



**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): 11/13/2020
 ORM Number: LRB 1996-9760197-Harris Hill/Sheridan Commons
 Associated JDs: Approved JD under Rapanos Guidance-LRB 1996-9760197, issued February 20,2013
 Review Area Location¹: State/Territory: New York City: Clarence County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 42.97972 Longitude -78.67916

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**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland A	0.59	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A is a depressional wetland that does not meet the definition of an (a)(4) adjacent wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1). It doesn't abut a water identified in paragraph (a)(1), (2), or 3. As per on-site observations, data and photos within the delineation report and a review of remote tools including USGS topographical maps, the NRCS Websoil survey for Erie County, and USFWS NWI maps, Wetland A is a small isolated wetland that is completely surrounded by uplands. Although NWI maps show a large NWI wetland on the site-I walked the boundary of the wetland and the entire project site and the boundaries of the wetland are accurate. I didn't find evidence of other wetland areas within the project site and in addition no tributaries were located on the project site. The closest (a)(2) water is approximately 1000 linear feet to the east. All evidence indicates that Wetland a does not abut an (a)(1), (2) or (3) water ii. Are inundated by flooding from a water identified in paragraph (a)(1), 2 or 3 in a typical year. Nothing was observed during the site visit to show evidence of flooding. Aerial imagery does not indicated that Wetland A is flooded from an (a)(1)-(a)(3) water in a typical year. In addition, data from the NRCS Websoil Survey indicate that the soils mapped in the project area have no frequency of flooding. Iii. There is no evidence that indicates Wetland a is physically separated from a water identified in paragraph (a)(1), (2), or (3) only by a natural berm, bank, dune or other natural feature. iv. There is no evidence based on on-site observations and review of remote tools to indicate that Wetland A is physically separated from an (a)(1)-(a)(3) water only by an artificial structure so long as that structure allows for a direct hydrologic surface connection between the wetlands and water identified in paragraph (a)(1), (2), or (3) of this section in a typical year,

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	
				such as through a culvert, flood or tide gate, pump, or similar artificial feature.
N/A.	N/A.	acre(s)	N/A.	N/A.
N/A.	N/A.	acre(s)	N/A.	N/A.
N/A.	N/A.	acre(s)	N/A.	N/A.

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 October 16, 2020 submitted by Wilson Environmental Technologies](#)
This information is sufficient for purposes of this AJD.
Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Photographs within the Wetland Delineation Report. Review of Google orthoimagery and ConnectExplorer dates: 2018, 2014, 2008 and 2005.](#)
- Corps site visit(s) conducted on: [July 9, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [LRB-1996-9760197, AJD issued February 20, 2013](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [NRCS Websoils Survey Accessed 10NOV2020
https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx](#)
- USFWS NWI maps: [USFWS National Wetlands Inventory Mapper, Accessed 10NOV2020
https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/](#)
- USGS topographic maps: [USGS 2016 Amherst Quadrangle.](#)

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	Federal FEMA National Flood Hazard Layer Zones Accessed 10NOV2020
State/Local/Tribal Sources	N/A.
Other Sources	HistoricalAerials.com 1963, 2005 and 2014 reviewed Accessed 10Nov2020

B. Typical year assessment(s): The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of “normal,” “wetter than normal,” or “drier than normal” based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index and the University of



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

Delaware WebWIMP.

An APT evaluation was run, associated with Google Earth Aerial photos for 2005, 2008, 2014 and 2018. The evaluation was run for the weather stations in the immediate vicinity of the site. Results indicate two years of normal conditions, one year of drier than normal and one year of wetter than normal conditions. The aerials for all years suggest no inundation of Wetland A from any nearby tributary.

C. Additional comments to support AJD: Based on an analysis of remote tools including USGS current and historical maps, USFWS NWI maps, Erie County Soil Survey and Aerial imagery, as well as observations from the site visit conducted on July 9, 2020, Wetland A is physically remote isolated wetland and doesn't meet the definition of an (a)(4) wetland as it doesn't meet any of the four adjacency criteria set forth in 33CFR328.3(c)(1) and are excluded waters of the U.S. Therefore Wetland A is not a jurisdictional water of the U.S.