



**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): 8/31/2020

ORM Number: LRB-2005-02386

Associated JDs: LRB-2005-02386 AJD (there was a previous AJD in 2006 for the site that employed the SWANCC guidance for the waters on the project site).

Review Area Location¹: State/Territory: New York City: Amherst County/Parish/Borough: Erie

Center Coordinates of Review Area: Latitude 43.00897 N Longitude -78.69788 W

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.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 1	0.15	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetland 1 and Wetland 2 do not meet the definition of an (a)(4) adjacent wetland as both wetlands do not meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1).</p> <p>i. Abut, meaning to touch at least at one point or side of, a water identified in paragraph (a)(1), (2), or (3) Assessment: As per on site observations, the delineation report and mapping and a review of remote tools, Wetland 1 and Wetland 2 are separated by uplands themselves and both wetlands are surrounded by uplands to the north, housing developments to the east, a vacant lot to the south and a major roadway to the west. Both Wetland 1 and Wetland 2 do not abut an (a)(1)-(a)(3) water. The closest waters to Wetland 1 and Wetland 2 is an Unnamed Tributary to Got Creek which is approximately 290 linear feet to the west of the Wetland 2 (and houses are situated between the wetlands on the project site and the Unnamed Tributary to Got Creek). The Unnamed Tributary to Got Creek has been determined to be the closest (a)(1)-(a)(3) water as it is a blue-line stream on the USGS topographic map; is visible on aerial photographs as having perennial/ intermittent flow; and it is depicted on the NRCS Web Soil Survey, the USFWS National Wetland Inventory, USGS Stream Stats, and the USGS National Map thereby, qualifying it is an (a)(2) water. All available evidence indicates that Wetland 1 and Wetland 2 do not abut an (a)(1)-(a)(3) water.</p> <p>ii. Are inundated by flooding from a water identified in paragraph (a)(1), (2), or (3) in a typical year</p> <p>Assessment: Nothing was observed during the site visit to indicate that water from the Unnamed Tributary to Got Creek floods and inundates Wetland 1 and Wetland 2. No indications of flooding such as sediment, debris, wrack lines, scour, etc. were observed between the Unnamed Tributary to Got Creek and Wetland 1 and Wetland 2. Additionally, FEMA Flood</p>

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			<p>Hazard Mapping in this area depicts Wetland 1 and Wetland 2 to be well outside the limits of the mapped 500-year floodplain and Regulatory Floodway. Aerial photos do not indicate that the Unnamed Tributary to Got Creek floods and inundates Wetland 1 and Wetland 2. All available evidence indicates that Wetland 1 and Wetland 2 are not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.</p> <p>iii. Are physically separated from a water identified in paragraph (a)(1), (2), or (3) of this section only by a natural berm, bank, dune, or similar natural feature; Assessment: As per on-site observations, the delineation report and mapping, and a review of remote tools, Wetland 1 and Wetland 2 are bordered by uplands and commercial development to the north, housing developments to the east, a vacant lot to the south and a major roadway to the west. No evidence of a natural berm or natural feature was observed between the Unnamed Tributary to Got Creek and Wetland 1 and Wetland 2. All available evidence indicates that Wetland 1 and Wetland 2 are not physically separated from an (a)(1)-(a)(3) water by a natural berm, bank, dune, or similar natural feature.</p> <p>iv. Are physically separated from a water identified in paragraph (a)(1), (2), or (3) of this section only by an artificial dike, barrier, or similar artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and the 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. Assessment: As per on-site observations, the delineation report and mapping, and a review of remote tools, Wetland 1 and Wetland 2 are surrounded by uplands, housing and commercial developments, a vacant lot and a major roadway. There is no evidence that Wetland 1 or Wetland 2 are physically separated from a (a)(1)-(a)(3) water by a an artificial dike, barrier, or similar artificial structure. No culvert, flood or tide gate, pump, or similar artificial feature were observed within or outletting from Wetland 1 or Wetland 2 to the Unnamed Tributary to Got</p>



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			Creek. All available evidence indicates that Wetland 1 and Wetland 2 are not physically separated from an (a)(1)-(a)(3) water by an artificial structure..
Wetland 2	0.36	acre(s)	(b)(1) Non-adjacent wetland. See the above Rationale for Wetland 2.

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: [The Wetland Delineation Report, dated 11/2017, submitted by Earth Dimensions, Inc. \(EDI\).](#)
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: Photographs dated 11/2017 provided in the Wetland Delineation Report by EDI 11/2017. HistoricAerials.com Aerial Photos dated 2015, 2011, and 2009 \(no specific dates available\).](#)
- Corps site visit(s) conducted on: [May 14, 2018](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [LRB 2005-02386, dated 30SEPT2006](#)
- Antecedent Precipitation Tool: [*provide detailed discussion in Section III.B.*](#)
- USDA NRCS Soil Survey: [NRCS Web Soil, Accessed 10JULY2020, Survey, https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx](#)
- USFWS NWI maps: [USFWS National Wetlands Inventory Mapper, Accessed 10JULY2020, https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/](#)
- USGS topographic maps: [USGS 2016 Clarence Center Quadrangle](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS National Map, Accessed 2JULY2020, https://viewer.nationalmap.gov/advanced-viewer/
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	Federal FEMA National Flood Hazard Layer Zones Accessed 10July2020
State/Local/Tribal Sources	N/A.
Other Sources	USGS Stream Stats, Accessed 10JUL2020, https://streamstats.usgs.gov/ss/

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD:

- ▶ Remote Tools:
 - Photographs from delineation report: The photographs contained in the delineation report do not provide evidence that Wetland 1 and Wetland 2 might be adjacent. The photographs are fairly close up to the



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vegetation and habitat and not focused on the surrounding/connecting landscape.

- The Historicericals.com aerial photos dated 2015, 2011, and 2009 all indicate that Wetland 1 and Wetland 2 are located within a forested area. No clear indication of inundation by flooding is visible in the leaf-off 2009 aerial photo nor is there any indication of a surface hydrologic connection to another water. This source does not provide exact photograph dates.
 - USGS Stream Stats did not identify any potential stream/tributary features within ~290 feet of the project site; the nearest tributary is Unnamed Tributary to Got Creek which is ~290 linear feet east of Wetland 2 and ~450 feet from Wetland 1.
 - The Federal FEMA National Flood Hazard Layer Zones indicated that Wetland 1 and Wetland 2 are approximately greater than 2000 feet from the mapped 500-year floodplain boundary and the designated Regulatory Floodway.
 - The USFWS NWI map does not identify any wetland features within the review area. The NWI maps identifies the Unnamed Tributary to Got Creek, approximately 290 feet west of Wetland 2.
 - The USGS National Map identified the Unnamed Tributary to Got Creek ~290 feet west of Wetland 2 and ~450 feet west of Wetland 1.
 - The NRCS Web Soil Survey indicates Wetland 1 and Wetland 2 are underlain by Canadaigua silt loam, 0 to 3 percent slopes, Odessa silt loam 0 to 3 percent slopes and Lakemont silt loam 0 to 3 percent slopes. None of the soil series are identified as having frequency of flooding or ponding.
- In Summary, based on, on-site observations and a review of remote tools, Wetland 1 and Wetland 2 are physically remote isolated wetlands and therefore excluded (b)(1) non-adjacent wetlands. Wetland 1 and Wetland 2 are non-jurisdictional waters of the U.S.