



**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): 9/1/2020

ORM Number: NAN-2020-00039-UDE

Associated JDs: N/A

Review Area Location¹: State/Territory: New York City: Ballston County/Parish/Borough: Saratoga

Center Coordinates of Review Area: Latitude 42.99365 Longitude -73.84707

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
- 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.

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**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.671	acre(s)	(b)(1) Non-adjacent wetland.	Wetland not adjacent to an (a)(1), (a)(2) or (a)(3) water, see also III.C below.

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 “Rossi Commercial Business Planned Unit Development, Wetland Survey Lot #1B”, Sheet WDM-ISO, prepared by the Environmental Design Partnership, LLP, dated January 3, 2020, revised January 14, 2020, and last issued July 1, 2020; Wetland Delineation Report for Application Number NAN-2009-01379-UCO dated October 2010; original submission dated January 6, 2020; and revised and updated photos, figures and discussions received on July 1, July 28, and August 7, 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: [Aerial and Other: Aerials from 1949, 1961, 1968, and ORM imagery; and ground-level photos received January 10, 2020, and July 28, 2020](#)
- Corps site visit(s) conducted on: [November 9, 2010, June 21, 2011, and October 29, 2018](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [NAN-2009-01379-UCO, JD issued August 11, 2011; and NAN-2018-01303-UDE, site inspection conducted on October 29, 2018.](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Figure 2, received on July 1, 2020.](#)
- USFWS NWI maps: [Figure 1 in submission received on August 7, 2020.](#)
- USGS topographic maps: [Round Lake Quadrangle, 7.5 Minute Series, and ORM imagery](#)

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.
CorpsMap ORM Map Layers	Aerial imagery and USGS layers for site and lands to the east.
State/Local/Tribal Sources	N/A.
FEMA/FIRM maps	Figure 3, received on August 7, 2020

B. Typical year assessment(s): [Utilized Antecedent Precipitation Tool to assess on and off site conditions observed by USACE personnel and by applicant’s consultant on November 9, 2010, June 21, 2011, October 29, 2018, and July 27, 2020. The conditions have been observed during both the wet and dry](#)

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**

seasons, including wetter than normal and normal times during the wet season, and dryer than normal and normal times during the dry season. At all times, the off-site conditions were consistent, including the presence of the pond and swale, and where this swale ended and caused a lack of connection to an (a)(1), (a)(2), or (a)(3) water. During these inspections, flooding was never observed in Wetland A or the off-site pond and swale that it connects to from the downstream tributary to the Mourning Kill.

- C. Additional comments to support AJD:** On August 11, 2011, the New York District, U.S. Army Corps of Engineers issued an approved jurisdictional determination (JD) that confirmed that the wetland on the subject site is isolated and not subject to USACE jurisdiction. Extensive off-site analysis was conducted to determine how the wetland lacked a surface hydrologic connection to the nearest downstream tributary. While that JD was valid, the pre-existing forested wetland was altered by construction equipment which changed the wetland boundary and its cover type. The wetland, now known as Wetland A, is predominantly emergent and consists of 0.671 acres within the JD boundary. The off-site conditions were found to be the same in 2020 as they were in 2011. Wetland A continues off-site to the south onto Lot #1A, and then to the east where it abuts a man-made pond on private property. The pond outlets to the east into an open swale via a 12-inch diameter culvert. The swale, which flows intermittently and was found to lack an ordinary high water mark continues into another 12-inch diameter culvert. Beyond the second culvert, the swale and indicators of surface flow disappear. The total length of the swale is 80 feet. The closest down gradient wetland is approximately 166 feet to the east. The distance between the end of the pond and the end of the swale to the nearest tributary is 500 feet and 420 feet, respectively. The nearest tributary is an unnamed stream that flows into the Mourning Kill further to the east. Both of these streams are (a)(2) waters. The swale, pond and Wetland A are all over 20 feet higher in elevation than the unnamed tributary to the Mourning Kill. These surface features do not flood from this (a)(2) water during a typical year. It has been determined that Wetland A does not have a surface hydrologic connection to, and is not adjacent to an (a)(1), (a)(2) or (a)(3) water, as it does not abut an (a)(1), (a)(2) or (a)(3) water, it is not inundated by flooding from an (a)(1), (a)(2) or (a)(3) water during a typical year, nor is it separated from an (a)(1), (a)(2) or (a)(3) water by either a natural berm or similar feature, or by an artificial barrier or similar structure that provides a direct hydrologic surface connection between the wetland and an (a)(1), (a)(2) or (a)(3) water in a typical year.