



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): August 30, 2021

ORM Number: LRB-2020-01550

Associated JDs: LRB 2005-02197 – Adjacent property

Review Area Location¹:

State/Territory: New York City: County: Herkimer County

Center Coordinates of Review Area: Latitude 43.08531 Longitude -75.11454

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
Wetland 2	0.24 acres	(b)(1) Non-adjacent wetland	<p>Wetland 2 does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water is an unnamed tributary to Burch Creek, located just outside of the review area to the west of Wetland 2, more than 250 feet from Wetland 2. This tributary was identified in a 2007 Preliminary Jurisdictional Determination (LRB 2005-02197) as a potential water of the US. During a remote site visit on December 11, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland 2 is not inundated by any a(1)-a(3) water during a typical year. The nearest s(1)-a(3) water would need to flood beyond any known flood occurrence to inundate Wetland 2 at any time. There is no evidence of Wetland 2 being inundated during any year by any water.</p> <p>Wetland 2 is not separated from an adjacent water by a natural berm or feature. Wetland 2 is a depressional feature, in an active agricultural field, surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland 2 is separated from the nearest a(1) – a(3) water by uplands with no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland 2 does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland A	0.01 acres	(b)(1) Non-adjacent wetland	<p>Wetland A does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water is Sterling Creek, more than 500 feet to the Southeast of Wetland A, outside of the review area. During a remote site visit on December 11, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland A is not inundated by any a(1)-a(3) water during a typical year. Sterling Creek would need to flood beyond any known flood occurrence to inundate Wetland A at any time. There is no evidence of Wetland</p>

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			<p>A being inundated during any year by any water.</p> <p>Wetland A is not separated from an adjacent water by a natural berm or feature. Wetland A is located within an abandoned borrow area for construction of the adjacent interstate and the land is classified as cut and fill land with a hydric rating of 10%. During the virtual site visit, clear depressional areas, which hold water runoff from the agricultural field, were evident and these features were likely a result of the cut and fill process. Wetland A is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland A is separated from the nearest a(1) – a(3) water by uplands with no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland A does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland B	0.12 acres	(b)(1) Non-adjacent wetland	<p>Wetland B does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water is Sterling Creek, more than 400 feet to the Southeast of Wetland B, outside of the review area. During a remote site visit on December 11, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland B is not inundated by any a(1)-a(3) water during a typical year. Sterling Creek would need to flood beyond any known flood occurrence to inundate Wetland B at any time. There is no evidence of Wetland B being inundated during any year by any water.</p> <p>Wetland B is not separated from an adjacent water by a natural berm or feature. Wetland B is located within an abandoned borrow area for construction of the adjacent interstate and the land is classified as cut and fill land with a hydric rating of 10%. During the virtual site visit, clear depressional areas, which hold water runoff from the agricultural field, were evident and these features were likely a result of the cut and fill process. Wetland B is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland B is separated from the nearest a(1) – a(3)</p>

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			<p>water by uplands with no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland B does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland C	0.12 acres	(b)(1) Non-adjacent wetland	<p>Wetland C does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water is Sterling Creek, more than 400 feet to the Southeast of Wetland C, outside of the review area. During a remote site visit on December 11, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland C is not inundated by any a(1)-a(3) water during a typical year. Sterling Creek would need to flood beyond any known flood occurrence to inundate Wetland C at any time. There is no evidence of Wetland C being inundated during any year by any water.</p> <p>Wetland C is not separated from an adjacent water by a natural berm or feature. Wetland C is located within an abandoned borrow area for construction of the adjacent interstate and the land is classified as cut and fill land with a hydric rating of 10%. During the virtual site visit, clear depressional areas, which hold water runoff from the agricultural field, were evident and these features were likely a result of the cut and fill process. Wetland C is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland C is separated from the nearest a(1) – a(3) water by uplands with no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland C does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</p>
Wetland D	0.12 acres	(b)(1) Non-adjacent wetland	<p>Wetland D does not abut any (a)(1)-(a)(3) water. The nearest potential (a)(1)-(a)(3) water is Sterling Creek, more than 500 feet to the Southeast of Wetland D,</p>

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			<p>outside of the review area. During a remote site visit on December 11, 2020, the Corps of Engineers confirmed that upland extends around the wetland and that it does not abut any water.</p> <p>Wetland D is not inundated by any a(1)-a(3) water during a typical year. Sterling Creek would need to flood beyond any known flood occurrence to inundate Wetland D at any time. There is no evidence of Wetland D being inundated during any year by any water.</p> <p>Wetland D is not separated from an adjacent water by a natural berm or feature. Wetland D is located within an abandoned borrow area for construction of the adjacent interstate and the land is classified as cut and fill land with a hydric rating of 10%. During the virtual site visit, clear depressional areas, which hold water runoff from the agricultural field, were evident and these features were likely a result of the cut and fill process. Wetland D is a depressional feature surrounded by upland with no natural berm or feature that separates it from an adjacent water.</p> <p>Wetland D is separated from the nearest a(1) – a(3) water by uplands with no engineered features that allow water exchange once in a typical year.</p> <p>All resources reviewed support the determination that Wetland D does not directly abut any a(1)-a(3) waters, is not inundated by any a(1)-a(3) waters in a typical year, is not separated from any a(1)-a(3) waters by a natural barrier, and is not separated from any a(1)-a(3) waters by a man-made barrier which has an engineered feature that allows water exchange at least once in a typical year.</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: *Delineation of Waters of the United States – Lands of Herkimer County IDA Schuyler Parcel November 13, 2020.*

This information *is and is not* sufficient for purposes of this AJD.

Rationale: *The information did not rule out wetland connections from Wetland 2 to other wetlands, a remote site visit was conducted on December 11, 2021 to confirm that the wetland boundaries were correct and that there were no other connections.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *Google Earth Pro Photos dated: 10/2/2017; 5/13/2015; 5/26/2011; 3/31/2008. Connect Explorer Oblique Photos dated: 4/8/2013; and 5/2/2015. Photographs provided by the consultant in the delineation report dated 5/5/2020 and from the remote site visit December 11, 2020.*

Corps Site visit(s) conducted on: *December 11, 2020 (remote).*

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: *Online NRCS Soil Mapper accessed 06/17/2021 from <https://websoilsurvey.sc.egov.usda.gov/app/WebSoilSurvey.aspx>*

USFWS NWI maps: *Online USFWS NWI mapper accessed 06/17/2021 from <https://www.fws.gov/wetlands/data/Mapper.html>.*

USGS topographic maps: *USGS 1:24K, Ilion Quad.*

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): Although several point-in-time resources were evaluated for this review, they were not needed to determine whether inundation occurred from an a(1-3) water into onsite wetlands. Aerial photos were used to evaluate potential a(1)-a(3) waters adjacency and the lack of adjacency to any wetland was confirmed during a site visit conducted by the Corps of Engineers. These determinations did not require a typical year assessment.

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

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