



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, BUFFALO DISTRICT
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

March 15, 2021

Regulatory Branch

SUBJECT: Jurisdictional Determination, Department of Army Processing No. LRB-2010-00964

Mark Masse
Genesee County Economic Development Center
99 MedTech Drive, Suite 106
Batavia, NY 14020

Dear Mr. Masse:

This pertains to your recent request for a jurisdictional determination for the WNY STAMP project site near Judge and Crosby Roads, west of Route 77, in the Town of Alabama, Genesee County, New York.

Section 404 of the Clean Water Act (CWA) establishes Corps of Engineers jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands, as defined in 33 CFR Part 328.3.

I have evaluated your submitted wetland delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. I am hereby verifying the wetland and water boundaries depicted on the attached wetland delineation map (**Drawing 1 of 1**) with both an Approved Jurisdictional Determination (AJD) and a Preliminary Jurisdictional Determination (PJD) as described below.

1. Approved Jurisdictional Determination

Based upon my review of the submitted delineation and on-site observations, I have determined that aquatic resources **Wetland 4, Wetland 5, Wetland 7, Wetland 11, Wetland 12, Wetland 13, Wetland 14, Wetland 15, Wetland 16, Wetland 17, Wetland 18, Wetland 23, Wetland 24, Wetland 25, Wetland 28, Wetland 32, Wetland 33, Wetland 35, Wetland 38, Wetland 47, Wetland 49, Wetland 50, Wetland 51, Wetland 52 on the parcel (Drawing 1 of 1)** and on the AJD form are excluded waters as defined in the Navigable Waters Protection Rule. Therefore, these water(s) are not regulated under Section 404 of the CWA. Accordingly, you do not need Department of the Army authorization to commence work in these areas.

This verification will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. At the end of this period, a new wetland delineation will be required if a project has

SUBJECT: Jurisdictional Determination, Department of Army Processing No. LRB-2010-00964

not been completed on this property or additional impacts are proposed for WOUS.

If you object to this AJD, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above JD, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Suzanne Chubb
Regulatory Appeals Review Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10-714
Cincinnati, Ohio 45202-3222
Phone: 513-684-7261 Fax: 513-684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been submitted. If you have not submitted an RFA form, it must be received at the above address by **May 15, 2021**.

It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.

2. Preliminary Jurisdictional Determination

A Preliminary Jurisdictional Determination has been made for wetlands/waters as **Wetland 1, Wetland 2, Wetland 3, Wetland 6, Wetland 8, Wetland 9, Wetland 10, Wetland 19, Wetland 20, Wetland 21, Wetland 22, Wetland 26, Wetland 27, Wetland 29, Wetland 30, Wetland 31, Wetland 34, Wetland 36, Wetland 37, Wetland 39, Wetland 42, Wetland 43, Wetland 44, Wetland 46, Wetland 48, and Tributary , Tributary 2, Tributary 3, Tributary 4, Tributary 5, Tributary 6, Tributary 7 and Whitney Creek** shown on the attached map (**Drawing 1 of 1**).

Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States (WOUS) on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 16-01, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the Corps. Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an approved jurisdictional determination (AJD) from

SUBJECT: Jurisdictional Determination, Department of Army Processing No. LRB-2010-00964

this office. If an AJD is requested, please be aware that this may require the submittal of additional information.

I have enclosed the Preliminary JD Form with this letter. The form and included table identify the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please sign and return a copy of this form to my attention. If you do not respond within 15 days, we will presume concurrence and no additional follow up is necessary prior to finalizing an action.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of all aquatic resources on the parcel be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified, and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, both the AJD and PJD have been conducted only to identify the limits of wetlands/waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

I encourage you to contact the appropriate state and local governmental officials to ensure that the proposed work complies with their requirements.

Questions pertaining to this matter should be directed to me at (716) 879-4304 by writing to the following address: U.S. Army Corps of Engineers Regulatory Branch 1776 Niagara Street, Buffalo NY 14207 or by e-mail

Sincerely,



Molly Connerton
Biologist

Enclosures

cc:

NOTICE OF ADMINISTRATIVE APPEAL OFFER AND PERMIT DENIAL
FOR PROFFERED PERMIT

Applicant: Genesee County Economic Development Center		File Number: LRB-2010-00964	Date: March 15, 2021
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
X	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/pages/reg_materials.aspx or Corps regulations at 33 CFR Part 3.31

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Molly Connerton
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207
Molly.A.Connerton@usace.army.mil
(716) 879-4304

If you only have questions regarding the appeal process you may also contact:

Suzanne Chubb
Regulatory Appeals Review Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10-714
Cincinnati, Ohio 45202-3222
Phone: 513-684-7261 Fax: 513-684-2460

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: March 15, 2021

B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Mark Masse,
Genesee County Economic Development Center, 99 MedTech Drive, Suite 106, Batavia, NY
1402

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, WNY STAMP, 2010-00694

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The project site is located on a parcel along Allegany, Judge and Lewiston Roads, in the Town of Alabama, Genesee County, New York. The site was delineated originally in 2010 and the applicant was provided an Approved JD (AJD) for the project site on February 1, 2012. The applicant then requested a PJD for the updated delineation report that was completed in January 2017. I sent a PJD on December 20, 2018. Currently the applicant has requested a Combined AJD-PJD for the STAMP site under the NWPR. A Preliminary JD will be issued for Wetlands (W1, W2, W3, W6, W8, W9, W10, W19, W20, W21, W22, W23, W26, W27, W29, W30, W31, W34, W36, W37, W39, W42, W43, W44, W46, W48, and Tributary 1 through 7 and Whitney Creek). The remaining wetlands (Wetlands W4, W5, W7, W11, W12, W13, W14, W15, W16, W17, W18, W23, W24, W25, W28, W32, W33, W35, W38, W47, W49, W50, W51, W52. will be on NWPR AJD Form under Excluded Waters.

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: New York County/parish/borough: Genesee City: Alabama

Center coordinates of site (lat/long in degree decimal format):

Lat.:43.090007 Long.: -78.404839

Universal Transverse Mercator: 17

Name of nearest waterbody: Whitney Creek

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: March 9, 2021

Field Determination. Date(s): August 2018 and January 2021

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Wetland 1	43.07	-78.40	0.63 acres	wetland	Section 404
Wetland 2	43.07	-78.40	18.48 acres	wetland	Section 404

Wetland 3	43.07	-78.40	0.07 acres	wetland	Section 404
Wetland 6	43.07	-78.40	4.45 acres	wetland	Section 404
Wetland 8	43.07	-78.40	0.99 acres	wetland	Section 404
Wetland 9	43.07	-78.40	1.88 acres	wetland	Section 404
Wetland 10	43.07	-78.40	1.55 acres	wetland	Section 404
Wetland 19	43.07	-78.40	0.34 acres	wetland	Section 404
Wetland 20	43.07	-78.40	31.75 acres	wetland	Section 404
Wetland 21	43.07	-78.40	0.50 acres	wetland	Section 404
Wetland 22	43.07	-78.40	6.93 acres	wetland	Section 404
Wetland 23	43.07	-78.40	0.33 acres	wetland	Section 404
Wetland 26	43.07	-78.40	1.37 acres	wetland	Section 404
Wetland 27	43.07	-78.40	3.75 acres	wetland	Section 404
Wetland 29	43.07	-78.40	4.66 acres	wetland	Section 404
Wetland 30	43.07	-78.40	0.25 acres	wetland	Section 404
Wetland 31	43.07	-78.40	0.64 acres	wetland	Section 404
Wetland 34	43.07	-78.40	1.78 acres	wetland	Section 404
Wetland 36	43.07	-78.40	12.04 acres	wetland	Section 404
Wetland 37	43.07	-78.40	5.63 acres	wetland	Section 404
Wetland 39	43.07	-78.40	0.89 acres	wetland	Section 404
Wetland 44	43.07	-78.40	0.06 acres	wetland	Section 404

Wetland 46	43.07	-78.40	0.63 acres	wetland	Section 404
Wetland 48	43.07	-78.40	2.08 acres	wetland	Section 404
Tributary 1	43.07	-78.40	833.06 linear ft.	tributary	Section 404
Tributary 2	43.07	-78.40	3309.22 linear ft.	tributary	Section 404
Tributary 3	43.07	-78.40	11517.32 linear ft.	tributary	Section 404
Tributary 4	43.07	-78.40	2012.05 linear ft.	tributary	Section 404
Tributary 5	43.07	-78.40	4679.24 linear ft.	tributary	Section 404
Tributary 6	43.07	-78.40	2310.00 linear ft.	tributary	Section 404
Tributary 7	43.07	-78.40	1094.91 linear ft.	tributary	Section 404
Whitney Creek	43.07	-78.40	4,067 linear ft.	tributary	Section 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map Review of the Aquatic Resource Delineation Update Report (Completed January 2017) by CC Environment and Planning and Updated Maps submitted on December 10, 2020.
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____.
- Data sheets prepared by the Corps: _____.
- Corps navigable waters' study: _____.
- U.S. Geological Survey Hydrologic Atlas: Southwestern Lake Ontario.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Akron.
- Natural Resources Conservation Service Soil Survey. Citation: Review of Genesee County Websoil Survey.
- National wetlands inventory map(s). Cite name: Review of USFWS-NWI maps-several NWI wetlands mapped onsite.
- State/local wetland inventory map(s): Review of Environmental Resource Mapper for NYSDEC wetlands which are mapped onsite.
- FEMA/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____. (National Geodetic Vertical Datum of 1929)
- Photographs:
 - Aerial (Name & Date): Review of Google orthoimagery, (2018, 2016, 2011, 1995).
 - Other (Name & Date): Review of Photographs within the updated Delineation Report.
- Previous determination(s). File no. and date of response letter: _____.
- Other information (please specify): _____.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Molly Connor 03/15/2021

Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



**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): 3/15/2021
ORM Number: LRB 2010-00964

Associated JDs: Rapanos AJD issued on February 1, 2012 and a Preliminary JD issued on December 20, 2018. A Preliminary JD will be issued for Wetlands (W1, W2, W3, W6, W8, W9, W10, W19, W20, W21, W22, W26, W27, W29, W30, W31, W34, W36, W37, W39, W42, W43, W44, W46, W48, and Tributary 1 through 7 and Whitney Creek). The remaining Wetlands W4, W5, W7, W11, W12, W13, W14, W15, W16, W17, W18, W23, W24, W25, W28, W32, W33, W35, W38, W47, W49, W50, W51, W52 will be on this NWPR AJD Form under Excluded Waters.

Review Area Location¹: State/Territory: New York City: Basom County/Parish/Borough: Genesee
Center Coordinates of Review Area: Latitude 43.09007 Longitude -78.400839

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.

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

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

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 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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 4	0.45	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 4 and Wetlands 11-18 are small isolated pocket wetlands that are surrounded by upland hayfields. These wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3 (c)(1). As per on site observations, the delineation report and a review of remote tools, these wetlands do not abut an a(1)-(a)(3) water. The closest a (1)-(a)(3) tributary to these wetlands is Tributary 3 which is approximately 224 from the closest wetland within this group. Uplands separate these wetlands and Tributary 3. Tributary 3 is a perennial tributary and is visible on aerial imagery as well as the NRCS Websoil survey, and the USGS topographical maps. These wetlands are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Nothing was observed during the site visits to indicate that water from Tributary 3 floods and inundates these wetlands. In addition, NRCS soil maps in this area indicate no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates Wetland 4 or Wetlands 11-18 are physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland 4 or Wetlands 11-18 are physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. No culverts were observed at
Wetland 11	0.11			
Wetland 12	0.08			
Wetland 13	0.38			
Wetland 14	0.06			
Wetland 15	0.25			
Wetland 16	0.05			
Wetland 17	0.02			
Wetland 18	0.15			

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland 5 Wetland 7	0.04 0.06	acre(s)	(b)(1) Non-adjacent wetland.
			the any of the Wetlands (Wetland 4 and Wetland 11-18).
			Wetland 5 and Wetlands 7 are small isolated pocket wetlands that are surrounded by upland hayfields. These wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3 (c)(1). As per on site observations, the delineation report and a review of remote tools, these wetlands do not abut an a(1)-(a)(3) water. The closest a (1)-(a)(3) tributary to these wetlands is Tributary 2 which is approximately 296 linear feet from the closest wetland (Wetland 5) within this group. Uplands separate these wetlands and Tributary 2. Tributary 2 is an intermittent tributary and is visible on aerial imagery as well as the NRCS Websoil survey, and the USGS topographical maps. These wetlands are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Nothing was observed during the site visits to indicate that water from Tributary 2 floods and inundates these wetlands. In addition, NRCS soil maps in this area indicate no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates Wetland 5 or Wetland 7 are physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland 5 or Wetland 7 are physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. No culverts were observed at Wetland 5 or Wetland 7).
Wetland 23 Wetland 24 Wetland 25	0.33 0.40 0.23	acre(s)	(b)(1) Non-adjacent wetland.
			Wetland 23, 24 and 25 do not meet any of the four adjacency criteria set forth in 33CFR328.3 (c)(1). As per on site observations and a review of remote tools including USGS topographical maps, NRCS websoil surveys and aerial imagery, these wetlands do not abut an (a)(1)-(a)(3)water. The closest tributary is Whitney Creek which is approximately 200 linear feet



**U.S. ARMY CORPS OF ENGINEERS
 REGULATORY PROGRAM
 APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
 NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>from Wetland 23, 500 linear feet from Wetland 24 and 900 linear feet from Wetland 25. These wetlands are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Nothing was observed during the site visits to indicate that water from Whitney Creek floods and inundates these wetlands. In addition, NRCS soil maps in this area indicate no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates Wetland 23, 24 or 25 are physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland 23, 24, or 25 are physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.</p>
Wetland 28	0.02	acre(s)	<p>(b)(1) Non-adjacent wetland.</p> <p>Wetland 28 is a small isolated pocket wetland surrounded by upland woods and fields. Wetland 28 doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). As per on site observations and a review of remote tools including USGS topographical maps, NRCS websoil surveys and aerial imagery. Wetland 28 does not abut an (a)(1)-(a)(3)water. The closest tributary is Tributary 4 which is approximately 930 linear feet north of Wetland 28 and upland fields separate Wetland 28 from Tributary 4. There is no evidence based on site observations and a review of remotes tools to indicate that Wetland 28 is inundated by flooding from an (a)(1)-(a)(3) water in a typical year. The NRCS Websoil survey shows that the mapped soils in this area have no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates Wetland 28 is physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. There is no evidence based on on-site observations and review of remote tools to</p>



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			indicate that Wetland 28 is physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature.
Wetland 32 Wetland 33 Wetland 35 Wetland 47 Wetland 49 Wetland 50 Wetland 51 Wetland 52	0.05 0.31 0.11 0.06 0.11 0.97 0.22 0.56	acre(s)	(b)(1) Non-adjacent wetland. Wetland 32, 33, 35, 47, 49 and 50-52 are small isolated pocket wetlands that are surrounded by upland hayfields. These wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3 (c)(1). As per on site observations, the delineation report and a review of remote tools, these wetlands do not abut an a(1)-(a)(3) water. The closest a (1)-(a)(3) tributary to these wetlands is Tributary 3 which is approximately 268 linear feet from the closest wetland (Wetland 35) within this group. Uplands separate these wetlands and Tributary 3. Tributary 3 is a perennial tributary and is visible on aerial imagery as well as the NRCS Websoil survey, and the USGS topographical maps. These wetlands are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Nothing was observed during the site visits to indicate that water from the Tributary 3 floods and inundates these wetlands. In addition, NRCS soil maps in this area indicate no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates these wetlands are physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. The entire project site is relatively flat in elevation. There is no evidence based on on-site observations and review of remote tools to indicate that these wetlands physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. All of these wetlands are small remote wetlands surrounded by uplands and no



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			culverts or other outlets were observed at the any of the wetlands.
Wetland 38	0.02	acre(s)	(b)(1) Non-adjacent wetland.
			Wetland 38 is a small isolated pocket wetland that are surrounded by upland hayfields. This wetland does not meet any of the four adjacency criteria set forth in 33CFR328.3 (c)(1). As per on site observations, the delineation report and a review of remote tools, this wetland doesn't abut an a(1)-(a)(3) water. The closest a (1)-(a)(3) tributary to this wetland is Tributary 5 which is approximately 252 from Wetland 38. Tributary 5 is a perennial tributary and is visible on aerial imagery as well as the NRCS Websoil survey, and the USGS topographical maps. This wetland is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year. Nothing was observed during the site visits to indicate that water from the Tributary 5 floods and inundates these wetlands. In addition, NRCS soil maps in this area indicate no frequency of flooding. There is no evidence based on site visit observations and review of topographical and aerial imagery that indicates Wetland 38 is physically separated from a water identified in paragraph (a)(1) (2) or (3) only by a natural berm bank, dune or natural feature. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland 38 is physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year, such as through a culvert, flood or tide gate, pump, or similar artificial feature. No culverts were observed at Wetland 38.

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: Title(s) and date(s)
This information **Select.** sufficient for purposes of this AJD.
Rationale: **N/A or describe rationale for insufficiency (including partial insufficiency).**
- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: **Aerial and Other:** Photographs within the delineation report and review of Google aerials from years 1995, 2011, 2016 and 2018.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

- Corps site visit(s) conducted on: [January 2021, August 2018](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [Approved JD issued under Rapanos \(February 1, 2012\), Preliminary JD issued under the CWR \(December 20, 2018\)](#)
- Antecedent Precipitation Tool: [*provide detailed discussion in Section III.B.*](#)
- USDA NRCS Soil Survey: [NRCS Websoil Survey Accessed 03012021](#)
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- USFWS NWI maps: [USFWS National Wetlands Inventory Mapper, Accessed 03012021](#)
- USGS topographic maps: [USGS 2016 Akron Quadrangle](#)

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	HistoricalAerials.com review of Topo and Aerials for years 1995, 1965, 1927

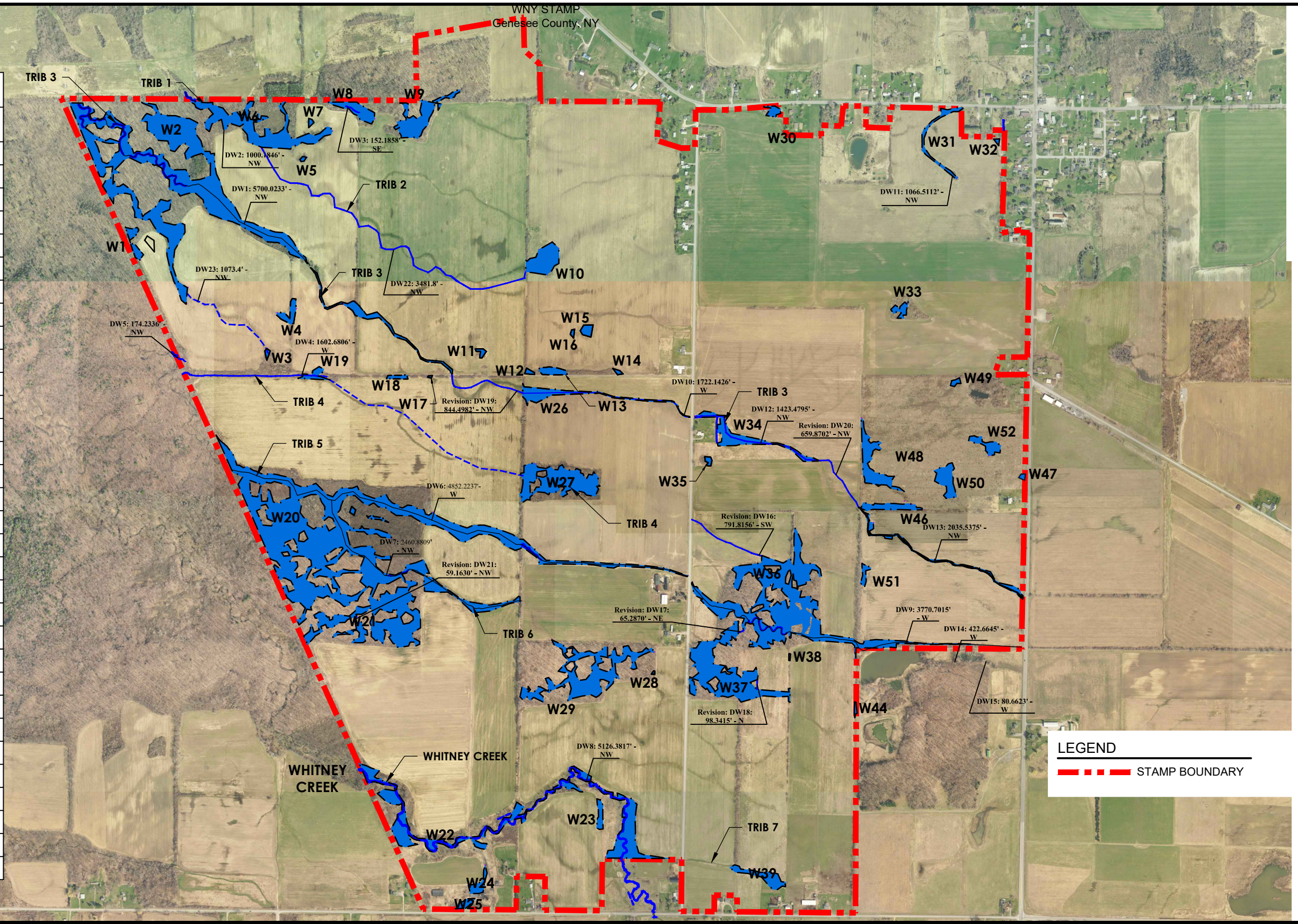
B. Typical year assessment(s): The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 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 and the University of Delaware WebWIMP.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
43.090007	-78.404839	9/22/2018	-99.99	Not available	Dry Season	11	Normal Conditions
43.090007	-78.404839	5/30/2016	-99.99	Not available	Dry Season	7	Drier than Normal
43.090007	-78.404839	10/5/2011	-99.99	Not available	Wet Season	13	Normal Conditions
43.090007	-78.404839	3/27/1995	-99.99	Not available	Wet Season	8	Drier than Normal

An APT evaluation was run, associated with Google Earth Aerial photos for 2. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate normal conditions for 2011 and 2018 and drier than normal conditions in 1995 and 2016.

C. Additional comments to support AJD: [Based on the site visit observations and data reviewed from the delineation report and a review of remote tools which included aerial photography, soils data and maps, and topographical maps, W4, W5, W7, W11, W12, W13, W14, W15, W16, W17, W18, W23, W24, W25, W28, W32, W33, W35, W38, W47, W49, W50, W51, W52 do not meet the definition of an \(a\)\(4\) adjacent wetland as the wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3\(c\)\(1\). Therefore these wetlands are excluded and are not jurisdictional waters of the U.S.](#)

TABLE OF NWPR WATERS	
PJD	AJD
TRIBUTARY 1	WETLAND 4
TRIBUTARY 2	WETLAND 5
TRIBUTARY 3	WETLAND 7
TRIBUTARY 4	WETLAND 11
TRIBUTARY 5	WETLAND 12
TRIBUTARY 6	WETLAND 13
TRIBUTARY 7	WETLAND 14
WETLAND 1	WETLAND 15
WETLAND 2	WETLAND 16
WETLAND 3	WETLAND 17
WETLAND 6	WETLAND 18
WETLAND 8	WETLAND 23
WETLAND 9	WETLAND 24
WETLAND 10	WETLAND 25
WETLAND 19	WETLAND 28
WETLAND 20	WETLAND 32
WETLAND 21	WETLAND 33
WETLAND 22	WETLAND 35
WETLAND 26	WETLAND 38
WETLAND 27	WETLAND 47
WETLAND 29	WETLAND 49
WETLAND 30	WETLAND 50
WETLAND 31	WETLAND 51
WETLAND 34	WETLAND 52
WETLAND 36	
WETLAND 37	
WETLAND 39	
WETLAND 42	
WETLAND 43	
WETLAND 44	
WETLAND 46	
WETLAND 48	




J:\PROJECTS\GCEDC\STAMP Joint App\Design\08 CAD\AutoCAD\Civil\C2\JPA RAI\Wetland Mitigation Figures\Figure 6 - Delineated Wetlands and Streams.dwg



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DELINEATED WETLANDS AND STREAMS - UPDATED MARCH 2021
WMY SCIENCE TECHNOLOGY ADVANCE MANUFACTURING PARK
TOWN OF ALABAMA, GENESEE COUNTY, NY
MARCH 2021

