



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): 26-AUG-2020
ORM Number: LRB-2020-00682 (Audubon Complex - 500 Maple Road)
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
Review Area Location¹:
State/Territory: NY City: Amherst County/Parish/Borough: Erie County
Center Coordinates of Review Area: Latitude 42.994374 Longitude -78.772917

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 and 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.



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
W1	1.4 acres	(b)(1) Non-adjacent wetland	W1 is a PFO wetland that is 1.4 acres in size and located along the North property line. During the July 14, 2020 site visit, the boundary was walked and no drainageways or streams were located within the vicinity of the wetland. The wetland is surrounded by a golf course to the South and East, bike trail and Millersport Highway to the North and baseball fields to the West. All resources reviewed and the site visit confirms W1 is an excluded waters. The nearest A(3) waters, Ellicott Creek, is approximately 4,100 feet to the East. Wetland W1 is outside any visible flood based on topography and visual observations. Observations during the site visit and an in-house review of resources support the determination that W1 does not abut an (a)(1) through (a)(3) water. Also, the distance of wetland W1 from Ellicott Creek, A(3) water, indicates the wetland would not be inundated by flooding by an (a)(1) through a(3) water. Finally, wetland W1 is not separated from an (a)(1) through (a)(3) water via a natural berm or barrier, and is not separated from an a(1) – a(3) water via an artificial structure/feature.
W2	1.08 acres	(b)(1) Non-adjacent wetland	W2 is a PEM wetland that is 1.08 acres in size and located within the middle of the delineated parcel. During the July 14, 2020 site visit, the boundary was walked and no drainageways or streams were located within the vicinity of the wetland. The wetland is surrounded by a golf course to the South and East, bike trail and Millersport Highway to the North and baseball fields to the West. All resources reviewed and the site visit confirms W1 is an excluded waters. The nearest A(3) waters, Ellicott Creek, is approximately 3,100 feet to the East. Wetland W1 is outside any visible flood based on topography and visual observations. Observations during the site visit and an in-house review of resources support the determination that W1 does not abut an (a)(1) through (a)(3) water. Also, the distance of wetland W1 from Ellicott Creek, A(3) water, indicates the wetland would not be inundated by flooding by an (a)(1) through a(3) water. Finally, wetland W1 is not separated from an (a)(1) through (a)(3) water via a natural berm or barrier, and is not separated from an a(1) – a(3) water via an artificial structure/feature.
Stream 1	1890 LF	b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	The feature labeled Stream 1 on the delineation map was determined to be a swale not a drainageway or stream. The feature was located along the toe of a berm on the South property line. "Steam" 1 had no

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 and 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.



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

			bed/banks, no OHW and was dominated by Phragmites grass throughout. No water or observations of hydrology indicators were present within the feature. The stream doesn't carry water to any location and receives hydrology from surface runoff from the berm. Stream 1 is not 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 report submitted by Earth Dimensions, Inc dated May 5, 2020 with accurate, completed data sheets, photographs, NWI map, web soil survey with hydric soil ratings and other supporting information*
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*
- Corps Site visit(s) conducted on: *Date(s). July 14, 2020*
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s). NRCS/USDA Web Soil Survey – August 26, 2020*
- USFWS NWI maps: *Title(s) and/or date(s). USFWS NWI Mapper – August 26, 2020*
- USGS topographic maps: *Title(s) and/or date(s). USGS Buffalo NE Quad – August 26, 2020*

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	N/A.
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: The site visit confirmed the conditions and wetland boundaries described in the delineation report and support documents/maps. The delineated parcel is a developed site consisting of athletic fields, golf course, commercial structure and bike path. During the July 14, 2020, the wetland boundaries were walked and no drainageways or streams were located on the delineated parcel. The feature labeled Stream 1 on the delineation map was determined to be a swale not a drainageway or stream. The feature was located along the toe of a berm on the South

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.



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

property line. “Steam” 1 had no bed/banks, no OHW and was dominated by Phragmites grass throughout. Stream 1 is not an A(1) – A(3) waters. 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. 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 “excluded” and are not jurisdictional waters of the United States. Wetland W3 will be reviewed under a PJD.

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.