



**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): 8/17/2020
 ORM Number: 2020-00174 EssexHomes (Heim Road)
 Associated JDs: N/A
 Review Area Location¹: State/Territory: New York City: Amherst County/Parish/Borough: Erie (775 Heim Road)
 Center Coordinates of Review Area: Latitude 43.0216 Longitude -78.7429

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.

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**

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.	See above.
N/A	N/A	N/A.	N/A.	See above.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
W1 (PFO)	2.44	acre(s)	(b)(1) Non-adjacent wetland.	W1 is a PFO wetland that is 2.44 acres in size and starts on the North property line and extends to the South, offsite and directly abuts the abandoned/removed “Peanut” railroad line. During the July 14, 2020 site visit, it was observed W1 abuts a swale that drains to the West through a 18 inch C.M.P. culvert. The water heads North in a closed, piped stormwater system before it outlets into Ditch 25, 2-4 miles away along Millersport Highway ((Email from Mr. Jeffrey Szatkowski of the Town of Amherst (July 29, 2020)). On the North side of the property, W1 ends at the adjacent property line because the area is maintained lawn. The swale is not a waters because it lacks an OHW and bed/banks. No other drainageways or streams were observed in the vicinity of W1 during the site visit. To the South of the “peanut” line are residential apartments. During the field visit, it was determined the swale located off site along the abandoned “Peanut” rail-line is not an A(1)-A(3) waters as no bed/banks or OHW were found. No wetlands exist on the other side of the peanut line All resources reviewed support the determination that W1 and W2 don’t directly abut an A(1)-A(3) waters, are not separated from an A(1)-A(3) waters by a natural or man-made feature and are not adjacent to an A(1)-A(3) waters.
W2 PFO	0.63	acre(s)	(b)(1) Non-adjacent wetland.	W2 is a PFO wetland that is 0.63 acres in size and located in the Northwest corner of the property. During the July 14, 2020 site visit, the boundary was walked and no drainageways or streams were located within the vicinity of the wetland. On the North side of the property, W2 ends at the adjacent

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
				property because the area is maintained lawn. During the field visit, it was determined the swale located off site along the abandoned “Peanut” rail-line is not an A(1)-A(3) waters as no bed/banks or OHW were found. All resources reviewed support the determination that W1 and W2 don’t directly abut an A(1)-A(3) waters, are not separated from an A(1)-A(3) waters by a natural or man-made feature and are not adjacent to an A(1)-A(3) waters.

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: [Wetland delineation conducted by Earth Dimensions, Inc, was submitted on January 28, 2020 with accurate, completed data sheets, photographs, NWI map, web soil survey with hydric soil ratings and other supporting information](#)

This information is sufficient for purposes of this AJD.

Rationale: [NA](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Global Earth, ESRI, Google Earth aerial review*](#)
- Corps site visit(s) conducted on: [July 14, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [None](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Web Soil Survey*](#)
- USFWS NWI maps: [Reviewed](#)
- USGS topographic maps: [Clarence Center, New York Quad*](#)

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	ORM maps
State/Local/Tribal Sources	N/A.
Other Sources	NYSDEC Freshwater Wetland Maps – no State regulated wetlands are within the vicinity of the delineated parcel

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

C. Additional comments to support AJD: [Evaluation of the on-site conditions as presented in the submittal and substantiated by the photographs and data summary sheets appear to be clear and straight-forward.](#)



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

The review area is relatively small (6.92 acres) and does not present complicated details. The delineated parcel is surrounded by commercial and residential development on all sides. A review of in-house resources, USDWS NWI Maps, USGS Quad Map, NRCS Web Soil Survey and NYSDEC Environmental Resource Mapper indicated no mapped wetlands or streams are located within the vicinity of the delineated parcel. During the field visit, it was determined the swale located off site along the abandoned "Peanut" rail-line is not an A(1)-A(3) waters as no bed/banks or OHW were found. All resources reviewed support the determination that W1 and W2 don't directly abut an A(1)-A(3) waters, are not separated from an A(1)-A(3) waters by a natural or man-made feature and are not adjacent to an A(1)-A(3) waters. Therefore, W1 and W2 are not jurisdictional waters of the United States.