



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): 7/20/2021

ORM Number: LRB-2021-00522

Associated JDs: N/A

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

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

Center Coordinates of Review Area: Latitude 43.08314 Longitude -78.63834

**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
LRB-2021-00522 Stream 1	430 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream 1 is labeled on maps as Clarence Town Ditch #2 and transects the subject area. Even though labeled a “Ditch,” it is a tributary as it is shown as a mapped tributary on the 1948 USGS quad for Lockport, NY and is shown as an intermittent tributary on later USGS quads: Clarence Center, NY 1980, and 2019. Aerial imagery shows that the Town of Clarence

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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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			<p>began maintaining Stream 1 as one of their Town ditches in 1977. The report titled, "Wetland Delineation for Goodrich Road, Clarence, NY – prepared for Richard Polak; April 2021" indicates that Stream 1 has intermittent flow. During the July 6, 2021 site inspection, it was observed that the tributary was not flowing. July is within the typical dry season for the subject area and according to the ATP this was a period of normal conditions, supporting a determination of intermittent flow. This stream is also shown on the USFWS National Wetlands Inventory Maps, labeled as a R-Riverine, 4 – Intermittent, SB – Streambed, C – Seasonally flooded, x – excavated (Specifically stating that this item is used as a modifier to wetlands basins or channels that were excavated by humans). Multiple aerial (Sep. 2018, Jun. 2014, and Mar. 1995) and oblique imagery (April 17, 2016, November 21, 2019, and April 25, 2020) show water within the channel. Since the aerials and oblique images show water inundation throughout the channel in many different dates throughout the year, during dry and wet seasons, this is further supporting the determination of intermittent flow. Overall, in-office resources and the July 6, 2021 site visit support the flow regime of intermittent and that this is a natural tributary that has been altered by humans. Therefore, it has been determined that this resource meets the definition of an (a)(2) water.</p>
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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

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N/A	N/A	N/A	N/A
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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
LRB-2021-00522 Wetland B	0.84 acres	(b)(1) Non-adjacent wetland	Wetland B does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland B does meet the definition of a wetland and the boundaries on the subject parcel are accurate as reported in the submitted report titled, "Wetland Delineation for Goodrich Road, Clarence, NY – prepared for Richard Polak; April 2021". The wetland does not abut an (a)(1)-(a)(3) water because the stream has been maintained by the Town of Clarence since at least the late 1970s and the adjacent areas around the channel, with widths of 30 to 90 feet wide, has been effectively drained causing separation between the wetland and stream with no regular surface water exchange within a typical year. Wetland B is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier. Wetland B is separated from stream 1 by a man-made feature (composed of side-cast/spread material that has been drained), but the manmade feature does not have an engineered mechanism for water exchange (inundation or flooding from typical storm events) in a typical year. Specifically, through the review of the submitted wetland delineation report, Wetland B's boundaries extend outside the project area but are reported to be surrounded by uplands with no surface water connections observed. Based on the above discussion, a review of the submitted wetland delineation report, and an in-office resource review, it has been determined that Wetland B is a (b)(1) non-adjacent wetland.

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LRB-2020-00522 Wetland A	1.23 acres	(b)(1) Non-adjacent wetland	<p>Wetland A does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland A does meet the definition of a wetland and the boundaries on the subject parcel are accurate as reported in the submitted report titled, "Wetland Delineation for Goodrich Road, Clarence, NY – prepared for Richard Polak; April 2021". The wetland does not abut an (a)(1)-(a)(3) water because the stream has been maintained by the Town of Clarence since at least the late 1970s and the adjacent areas around the channel, with widths of 30 to 90 feet wide, has been effectively drained causing separation between the wetland and stream with no regular surface water exchange within a typical year. Wetland A is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier. Wetland A is separated from stream 1 by a man-made feature (composed of side-cast/spread material that has been drained), but the manmade feature does not have an engineered mechanism for water exchange (inundation or flooding from typical storm events) in a typical year. Specifically, through the review of the submitted wetland delineation report, Wetland A's boundaries extend outside the project area but are reported to be surrounded by uplands with no surface water connections observed. Based on the above discussion, a review of the submitted wetland delineation report, and an in-office resource review, it has been determined that Wetland A is a (b)(1) non-adjacent wetland.</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: "Wetland Delineation for Goodrich Road, Clarence, NY – prepared for Richard Polak; April 2021" submitted/completed by

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Wetlands Investigation Company – Project Manager: Erik Krull.

This information is sufficient for purposes of this AJD.

Rationale: *The information in the report was sufficient to determine the wetland boundaries and help determine federal jurisdiction.*

Data sheets prepared by the Corps: *None.*

- Photographs: *Oblique Imagery from Connect Explorer (<https://explorer.pictometry.com/index.php>) – dates: April 17, 2016, November 21, 2019, April 25, 2020. Google Earth Aerials dated*
- Corps Site visit(s) conducted on: *Date(s). July 6, 2021.*
- Previous Jurisdictional Determinations (AJDs or PJDs): *None.*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>, Goodrich Road, Clarence, New York; accessed on July 6, 2021.*
- USFWS NWI maps: *<https://fwsprimary.wim.usgs.gov/decoders/wetlands.aspx> and <https://www.fws.gov/wetlands/data/mapper.html>, viewed study area on July 16, 2021.*
- USGS topographic maps: *NY-Lockport 1948, NY-Clarence Center 1980 and 2019; accessed July 16, 2021.*

**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	New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper - <a href="https://gisservices.dec.ny.gov/gis/erm/">https://gisservices.dec.ny.gov/gis/erm/</a> - accessed on July 16, 2021.

**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 determining whether the 30-day precipitation total falls within, above, or below the 70<sup>th</sup> and 30<sup>th</sup> 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.

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Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.08314	-78.6383	Site Visit 7/6/2021	- 99.99	Not available	Dry Season	10	Normal Conditions
43.08314	-78.6383	Oblique 4/17/2016	- 99.99	Not available	Wet Season	14	Normal Conditions
43.08314	-78.6383	Oblique 11/21/2019	- 99.99	Not available	Wet Season	15	Wetter than Normal
43.08314	-78.6383	Oblique 4/25/2021	- 99.99	Not available	Wet Season	10	Normal Conditions
43.08314	-78.6383	Aerial 10/14/2005	- 99.99	Not available	Wet Season	16	Wetter than Normal

**Conclusions:** An Antecedent Precipitation Tool (APT) report was conducted for each point-in-time resource that was evaluated, including Google Earth aerial images, Connect Explorer oblique images, and the date of the Corps site inspection. Antecedent Precipitation data indicates that wetter than normal conditions occurred in the subject area at the time of the October 14, 2005 aerial and the November 11, 2019 oblique image. Normal conditions were reported for all other dates input into the Antecedent Precipitation Tool. Water presence in the stream during all images (aerial and Oblique), and presence in some areas, although not flowing during the July 6, 2021 (dry season) site inspection, supports the determination that intermittent flow is normal for Stream 1. Also, the antecedent precipitation supports the view from all aerial and oblique images that flow does not occur at least once in a typical year from the wetlands to stream 1 within the study area.

**B. Additional comments to support AJD:** Based on the above documentation and rationale, it has been determined that the study area includes one jurisdictional (a)(2) water – 2021-00522 Stream 1 and two (2) excluded (b)(1) non-adjacent wetlands – LRB-2021-00522 Wetland A and LRB-2021-00522 Wetland B. All the above documentation supports these determinations.

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