



**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): [11/6/2020](#)

ORM Number: [LRB-2020-01353](#)

Associated JDs: [N/A](#).



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Review Area Location¹: State/Territory: [New York](#) City: [Amherst](#) County/Parish/Borough: [Erie](#)
Center Coordinates of Review Area: Latitude [43.01862](#) Longitude [-78.76360](#)

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.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Pond 1	0.348	acre(s)	(b)(10) Stormwater
			This feature was constructed in uplands for the express purpose of treating and conveying

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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			control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	stormwater from an adjacent development to the north and east. During the October 21, 2020 site visit no stream channels were observed connecting to / through the pond. Furthermore, the Tonawanda East USGS 7.5 min Quad and historic Soil Survey of Erie County do not show a stream channel at this location. Also, historic aerial imagery from 1995 does not identify the pond. The 2002 aerial image shows the pond along with the adjacent residential development. Thus, the pond was constructed for purposes of stormwater retention. Therefore, this feature is a b(10) stormwater exclusion.
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Excluded waters ((b)(1) – (b)(12)): ⁶			
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination
Wetlands W1 and W2	0.145 and 0.145	acre(s) (b)(1) Non-adjacent wetland.	Wetlands W1 and W2 do not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Wetlands W1 and W2 were circumnavigated during the October 21, 2020 site visit. No defined channels/tributaries/ditches were observed flowing from Wetlands W1 and W2. A review of the Tonawanda East USGS 7.5 min Quad and Soil Survey Map for Erie County do not show stream channels nor contours that would support channels at this location. Also, it is not expected that water from the nearest a(1-3) water would inundate Wetlands W1 and W2 in a typical year. The wetlands are located approximately 785 linear feet southwest of the nearest a(2) water. There was no evidence that water from the nearest a(2) water reaches Wetlands W1 and W2 in a typical year. Based on the above discussion, it has been determined that Wetlands W1 and W2 are b(1) non-adjacent, excluded wetlands.

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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⁷ 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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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 and Waterbodies Delineation Report for 2619 Millersport Highway, West Herr Automotive Group, Erie County, New York, prepared for West Herr Automotive Group, prepared by Earth Dimensions, Inc., October 6, 2020.](#)

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: HistoricAerials.com \(1995 and 2002\)](#)
- Corps site visit(s) conducted on: [October 21, 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: [Erie County](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [Tonawanda East, NY, 7.5 min](#)

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): [N/A.](#)

C. Additional comments to support AJD: [N/A.](#)