



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): **5 November 2020**

ORM Number: NAN-2020-01056-WOR

Associated JDs: 2002-01049-YS Russin Lumber Corp.

Review Area Location¹:

State/Territory: NY City: Montgomery County/Parish/Borough: Orange County

Center Coordinates of Review Area: Latitude 41.521342 Longitude -74.187438

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
Stream B	293 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Stream B is a perennial, unnamed tributary to the Otter Kill, as evidenced by observed bed and banks, ordinary high-water marks and running water during most times of the year.

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
Pond B	0.8 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a	Stream B flows freely through Pond B. Pond B does not appear to be an impoundment of Stream B. Rather, it appears to be an area that was once excavated in the path of Stream B and is perennial, just like Stream B.

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 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.

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.



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		typical year	
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Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland B	0.11 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland B was delineated using the 87 Manual/Regional Supplement and is physically contiguous to Stream B, a perennial, unnamed tributary to the Otter Kill.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	1.74 acres	(b)(1) Non-adjacent wetland	Wetland A is not located within a 100-year floodplain. Wetland A is located approximately 300 feet from and 2 feet higher in elevation than Stream B, the nearest water of the United States, with no apparent hydrologic connection.

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: *Drawing entitled “Federal Wetland Delineation Plan Jorad, LLC Bracken Road Town of Montgomery, Orange County, NY”, Sheet 1 of 2, prepared by Thomas B. Olley, P.E., P.L.L.C, dated March 4, 2020, and last revised October 20, 2020; wetland data sheet for area between Wetland A and Stream B dated August 14, 2019; and ground level photographs taken on September 23, 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: Google Earth Aerials dated March 31, 2001, March 31, 2004, and April 16, 2016.

Ground level photographs dated September 23, 2020.

Corps Site visit conducted on: *October 15, 2002, under Application Number 2002-01049-YS.*

Previous Jurisdictional Determinations (AJDs or PJDs): *N/A 2002-01049-YS was withdrawn.*

Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*

USDA NRCS Soil Survey: *Generated at Web Soil Survey March 20, 2020.*

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.

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NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	FEMA Map # 36071C0114E

B. Typical year assessment(s):

- a. The antecedent precipitation tool (APT) was run for the site visit that was conducted on October 15, 2002, showing that the site visit was conducted during a wetter than normal period, yet Wetland A was still observed to be not adjacent to Stream B, the nearest water of the US.
- b. The APT was run for the three Google Earth aerial photographs, dated March 31, 2001, March 31, 2004 and April 16, 2016. According to the APT, March 31, 2001 was experiencing normal conditions while March 31, 2004 and April 16, 2016 were under drier than normal conditions.
- c. The consultant provided one wetland data sheet of the area between Wetland A and Stream B, dated August 14, 2019. The APT for that date, indicates that conditions were drier than normal.
- d. The consultant provided color photographs from around the perimeter of Wetland A and near Stream B and Pond B, that were taken on September 23, 2020. The APT for that date shows that normal conditions existed on that day.

C. Additional comments to support AJD:

- a. The site visit of October 15, 2002, was conducted under Application Number 2002-01049-YS. At that time, the wetland currently shown as Wetland A was identified as Wetland B and appeared to not be part of the surface tributary system. Current Pond B and Wetland B correspond to "Pond", Wetland D and Wetland E under the former application.
- b. The three Google Earth aeriels, dated March 31, 2001, March 31, 2004 and April 16, 2016, all show that Wetland B is not hydrologically connected to the larger wetland system to the northwest.
- c. The wetland data sheet provided by the consultant shows that the location of the data sheet, in the area between Wetland A and Stream B, displays no wetland characteristics.
- d. The color photographs taken on September 23, 2020, show that Wetland B is in a slightly depressed area wherein the ground slopes up slightly before entering a large lawn area between Wetland A and Stream B.
- e. The USDA soil map shows that the area in between Wetland A and Stream B is dominated by Mardin gravelly silt loam, which is a moderately well drained soil, not normally associated with wetlands.

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