



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 6, 2021

ORM Number: LRB-2021-00814

Associated JDs: N/A.

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

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

Center Coordinates of Review Area: Latitude 43.029999 Longitude -78.752387

**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
LRB-2021-00814_WetlandA	0.98 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland A is 0.98 acres in size on-site

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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>but is part of a larger wetland that extends off-site to the east and north. Off-site, the overall wetland physically abuts (on both sides) an unnamed tributary to the Erie Barge Canal/Tonawanda Creek. This stream is located approximately 500 linear feet to the east of the subject parcel. It has been determined that this tributary has at least intermittent flow based on information provided by the consultant, water presence shown in aerials at most times of the year (see aerial dates in section IIIA (Supporting Information) and IIIB (APT report), blue-dotted line on the USGS Quad (NY-Clarence Center 2019), USGS NHD data, and labeled as RS4CB on the USFWS National Wetlands Inventory maps. The wetland delineation titled, "Wetland Delineation for 3175-3179 Millersport Highway, Amherst, NY, dated May 2021" included a statement that the forested community of Wetland A extends to the north and east where it is directly adjacent to the unnamed tributary to the Erie Barge Canal/Tonawanda Creek waterway. This was verified during the June 15, 2021 Corps site inspection with the consultant and by reviewing the above referenced resources.</p>
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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-2021-00814_Wetland B	0.079 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

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<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>boundaries on the subject parcel are accurate as reported in the submitted report titled, "Wetland Delineation for 3175-3179 Millersport Highway, Amherst, NY, dated May 2021." As reported and observed during a Corps site inspection on June 15, 2021, the wetland is surrounded by uplands with no surface water connections observed. Wetland B does not abut an (a)(1)-(a)(3) water, and is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier. There is no mechanism for water exchange between the wetland and any other (a)(1)-(a)(3) water (inundation or flooding from typical storm events) in a typical year. Based on the above discussion, a review of the submitted wetland delineation report, the Corps site visit on June 15, 2021, and an in-office resource review, it has been determined that Wetland B is a (b)(1) non-adjacent wetland.</p>
LRB-2021-00814_WetlandC	0.31 acres	(b)(1) Non-adjacent wetland	<p>Wetland C does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland C 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 3175-3179 Millersport Highway, Amherst, NY, dated May 2021." As reported and observed during a Corps site inspection on June 15, 2021, the wetland is surrounded by uplands with no surface water connections observed. Wetland C does not abut an (a)(1)-(a)(3) water, and is not separated from an</p>

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			(a)(1)-(a)(3) water by a natural berm or barrier. There is no mechanism for water exchange between the wetland and any other (a)(1)-(a)(3) water (inundation or flooding from typical storm events) in a typical year. Based on the above discussion, a review of the submitted wetland delineation report, the Corps site visit on June 15, 2021, and an in-office resource review, it has been determined that Wetland C is a (b)(1) non-adjacent wetland.
LRB-2021-00814_WetlandD	0.018 acres	(b)(1) Non-adjacent wetland	Wetland D does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland D does meet the definition of a wetland. The boundaries on the subject parcel are accurate as reported in the submitted report titled, "Wetland Delineation for 3175-3179 Millersport Highway, Amherst, NY, dated May 2021," though the wetland extends off-site to the north. As reported and observed during a Corps site inspection on June 15, 2021, the wetland is surrounded by uplands with no surface water connections to any (a)(1)-(a)(3) waters, or other (a)(4) waters. Wetland D does not abut an (a)(1)-(a)(3) water, and is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier. There is no mechanism for water exchange between Wetland D and any other (a)(1)-(a)(3) water (inundation or flooding from typical storm events) in a typical year. Based on the above discussion, a review of the submitted wetland delineation report, the Corps site visit on June 15, 2021,

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			and an in-office resource review, it has been determined that Wetland D is a (b)(1) non-adjacent wetland.
LRB-2021-00814_WetlandE	0.007 acres	(b)(1) Non-adjacent wetland	Wetland E does not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland E does meet the definition of a wetland. The boundaries on the subject parcel are accurate as reported in the submitted report titled, "Wetland Delineation for 3175-3179 Millersport Highway, Amherst, NY, dated May 2021," though the wetland extends off-site to the north. As reported and observed during a Corps site inspection on June 15, 2021, the wetland is surrounded by uplands with no surface water connections to any (a)(1)-(a)(3) waters, or other (a)(4) waters. Wetland E does not abut an (a)(1)-(a)(3) water, and is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier. There is no mechanism for water exchange between Wetland E and any other (a)(1)-(a)(3) water (inundation or flooding from typical storm events) in a typical year. Based on the above discussion, a review of the submitted wetland delineation report, the Corps site visit on June 15, 2021, and an in-office resource review, it has been determined that Wetland E is a (b)(1) non-adjacent wetland.

**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.

X  Information submitted by, or on behalf of, the applicant/consultant: submitted report by Wetland Investigation Company and titled, "Wetland Delineation for 3175-3179 Millersport

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Highway, Amherst, NY, dated May 2021.”

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: *Oblique Imagery from Connect Explorer*  
*(<https://explorer.pictometry.com/index.php>) – dates: April 25, 2020. Google Earth Aerials*  
*dated, March 11, 2005, October 21, 2012, September 22, 2018.*

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: *<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>*  
*accessed and viewed study area on June 14, 2021 and August 5, 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 June 14, 2021 and*  
*August 5, 2021.*

USGS topographic maps: *NY-Tonawanda East 2019 and NY-Clarence Center 2019,*  
*accessed from the USGS Topoviewer on August 5, 2021 -*  
*<https://ngmdb.usgs.gov/topoview/viewer/#15/43.0313/-78.7486>.*

**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):** 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
43.03005	-78.7525	6/15/2021	-2.88	Moderate drought	Dry Season	9	Drier than Normal
43.03005	-78.7525	3/31/2005	2.07	Moderate wetness	Wet Season	9	Drier than Normal
43.03005	-78.7525	4/25/2020	-0.2	Normal	Wet Season	13	Normal Conditions
43.03005	-78.7525	10/21/2012	0.94	Incipient wetness	Wet Season	13	Normal Conditions
43.03005	-78.7525	9/22/2018	0.78	Incipient wetness	Wet Season	11	Normal Conditions

**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 normal conditions were present in the aerial/oblique images dated 4/25/2020, 9/22/2018, and 10/21/2012, all of which were dates in the wet season. Drier than normal conditions were reported for the date of the site inspection, 6/15/2021 and the aerial dated 3/31/2005. This data supports the observations made for these resources regarding flow and adjacency for the wetlands and determination of flow for intermittent for the unnamed tributary to the Erie Barge Canal/Tonawanda Creek.

**C. Additional comments to support AJD:** Based on the above documentation and rationale, it has been determined that the study area includes one jurisdictional (a)(4) water – 2021-00814\_WetlandA and four (4) excluded (b)(1) non-adjacent wetlands – LRB-2021-00814\_WetlandB, LRB-2021-00814\_WetlandC, LRB-2021-00814\_WetlandD, and LRB-2021-00814\_WetlandE. All the above documentation supports these determinations.

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