that do not flow to a downstream water is supported.

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- C. Additional comments to support AJD:** Based on the above documentation and rationale, it has been determined that the study area includes two (b)(5) ditches. The above documentation supports these determinations.

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