

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 28, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, 772 North Forest Road (Westwood Country Club), LRB-1990-97632, Form 1 of 1 (Wetland 1 through Wetland 11 and Channel 1)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie County City: Town of Amherst
Center coordinates of site (lat/long in degree decimal format): Lat. 42.99055° **N**, Long. -78.77460° **W**.
Universal Transverse Mercator:

Name of nearest waterbody: Ellicott Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Ellicott Creek

Name of watershed or Hydrologic Unit Code (HUC): 04120104

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

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

Office (Desk) Determination. Date: March 29, 2016

Field Determination. Date(s): November 10, 2014

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: Ellicott Creek - 2,292 linear feet (or 3.24 acres) ; Channel 1 - 1,205 linear feet: width (ft)

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to

be not jurisdictional. Explain: Wetlands 1 through 10:

1. Wetlands 1, 2, 3, 4, 5, 6, and 9 are isolated wetlands that appear to be artificial ponds that were excavated in upland soils for aesthetic reasons for the golf course and/or to be used to irrigate the greens and fairways of the golf course and are therefore generally not considered to be Waters of the United States as per the preamble to the 1986 Regulations CFR 33 Section 328.3 (found in Federal Register Vol. 51, No. 219, Page 41217). Wetlands 1, 2, 3, 4, 5, 6, and 9 range in distance

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

from Ellicott Creek (a TNW that is designated as Wetland 11 on the delineation map) from a low of approximately 1,300 linear feet to a high of approximately 2,200 linear feet. Due to the lack of proximity and topographic features there is no possibility of a shallow subsurface connection to Ellicott Creek (a TNW). Wetlands 3, 4, 6, and 9 retain primarily pond characteristics while Wetlands 1, 2 and 5 exhibit more palustrine characteristics. Acreages: Wetland 1 – 0.309 acres; Wetland 2 – 0.229 acres; Wetland 3 – 0.601 acres; Wetland 4 – 1.02 acres; Wetland 5 – 0.660 acres; Wetland 6 – 0.915 acres)

2. Wetlands 7 (0.052 acres), 8 (0.173 acres) , and 10 (0.058 acres) are isolated wetlands with no outlet. These wetlands are depressional wetlands formed over time probably as a result of grading or construction activities and have no potential to affect interstate commerce under 328.3(a)(3)(i-iii) (See Section IV.B of this form); therefore, Wetlands 7, 8 and 10 are considered to be intrastate, non-navigable, isolated waters and are therefore determined to not be jurisdictional under Section 404 of the Clean Water Act. Wetlands 7 and 8 are approximately 950 linear feet from the nearest jurisdictional waterbody (Ellicott Creek) and Wetland 10 is approximately 890 linear feet from Ellicott Creek. There is no potential for shallow subsurface connection to Ellicott Creek due to the distance between the wetlands and the creek. Aerial photographs from the late 1920's and 1957, soil maps prepared on data collected during the 1967-1977 time frame, and topographic maps provide no indicators that ponded water existed in the areas of these wetlands prior to the construction of the golf course.
3. Total isolated wetland acreage: 4.18 acres (Acreages: Wetland 1 – 0.309 acres; Wetland 2 – 0.229 acres; Wetland 3 – 0.601 acres; Wetland 4 – 1.02 acres; Wetland 5 – 0.660 acres; Wetland 6 – 0.915 acres; Wetland 7 – 0.052 acres; Wetland 8 – 0.173 acres; Wetland 9 – 0.160 acres; Wetland 10 – 0.058 acres)

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Ellicott Creek**.

Summarize rationale supporting determination: On June 12, 2008 an approved jurisdictional determination form for this TNW has been completed for this section of Ellicott Creek by the Buffalo District. Additionally, the Buffalo District has determined that a site/project specific jurisdictional determination involving this TNW is not required as a TNW designation has already been completed. This TNW jurisdictional determination form for this section of Ellicott Creek has been attached as supporting documentation.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: **Pick List**
Drainage area: 0.16 **square miles**
Average annual rainfall: 37.3 inches
Average annual snowfall: 95 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
- Tributary flows through **2** tributaries before entering TNW.

Project waters are **1 (or less)** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **1 (or less)** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵: Channel 1 flows northwesterly across the southern half of the Westwood Site parcel to Frankhauser Road where it enters the stormwater collection system for the Town of Amherst. .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: The stream (Channel 1) has been highly manipulated. It

follows some portion of the natural flow pattern as seen on topographic maps (flowing from easterly to westerly) but it has been artificially widened, deepened, and forced into unnatural 90 degree bends. The natural flow path leading under Frankhauser Road to the west has been blocked and the stream now flows into the stormwater/sanitary sewer system of the Town of Amherst.

Tributary properties with respect to top of bank (estimate):

Average width: 8 feet
Average depth: 3 feet
Average side slopes: **Vertical (1:1 or less)**

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover: Cattails, emergent vegetation 35% cover total but is found

only in the most eastern portions of the channel.

Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.

Presence of run/riffle/pool complexes. Explain: None. The channel has been artificially manipulated such that if there were any .

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: The stream collects runoff from the adjacent parcel which is currently a former golf course.

Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):
 Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: The water quality as determined from photographs and from the site visit is generally fairly murky.

Identify specific pollutants, if known: .

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: along the eastern portion of the Channel wetland vegetation exists.
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: Ducks and geese use Channel 1 as evidenced by photographs.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain: .

Ecological connection. Explain: .

Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

Riparian buffer. Characteristics (type, average width): .

Vegetation type/percent cover. Explain: .

Habitat for:

Federally Listed species. Explain findings: .

Fish/spawn areas. Explain findings: .

Other environmentally-sensitive species. Explain findings: .

Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: 2,292 linear feet width (ft), Or, 3.24 acres.
 - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Photographs submitted by agent and by adjacent property owner as well as letters submitted from adjacent property owners show the Channel 1 as having flow seasonally.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **1,205** linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
 - Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters: .
- Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: 2.696 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 1.48 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: project location map, vegetation map, wetland delineation map, and drainage map.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. We concur with the delineation report on Wetlands 1 through 11 but we disagree on the Channel on the southern boundary of the site. We are asserting jurisdiction over this channel.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: Ellicot Creek TNW Jurisdictional Determination dated 6/12/08.
- U.S. Geological Survey Hydrologic Atlas: .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Buffalo NE NY.
- USDA Natural Resources Conservation Service Soil Survey. Citation: Erie County.
- National wetlands inventory map(s). Cite name: Town of Amherst, Erie County, NY.
- State/Local wetland inventory map(s): State Freshwater Wetland Map.
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):Aerial photographs available online on Bing and Google Earth-Pro.
or Other (Name & Date):Photographs submitted by applicant.
- Previous determination(s). File no. and date of response letter:LRB: 1990-97632 April 22, 2013..
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetland 1 through 10 are outside Department of the Army jurisdiction because they do not meet the criteria for a jurisdictional water of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. do not/has not supported interstate or foreign commerce;

2. are not an interstate water/wetland;
3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) which are used or could be used for industrial purpose by industries in interstate commerce
4. are not an impoundment of water otherwise defined as WOUS under the definition;
5. are not a tributary of waters identified in paragraphs (a)(1)-(4) of this section;
6. are not a territorial sea;
7. are not wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section.

Significant Nexus information regarding Channel 1:

The onsite stream (Channel 1) was found to perform functions including flood attenuation /runoff storage, pollutant trapping, water quality improvement, and wildlife habitat. The conclusion that the stream performs flood attenuation/runoff storage functions was based on direct observations of standing water and saturated soils occupying large portions of the stream in at least three seasons of the year, the wetland's position in a suburban landscape, the size and depth of the stream, the fact that runoff from surrounding properties flowed directly into the stream, and the relatively level topography of the stream which holds the water and allows time to either process chemicals and/or hold the contaminants until the initial storm water has been flushed from the system and then the overflow from the stream can be slowly released into the system.

Pollutant trapping aspects of waters such as the subject stream are well documented and include removal and treatment of nitrogen, phosphorus, and trace metals used in the application of lawn fertilizer, herbicides, and other lawn chemicals. Wildlife habitat functions were also documented and were based on direct observations as well as photographs submitted by local residents. The water quality of the unnamed tributary is improved with the presence of the on-site stream. Golf courses tend to have a negative effect on nearby waters from the use of fertilizers and lawn chemicals. This stream plays an important role in attenuating adverse effects on downstream water quality.

Based on the hydrological connection and the functions being performed, the District concludes that the approximately 1,205 linear feet of the unnamed tributary annotated as Channel 1 on the delineation map has a significant effect on the chemical, physical, and biological integrity of the downstream waters, including Ellicott Creek (a TNW) and is a part of a tributary system that flows into a TNW (Ellicott Creek) and therefore is a jurisdictional water of the U.S. subject to Section 404 of the CWA regulation.