



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): 22-JAN-2021
ORM Number: LRB-2000-00680
Associated JDs: Previous JDs under 2000-00680 Review Area Location¹:

State/Territory: NY City: Amherst County/Parish/Borough: Erie County
Center Coordinates of Review Area: Latitude 42.959129 Longitude -78.711571

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

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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	1805 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 feature was excavated in uplands. The ditch was excavated along the property boundary where there was no indication, based upon soils, USGS, and previous wetland mapping of any adjacent wetlands or potential a(2) waters. The ditch is located along the eastern property line along the back of the residential lots of Bellingham Drive. This area was identified as upland in previous wetland delineations, including the WRAP report produced by USACE in 2002 and utilized for the Special Case JD performed by USEPA in 2002. This ditch was excavated subsequent to the 2002 report.
Ditch 2	1106 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 feature was excavated in uplands. The ditch was excavated along the property boundary where there was no indication, based upon soils, USGS, and previous wetland mapping of any adjacent wetlands or potential a(2) waters.
Wetland 1	0.08 acres	(b)(1) Non-adjacent wetland	This is a small depressional wetland area within a grassed field. There is no proximal potential a(1-3) water. The nearest potential a(1-3) water is a perennial town ditch located south of Wehrle Drive. There is no indication that the town ditch would flood into the subject parcel in a typical year. The ditch is approximately 1000 linear feet away from Wetlands 1-5 and separated from the wetlands by a four-lane road and a parking lot. Hence, this wetland does not abut an a(1-3) water, is not

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			inundated by an a(1-3) water in a typical year, is not separated from a a(1-3) water by a natural berm or barrier, and is not separated from an a(1-3) water by a man made feature which allows for water exchange in a typical year.
Wetland 2	0.2 acres	(b)(1) Non-adjacent wetland	This is a small depressional wetland area within a grassed field. There is no proximal potential a(1-3) water. The nearest potential a(1-3) water is a perennial town ditch located south of Wehrle Drive. There is no indication that the town ditch would flood into the subject parcel in a typical year. The ditch is approximately 1000 linear feet away from Wetlands 1-5 and separated from the wetlands by a four-lane road and a parking lot. Hence, this wetland does not abut an a(1-3) water, is not inundated by an a(1-3) water in a typical year, is not separated from a a(1-3) water by a natural berm or barrier, and is not separated from an a(1-3) water by a man made feature which allows for water exchange in a typical year.
Wetland 3	0.05 acres	(b)(1) Non-adjacent wetland	This is a small depressional wetland area within a grassed field. There is no proximal potential a(1-3) water. The nearest potential a(1-3) water is a perennial town ditch located south of Wehrle Drive. There is no indication that the town ditch would flood into the subject parcel in a typical year. The ditch is approximately 1000 linear feet away from Wetlands 1-5 and separated from the wetlands by a four-lane road and a parking lot. Hence, this wetland does not abut an a(1-3) water, is not

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Wetland 4	0.32 acres	(b)(1) Non-adjacent wetland	This is a small depressional wetland area within a grassed field. There is no proximal potential a(1-3) water. The nearest potential a(1-3) water is a perennial town ditch located south of Wehrle Drive. There is no indication that the town ditch would flood into the subject parcel in a typical year. The ditch is approximately 1000 linear feet away from Wetlands 1-5 and separated from the wetlands by a four-lane road and a parking lot. Hence, this wetland does not abut an a(1-3) water, is not inundated by an a(1-3) water in a typical year, is not separated from a a(1-3) water by a natural berm or barrier, and is not separated from an a(1-3) water by a man made feature which allows for water exchange in a typical year.
Wetland 5	0.05 acres	(b)(1) Non-adjacent wetland	This is a small depressional wetland area within a grassed field. There is no proximal potential a(1-3) water. The nearest potential a(1-3) water is a perennial town ditch located south of Wehrle Drive. There is no indication that the town ditch would flood into the subject parcel in a typical year. The ditch is approximately 1000 linear feet away from Wetlands 1-5 and separated from the wetlands by a four-lane road and a parking lot. Hence, this wetland does not abut an a(1-3) water, is not

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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 2190-2220 Wehrle Drive, November 15, 2018.
This information *is and is not* sufficient for purposes of this AJD.
Rationale: *The delineation represents on-the ground information accurately, but did not include discussion of previous work on the site. This additional information was supplied subsequently by the applicant.*
- 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: *December 23, 2020.*
- Previous Jurisdictional Determinations (AJDs or PJDs): 2000-00680, Completed in 2000, USEPA Special Case JD completed in 2002.
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Title(s) and/or date(s).*
- USFWS NWI maps: *Title(s) and/or date(s).*
- USGS topographic maps: *Title(s) and/or date(s).*

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
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): N/A. The JD does not rely on any “point in time” resources which would necessitate the use of the Antecedent Precipitation Tool.

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C. Additional comments to support AJD: This site has been the subject of much scrutiny, with a USEPA Special Case JD completed using information prepared by a Corps WRAP request. The WRAP request was completed in response to a lawsuit challenging a determination that wetlands on the site were isolated and not regulated in 2000. As a result of the lawsuit, the Corps JD was rescinded and the EPA took assumed responsibility for completing the JD, which was completed in 2002. No further JD was completed on the site between 2002 and 2020. Additional work, including the installation of the eastern property boundary drainage ditch was completed subsequent to the 2002 JD. The ditch was constructed in areas identified as uplands by the 2002 JD and appears to have modified the site hydrology such that the overall footprint of the wetlands on the site has been reduced. In accordance with the Navigable Waters Protection Rule, the Corps is evaluating conditions on the ground at the time of the current (2020) JD request. There are no potential a(1-3) waters on the site or in the vicinity of any of the existing wetlands. The closest potential a(2) water is a town ditch located south of Wehrle Drive. This ditch shows no indication that it floods during a typical year. The two ditches on the subject parcel are manmade and excavated in uplands.

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