



**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): 7/14/2021
 ORM Number: LRB-2021-00464
 Associated JDs: NA
 Review Area Location¹: State/Territory: NY City: Amherst County/Parish/Borough: Erie
 Center Coordinates of Review Area: Latitude 42.9958 Longitude -78.7838

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
Wetland W1	0.19 acre(s)	(b)(1) Non-adjacent wetland.	<p>During the field inspection, no drainages or tributaries were located within the immediate vicinity of W1. The Corps site inspection confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. The wetland is a shallow surface concave depression that collects water and retains long enough to develop wetland characteristics but does not outlet to any (a)(1)-(a)(3) waters. The nearest tributary (unnamed tributary to Ellicott Creek) is approximately 796 meters to the west. The feature appears to have been created from historical placement of fill material and refuse surrounding the wetland (verbal communication from consultant).</p> <p>A roadside ditch was located on the south side of Amherst Manor Drive, however no surface water connection was located between the wetland and the ditch (approx. 36 meters away). Even though the inspection was conducted during a dry time (APT Condition – Drier than Normal; PDSI Class – Moderate drought), no evidence of a connection (i.e. channel) was located. The area surrounding the wetland appeared to be higher elevation (average 1-2 feet) than the wetland.</p> <p>In addition, the feature does not become inundated by flooding from the nearest possible (a)(2) water in a typical year. The area surrounding the wetland is highly developed and there is no natural berm, bank, or dune separating the feature from unnamed tributary to Ellicott Creek.</p>
Wetland W2	0.01 acre(s)	(b)(1) Non-adjacent wetland.	<p>During the field inspection, no drainages or tributaries were located within the immediate vicinity of W2. The Corps site inspection confirmed the feature does not abut an (a)(1), (a)(2), or (a)(3) water. The wetland is a shallow surface concave depression that collects water and retains long enough to develop wetland characteristics but does not outlet to any (a)(1)-</p>

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
			<p>(a)(3) waters. The nearest tributary (unnamed tributary to Ellicott Creek) is approximately 733 meters to the west. The feature appears to have been created from historical placement of fill material and refuse surrounding the wetland (verbal communication from consultant).</p> <p>A roadside ditch was located on the south side of Amherst Manor Drive, however no surface water connection was located between the wetland and the ditch (approx. 38 meters away). Even though the inspection was conducted during a dry time (APT Condition – Drier than Normal; PDSI Class – Moderate drought), no evidence of a connection (i.e. channel) was located. The area surrounding the wetland appeared to be higher elevation (average 1-2 feet) than the wetland.</p> <p>In addition, the feature does not become inundated by flooding from the nearest possible (a)(2) water in a typical year. The area surrounding the wetland is highly developed and there is no natural berm, bank, or dune separating the feature from unnamed tributary to Ellicott Creek.</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: [Wetland Delineation Report: 1615 Amherst Manor Drive \(5 APR 2021\)](#)

This information is sufficient for purposes of this AJD.

Rationale: [Consultant’s opinion, based on the mapping resources and field data collection, was that neither wetland area is jurisdictional.](#)

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

Photographs: [Aerial: Google Earth: 22 SEP 2018, 29 MAY 2017, 5 OCT 2011, 4 JUN 2006, 31 MAR 2005, 8 SEP 2002, 31 MAR 2002, 27 MAR 1995. ConnectExplorer: 25 APR 2020.](#)

Corps site visit(s) conducted on: [17 JUN 2021](#)

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: [NRCS Erie County Soil Survey Map \(from wetland delineation report\), date: 31 MAR 2021](#)

USFWS NWI maps: [National Wetlands Inventory On-line Mapper \(from wetland delineation report\), date 31 MAR 2021.](#)



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USGS topographic maps: [USGS 7.5 Minute Topographical Map, Buffalo NE Quadrangle](#) (from wetland delineation)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	Stream Stats Website (streamstats.usgs.gov) , evaluated on 6 JUL 2021.
USDA Sources	Erie County Soil Survey from Wetland Delineation Report.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other information (specify)	www.historicaerails.com (resources were not included due to copyrights) – The resource was reviewed and no tributaries were identified in the historical topography maps for years 2019, 2016, 2013, 1967, 1958, 1950, 1947, 1940, 1931, 1925, 1913, 1909, 1903, 1901, 1899, or 1894. In addition, the historic aerials contained were also reviewed years dated 2017, 2015, 2013, 2011, 2009, 2008, 2006, 2005, 2002, 1995, 1972, 1966, 1963, and 1958. No tributaries were viewed in the project area connecting the two wetlands to a tributary.

B. Typical year assessment(s): APT was run for each aerial photo. Photos during recent “normal” or “wetter than normal” conditions (22 SEP 2018, 29 MAY 2017, & 25 APR 2020) did not show the wetlands abutting or tributary to an (a)(2) water.

Latitude	Longitude	Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip	Condition
42.9958	-78.7838	6/17/2021		Moderate drought	Dry Season	9		Drier than Normal
42.9958	-78.7838	3/23/2021	-2.26	Moderate drought	Wet Season	8		Drier than Normal
42.9958	-78.7838	9/22/2018	0.78	Incipient wetness	Wet Season	11		Normal Conditions
42.9958	-78.7838	5/29/2017	2.96	Moderate wetness	Wet Season	18		Wetter than Normal
42.9958	-78.7838	10/5/2011	3.41	Severe wetness	Wet Season	13		Normal Conditions
42.9958	-78.7838	6/4/2006	0.33	Normal	Dry Season	7		Drier than Normal
42.9958	-78.7838	3/31/2005	2.07	Moderate wetness	Wet Season	9		Drier than Normal
42.9958	-78.7838	9/8/2002	-1.63	Mild drought	Wet Season	8		Drier than Normal
42.9958	-78.7838	3/31/2002	0.12	Normal	Wet Season	16		Wetter than Normal
42.9958	-78.7838	3/27/1995	-1.26	Mild drought	Wet Season	10		Normal Conditions

C. Additional comments to support AJD: Corps site visit confirmed the two wetlands did not have a surface water connection to any tributary. They appeared to be concave, isolated features.

The Erie County Soil Survey revealed Odessa silt loam, 0-3% slopes (Od) in the area of the two wetlands. This soil type contains possible hydric inclusions.

NWI map contained no wetlands in or adjacent to the project area.