



**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): [1/25/2021](#)  
 ORM Number: [LRB-2020-01255](#)  
 Associated JDs: [N/A](#)  
 Review Area Location<sup>1</sup>: State/Territory: [New York](#) City: [Aurora](#) County/Parish/Borough: [Erie](#)  
 Center Coordinates of Review Area: Latitude [42.77136 N](#) Longitude [-78.67277 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)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>	<a href="#">N/A.</a>

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
<a href="#">LRB-2020-01255</a> <a href="#">Stream 1</a> <a href="#">(Cazenovia Creek)</a>	<a href="#">3257</a> <a href="#">linear</a> <a href="#">feet</a>	<a href="#">(a)(2) Perennial</a> <a href="#">tributary</a> <a href="#">contributes</a> <a href="#">surface water</a> <a href="#">flow directly or</a> <a href="#">indirectly to an</a> <a href="#">(a)(1) water in a</a> <a href="#">typical year.</a>	<a href="#">This tributary is a large, mapped perennial stream with 60-80 feet wide at the ordinary high water mark and has bedrock substrate. It is located on the property around the eastern and northern boundary with flow occurring from the south to the northeast around the property. The stream channel has water presence viewed on all aerial and oblique images reviewed, including the following dates: 27APR2016, 16MAR2017, 30NOV2019, 25APR2020. The submitted report, titled “Wetland and Waterbodies Delineation Report for Creekside Estates – Town of</a>

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.  
<sup>2</sup> 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.  
<sup>3</sup> 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**

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
				<a href="#">Aurora, Erie County, New York,” dated September 10, 2020, reported the flow regime as perennial. Flow was occurring at the time of the USACE site visit on 23SEP2020. The USGS maps has Cazenovia Creek mapped and labeled. The USFWS NWI map has Cazenovia Creek marked with a wide blue line and labeled as R2UBH – [R] Riverine [2] Lower Perennial [UB] Unconsolidated Bottom [H] permanently flooded, which supports the determination of perennial flow. In-office resources, including aerial imagery, USGS topographical maps, USFWS National Wetlands Inventory maps, and the APT report (see section III.B) for these resources support the flow regime of intermittent. Therefore, it has been determined that this resource meets the definition of an (a)(2) water.</a>
LRB-2020-01255 Stream 2 (Unnamed Tributary to Cazenovia Creek)	1649	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	This tributary has a channel of 2-3 feet wide at ordinary high water mark width and has a bedrock substrate. It originates in the center of the property, flowing to the north, and then the channel curves to the northeast where it contributes flow intermittently to Cazenovia Creek. The stream channel has water presence viewed on several aerial and oblique images; dates 27APR2016, 16MAR2017, 30NOV2019, 25APR2020. The submitted report, titled “Wetland and Waterbodies Delineation Report for Creekside Estates – Town of Aurora, Erie County, New York,” dated September 10, 2020, reported the flow regime as intermittent. Flow was occurring originating at wetland 6 at the time of the USACE site visit on 23SEP2020. The channel extends further to the south on the site abutting wetland 5 and wetland 8, but no water was found flowing through this area during the 23SEP2020 site visit. A channel with gravel substrate was present with bed and banks from wetland 8 to wetland 5 but then widened and flattened through wetland 5 and was re-established within wetland 6. A channel being smaller and flatter with no banks within wetland 5 is a direct result of the historical pond that existed where wetland 5 is, which was drained in 2018. Aerials dated 2018 and prior showed a pond at this location showing a channel into the pond (wetland 5) and water outflowing the pond at the location of Wetland 6. During the site visit, Stream 2 was exhibiting flow though only originating at the starting location of Wetland 6. The channel of stream 2 to the south of wetland 6 was not flowing which



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

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			<p>was due to the period of mild drought and the drier conditions reported by the APT report. The APT report of the most recent dates (after the pond had been drained) supports the observations that surface flow (hydrological connection) would occur at least once in a typical year for wetland 5, 6, and 8 due to their abutting nature within Stream 2. Aerial imagery indicates a break in vegetation where the stream channel exists up to wetland 5. Based on a review of the resources, the site visits by the Corps and consultant, and the APT report, Stream 2 to the south of wetland 6 has intermittent flow.</p> <p>Contours shown on USGS maps and the Erie County, NY parcel viewer indicate that topography could create drainage with the contours peaking in the area where Stream 2 flows from the location of wetland 6 to Cazenovia creek. In-office resources, including aerial imagery, USGS topographical maps, USFWS National Wetlands Inventory maps, and the APT report (see section III.B) for these resources support the flow regime of intermittent throughout the channel. Therefore, it has been determined that this resource meets the definition of an (a)(2) water.</p>

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
2020-01255 Wetland 2	0.41 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by a natural feature.	<p>Wetland 2 meets the definition of a wetland and is reported as a hardwood swamp riparian wetland by "Wetland and Waterbodies Delineation Report for Creekside Estates – Town of Aurora, Erie County, New York," dated September 10, 2020. Wetland 2 is located on the southeast side and exists parallel to Wetland 3 and Cazenovia Creek, an (a)(2) water (see above (a)(2) table rationale) and is only separated by a natural barrier. The water resources report states that Wetland 2 has connectivity, contributing flow once in a typical year with Cazenovia Creek. Aerial and oblique imagery dated 27APR2016, 16MAR2017, 30NOV2019, 25APR2020 show Wetland 2 to be physically parallel to Cazenovia Creek and separated by a natural barrier. The APT data supports the location of wetlands 2 and 3 as verified during the site</p>



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

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
				inspections conducted by the consultant. Aerial imagery dates were present during periods of wetness and dry periods throughout the wet season and supports the determination that Wetland 2 is an (a)(4) adjacent wetland; see more in the III.B rationale.
LRB-2020-01255 Wetland 3	2.03	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 3 meets the three criteria of a wetland and it meets the definition of an (a)(4) abutting wetland under the NWPR because it is directly abutting Cazenovia Creek on the south side of the Cazenovia Creek channel. The "Wetland and Waterbodies Delineation Report for Creekside Estates – Town of Aurora, Erie County, New York," dated September 10, 2020 indicates that Wetland 3 abuts Cazenovia Creek. Aerial and oblique imagery dated 27APR2016, 16MAR2017, 30NOV2019, 25APR2020 show Wetland 3 to be physically connected to Cazenovia Creek (hydrology for both are visible). the APT data supports the location of wetlands 2 and 3 has observed during the site inspections and aerial imagery were present during periods of wetness and dry periods throughout the wet season and supports that Cazenovia Creek and the wetlands exchange waters regularly throughout a typical year; see more in the III.B rationale.
LRB-2020-01255 Wetland 5	0.89	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	<u>Wetland 5 is in the center of the site and based on in-office resources (USGS quads and aerial imagery) had been a pond up until 2018; the requestor indicated they drained the pond upon purchasing the property. Stream 2 flows through the eastern extent of wetland 5. Therefore, wetland 5 abuts an (a)(2) water. Aerial and oblique imagery dated 27APR2016, 16MAR2017, 30NOV2019, 25APR2020 show Wetland 5 to be physically connected to the unnamed tributary of Cazenovia Creek (hydrology for both are visible). The connection was verified during the 23SEP2020 site visit and additional information collected from a 13JAN2021 site visit provided by the environmental consultants confirms the connection and abutting status. The APT report for these resources, also support the contribution of flow and exchange of flood waters within a typical year; see more in the III.B rationale. Therefore, it has been determined that Wetland 5 is an (a)(4) adjacent wetland.</u>
LRB-2020-01255 Wetland 6	0.08	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	<u>Wetland 6 is located in the center of the site and Stream 2 (an Unnamed tributary to Cazenovia Creek) flows through it. Thus, Wetland 6 abuts</u>



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

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
			<a href="#">Stream 2, contributing flow within a typical year to an (a)(2) water. Aerial and oblique imagery dated 27APR2016, 16MAR2017, 30NOV2019, 25APR2020 show Wetland 6 to be physically connected to the unnamed tributary of Cazenovia Creek (hydrology for both are visible). The connection was verified during the 23SEP2020 site visit. The APT report for these resources, also support the contribution of flow and exchange of flood waters within a typical year; see more in the III.B rationale. Therefore, it has been determined that Wetland 6 is an (a)(4) adjacent wetland.</a>
LRB-2020-01255 Wetland 8	0.10	Acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.  <a href="#">Wetland 8 is located at the top of Stream 2, resulting in one of the direct hydrological sources for stream 2. Wetland 8 abuts stream 2 at this location, thus abutting an (a)(2) water. The connection was noted during the 23SEP2020 site visit and additional information collected from a 13JAN2021 site visit provided by the environmental consultants confirms the connection and abutting status. The APT report for the resources outlined in Section III of this form, also support the contribution of flow and exchange of flood waters within a typical year; see more in the III.B rationale. Therefore, it has been determined that Wetland 8 is an (a)(4) adjacent wetland.</a>

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
LRB-2020-01255 Wetlands W1 (0.04 acre), W4 (0.40 acre), W7 (0.05 acre), W9 (0.43 acre)	0.92	acre(s)	(b)(1) Non-adjacent wetland.	<a href="#">Wetlands 1, 4, 7, and 9 do not meet the definition of an (a)(1), (a)(2), (a)(3), or (a)(4) water. The wetlands do 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 (flooding or inundation from an (a)(1)-(a)(3) water) in a typical year. The general landscape is forested, but some of the wetlands were in areas of previous disturbance including vegetation removal and paths created, resulting in depressional areas for water to pool without</a>

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>
			<p><u>outlets. Specifically, through the review of the submitted water resources report titled “Wetland and Waterbodies Delineation Report for Creekside Estates – Town of Aurora, Erie County, New York,” dated September 10, 2020, these wetland boundaries on-site are surrounded by uplands with no surface water connections observed. Wetlands 9 extends 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 the (a)(2) tributaries located on-site referenced in Section II.B at the top of this form. There is no evidence of any of these 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. Therefore, it has been determined that Wetlands 1, 4, 7, and 9 are (b)(1) non-adjacent wetlands.</u></p>

**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 Creekside Estates – Town of Aurora, Erie County, New York,” dated September 10, 2020. Revised Delineation map dated 13JAN2021.

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 23SEP2020 Site Visit with the exception of additional information regarding a stream near Wetland 8 and 5, which was provided on 13JAN2021.

Data sheets prepared by the Corps: Title(s) and/or date(s).

Photographs: Aerial: GoogleEarth Imagery 22SEP2018 and 16MAR2017. Earth Explorer oblique images 27APR2016, 30NOV2019, 25APR2020 - https://explorer.pictometry.com/index.php#

Corps site visit(s) conducted on: 23SEP2020.

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 22SEP2020 and included in waters report.

USFWS NWI maps: https://fwspwprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/ - accessed 22SEP2020 and included in waters report.



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

USGS topographic maps: <https://livingatlas.arcgis.com/topoexplorer/index.html> – accessed 17NOV2020. Reviewed USGS topographics from 1965 (Quad:NY – Orchard Park)

**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	Erie County Parcel Viewer - <a href="http://gis2.erie.gov/HTML5/ErieCountyNY/PublicLaunchPage.aspx">http://gis2.erie.gov/HTML5/ErieCountyNY/PublicLaunchPage.aspx</a>

**B. Typical year assessment(s):** APT Methodology

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 (PDSI) and the University of Delaware WebWIMP.

Inputs/Data Sources:

Geographic Area(s) (Scope): This data was conducted as a single-point source using the coordinates of the subject area as shown below in the table.

Weather Station(s): Wales, Elma 2.7 WSW, East Aurora 0.1 ENE, Colden 1N, Buffalo

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
42.77136	-78.67277	4/27/2016	-0.83	Incipient drought	Wet Season 13		Normal Conditions
42.77136	-78.67277	3/16/2017	1.22	Mild wetness	Wet Season 17		Wetter than Normal
42.77136	-78.67277	11/30/2019	3.12	Severe wetness	Wet Season 15		Wetter than Normal
42.77136	-78.67277	4/25/2020	-0.16	Normal	Wet Season 12		Normal Conditions
42.77136	-78.67277	9/22/2018	0.78	Incipient wetness	Wet Season 13		Normal Conditions
42.77136	-78.67277	9/23/2020	-1.31	Mild drought	Wet Season 8		Drier than Normal
42.77136	-78.67277	1/13/2021	Report did not provide	Not available	Wet Season 12		Normal Conditions

Conclusion(s): The APT report data provides consideration of the type of water flow conditions that could be expected at this area. All of the aerals and site visit dates in the above table were during the 'wet season,' though ranged in the conditions reported (incipient drought, mild wetness, severe wetness, normal, incipient wetness, mild drought). The APT data supports the determinations of water being conveyed through a surface water connection to other (a)(2) waters within a typical year for Streams 1 and 2, Wetlands 2, 3, 5, 6, and 8, as reported.

**C. Additional comments to support AJD:** [Based on the above information including an in-office resource review, the waters and wetlands delineation submitted by Earth Dimensions, Inc. dated 10SEP2020, the site inspection on 23SEP2020, revised delineation map dated 13JAN2021, and the APT report assessment](#)



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

it has been determined that Streams 1 and 2 are (a)(2) tributaries, Wetlands 2, 3, 5, 6, and 8 are (a)(4) adjacent wetlands, and Wetlands 1, 4, 7, and 9 are (b)(1) excluded non-adjacent wetlands.