



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): 15-DEC-2020
ORM Number: LRB-2015-01255 (Qasaymeh, Mohammad)
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: Erie County
Center Coordinates of Review Area: Latitude 43.002604 Longitude -78.732741

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.

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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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D. Excluded Waters or Features

Excluded waters (b)(1) – (b)(12)⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ditch 1	700 feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1)	Ditch 1 was a drainage feature observed during the April 2016 site visit. It appeared the ditch was excavated to alleviate rear yard drainage. However, during the site visit no bed or banks were observed within the ditch. In addition, no water or flow was observed in the ditch even though water was observed in the surrounding area and delineated wetlands. The ditch is not found on the USGS Clarence Center Quad. The ditch was vegetated and significantly covered in leaf litter with old fill piles and woody debris (cut logs) found throughout. The ditch is perched significantly higher in elevation than the maintained Town of Amherst ditch to the North. The ditch doesn't contribute direct flow to an A(1) water or is an A(1) water, the ditch was not constructed in a tributary, doesn't relocate a tributary nor or was the ditch constructed in an adjacent wetland. Finally, the ditch doesn't contribute perennial or intermittent flow during a particular year.
Wetland 1	0.417 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland 2 is a hard wood swamp pocket located in the North portion of the delineated parcel. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland 1. This was confirmed during the site visit. Wetland 1 is more than 41 linear feet from Ditch 1 and 100 linear feet from an excavated, maintained Town of Amherst ditch to the West. No A(1)-A(3) waters were identified directly abutting Wetland 1 during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 1 and A(1) – A(3) waters were found during the site visit. The wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey "Flood Frequency Class" rating is "none" which means, "...flooding is not probable. The chance of flooding is nearly 0 percent in any year". All resources reviewed support the determination that Wetland 1 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.
Wetland 2	0.398 acres	(b)(1) Non-adjacent wetland	In the delineation report, it states Wetland 2 is a hard wood/scrub-shrub swamp pocket located in the Center

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			<p>portion of the delineated parcel. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland 2. This was confirmed during the site visit. Wetland 2 is more than 60 linear feet from Ditch 1 and 350 linear feet from an excavated, maintained Town of Amherst ditch to the West. No A(1)-A(3) waters were identified directly abutting Wetland 1 during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 2 and A(1) – A(3) waters were found during the site visit. The wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is nearly 0 percent in any year”. All resources reviewed support the determination that Wetland 1 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.</p>
Wetland 3	0.11 acres	(b)(1) Non-adjacent wetland	<p>In the delineation report, it states Wetland 3 is a hard wood/scrub-shrub swamp pocket located in the Eastern portion of the delineated parcel. The soils are mapped potentially hydric. Vegetation found within this wetland is a mix of non-hydric and hydroptic vegetation. A review of aerial imagery and other in-house resources show no drainage patterns coming or going from wetland 3. This was confirmed during the site visit. Wetland 3 is more than 31 linear feet from Ditch 1 and 550 linear feet from an excavated, maintained Town of Amherst ditch to the West. In addition, Wetland 3 is more than 150 linear feet from Klein Road to the East but no open drainage is located along the road. No A(1)-A(3) waters were identified directly abutting Wetland 3 during the site visit or an in-house review of aerial imagery, topo maps, the NYSDEC environmental resource or USFWS Wetland mapper. The wetland is a shallow surface concave depression that collects water and holds it long enough to provide wetland characteristics but does not drain to A (1) – A(3) waters. No natural or artificial barriers between Wetland 3 and A(1) – A(3) waters were found during the site visit. The wetland is not inundated by an A(1) – A(3) waters. Also, the NRCS/USDA Web Soil Survey “Flood Frequency Class” rating is “none” which means, “...flooding is not probable. The chance of flooding is</p>

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			nearly 0 percent in any year". All resources reviewed support the determination that Wetland 3 doesn't directly abut an A(1)-A(3) waters, is not separated from an A(1)-A(3) waters by a natural or man-made feature and is not adjacent to an A(1)-A(3) waters.
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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 delineation dated November 3, 2015 submitted by Earth Dimensions, Inc. Also, an additional walkover report dated October 29, 2019 submitted by Earth Dimensions, Inc.*

Rationale: The reports submitted by EDI contained 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: Photographs included within the delineation report; Google Earth, ESRI

Corps Site visit(s) conducted on: April 2016

Previous Jurisdictional Determinations (AJDs or PJDs): N/A

Antecedent Precipitation Tool: provide detailed discussion in Section III.B.

USDA NRCS Soil Survey: USDA/NRCS Web Soil Survey – Accessed Dec 10, 2020

USFWS NWI maps: USFWS Wetland Mapper – Accessed Dec 10, 2020

USGS topographic maps: USGS Clarence Center Quad – delineated parcel located

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 – Accessed Dec 10, 2020
State/Local/Tribal Sources	NYSDEC Freshwater Wetland Maps – no State regulated wetlands are within the vicinity of the delineated parcel – Accessed Dec 10, 2020
Other Sources	N/A.

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

C. Additional comments to support AJD: N/A

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