



**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): 11/17/2020
 ORM Number: LRB-2020-01247
 Associated JDs: N/A
 Review Area Location¹: State/Territory: New York City: Amherst County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 43.04977 N Longitude -78.74606 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 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.



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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
LRB-2020-01247 Wetlands W1 (0.84 acre), W2 (0.57 acre), W3 (0.17 acre), W4 (0.99 acre), W5 (0.90 acre), W6 (0.52 acre), W7 (0.25 acre), W8 (0.05 acre)	4.29 acre(s)	(b)(1) Non-adjacent wetland.	<u>Wetlands 1, 2, 3, 4, 5, 6, 7, and 8 do not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. Wetland 1 does meet the definition of a wetland, but does not abut an (a)(1)-(a)(3) water, is not separated from an (a)(1)-(a)(3) water by a natural berm or barrier, and is not separated from another water by a man made feature that has an engineered mechanism for water exchange in a typical year. The general landscape of the area is topographically flat with little slope resulting in little surface water flow/movement. Specifically, through the review of the submitted water resources report titled “Wetland and Waterbodies Delineation Report for Amherst Solar – 595 Schoelles Road, in the Town of Amherst, New York,” dated August 24, 2020, the wetland boundaries on-site are surrounded by uplands with no surface water connections observed. Wetlands 1, 2, 4, 5, 6, and 7 extend off-site and based on in-office resource review the wetland boundaries off-site are also surrounded by upland area with no surface water connections. The nearest possible water is a possible (a)(2) tributary located approximately 1205 linear feet to the west of the subject parcel. That water is separated by a utility roadway between that location and the subject parcel, and there is no evidence of any of the wetlands abutting or exchanging water with this tributary. The wetland and surrounding uplands do not show any evidence of flood waters connecting the wetland, nor was it separated with a natural or artificial barrier preventing flows. Furthermore, there are borrow/stormwater detention ponds located off-site just to the south of Wetland 5. Based on the in-office resource review, Wetland 5 may abut these ponds, although they appear to be excluded stormwater features (b)(10) under the Navigable Waters Protection Rule. Therefore, it has been determined that Wetlands 1, 2, 3, 4, 5,</u>

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
			6, 7, 8 are (b)(1) non-adjacent wetlands.

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: [A submitted water resources report from Earth Dimensions, Inc. titled “Wetland and Waterbodies Delineation Report for Amherst Solar – 595 Schoelles Road, in the Town of Amherst, New York,” dated August 24, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The report included details needed to make a jurisdictional determination and were concurred with during the 30SEP2020 Site Visit](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial and Other: Aerials and oblique imagery from <https://explorer.pictometry.com/index.php> – dates 25APR2020 and 21NOV2019.](#)
- Corps site visit(s) conducted on: [30SEP2020.](#)
- 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: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – accessed on [29SEP2020](#) and included in waters report.
- USFWS NWI maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - accessed [29SEP2020](#) and included in waters report.
- USGS topographic maps: <https://livingatlas.arcgis.com/topoexplorer/index.html> – accessed [17NOV2020](#). Reviewed USGS topographics from 1965 and 1980 (Quad:NY – Clarence Center)

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	N/A

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 Delaware WebWIMP.

Latitude Longitude Date PDSI Value PDSI Class Season ARC Score Antecedent Precip Condition



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43.04977	-78.74606	8/24/2020	-0.61	Incipient drought	Dry Season 9	Drier than Normal (Delineation Date)
43.04977	-78.74606	9/30/2020	-1.32	Mild drought	Wet Season 9	Drier than Normal (Site Visit Date)
43.04977	-78.74606	4/25/2020	-0.17	Normal	Wet Season 13	Normal Conditions (Oblique Imagery)
43.04977	-78.74606	11/21/2019	3.11	Severe wetness	Wet Season 15	Wetter than Normal (Aerial/Oblique Imagery)

Based on the ATP report, the site visits in 2020 were conducted in a time when the area was drier than normal in the Wet and Dry seasons. The 25APR2020 oblique imagery shows normal conditions in the wet season and the 21NOV2019 aerial/oblique imagery shows wetter than normal conditions in the wet season. Since all of these dates did not reflect any surface flow conditions to/from the wetlands to/from any other waters amongst all conditions (drier than normal, normal, and wetter than normal), this supports that the wetlands are non-adjacent wetlands that do not contribute flow or exchange flow within a typical year.

- C. Additional comments to support AJD:** [Based on the in-office resource review, including aerial imagery, USGS resources, among others stated above, the waters and wetlands delineation submitted by Earth Dimensions, Inc. dated 24AUG2020, and the site inspection on 30SEP2020, it has been determined that Wetlands 1, 2, 3, 4, 5, 6, 7, and 8 are \(b\)\(1\) non-adjacent wetlands.](#)