



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NY 14202-3278

23 October 2024

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination, Preliminary Jurisdictional Determination, and Delineation Verification for Department of the Army No. LRB-2023-00696

Town of Amherst, Planning Department
Attn: Jeffrey Szatkowski
5583 Main Street
Buffalo, New York 14221
Email: jszatkowski@amherst.ny.us

Dear Mr. Szatkowski:

I have reviewed the Jurisdictional Determination (JD) request submitted by Earth Dimensions, Inc. for a 170-acre review area, located on the north side of Sheridan Drive and South side of Maple Road, in the Town of Amherst, Erie County, New York (Latitude: 42.98375°N, Longitude: -78.77276°W)(map sheets 1-7 of 7).

Please note that this letter contains two jurisdictional determinations. The approved JD applies to the area labeled "Approved Jurisdictional Determination Area" shown in red and the preliminary JD applies to the area labeled "Preliminary Jurisdictional Determination Area" shown in pink (Sheet 3-7 of 7). Please refer to the documentation below and attached for the terms, conditions, and appeal rights for each type of JD.

Approved JD

I have determined that the location and extent of all aquatic resources shown on the attached maps (Sheets 3-7 of 7) accurately represent the "Approved Jurisdictional Determination" area. conditions.

Enclosed is an approved JD which verifies the limits of waters of the U.S. within the "Approved Jurisdictional Determination" area as depicted on Sheets 3-5 of 5. This approved JD will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the approved JD before the expiration date. At the end of this period, a new aquatic resource delineation will be required to support any request for a new JD.

It has been determined that the following aquatic resources within the "Approved Jurisdictional Determination" area are not waters of the U.S. as noted on the attached Approved Jurisdictional Determination Memorandum for Record (MFR): LRB-2023-00696

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Wetlands 1, 3, 5, 6, 7, 8, 9, 11 and Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4, and Stream 2. Therefore, these aquatic resources are not regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Department of the Army authorization is not required if you propose work, installation of structures, or a discharge of dredged or fill material in these aquatic resources.

If you object to the determination for the “Approved Jurisdictional Determination” area, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find Request for Appeal (RFA) form. If you request to appeal the above approved JD, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **December 21, 2024**.

It is not necessary to submit an RFA to the Division office if you do not object to the “Approved Jurisdictional Determination” area determination in this letter.

Preliminary JD

I have determined that the location and extent of the aquatic resource boundaries shown on the attached maps (Sheet 3-7 of 7) accurately represent the “Preliminary Jurisdictional Determination Area” conditions. Please note that this is a preliminary JD. Preliminary JDs are non-binding written indications that there may be waters of the United States (WOUS) on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 16-01, any permit application made in reliance on this preliminary JD will be evaluated as though all aquatic resources in the “Preliminary Jurisdictional Determination Area” are regulated by the Corps. Further, all aquatic resources will be used for purposes of assessing the extent of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction

Regulatory Branch

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for any or all of the aquatic resources identified on the submitted drawings, you may request an approved JD from this office. If an approved JD is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the preliminary JD Form with this letter. The form and attached table identify the extent of aquatic resources within the "Preliminary Jurisdictional Determination Area" and specific terms and conditions of the preliminary JD. Please sign and return a copy of this form to my attention so that I may complete my evaluation of your file. If you do not respond within 15 days, I will presume concurrence and no additional follow-up is necessary prior to finalizing this action.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of all aquatic resources within the review area be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified, and you do not inadvertently incur a violation of Federal law while constructing your project or working within the review area.

Further, the delineation and all determinations included herein have been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the review areas identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

A copy of this letter has been sent to Earth Dimensions, Inc.

Questions pertaining to this matter should be directed to me at (716) 879-4240 by writing to the following address: U.S. Army Corps of Engineers Regulatory Branch, 478 Main Street, Buffalo, New York 14202, or by e-mail at: Shaina.R.Souder@usace.army.mil

Sincerely,



Shaina R. Souder
Biologist

Enclosures

Appendix A

Approved Jurisdictional Determination Memorandum for Record



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NEW YORK 14202-3278

CELRB-ORR

23 October 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ *LRB-2023-00696 (MFR 1 of 1)*²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. *LRB-2023-00696 Wetland 1, 0.74-acre, Palustrine Scrub-Shrub (PSS), non-jurisdictional.*
 - ii. *LRB-2023-00696 Wetland 2/Pond 1, 0.60-acre, Palustrine Open Water (POW), non-jurisdictional.*
 - iii. *LRB-2023-00696 Wetland 3, 0.34-acre, PSS, non-jurisdictional.*
 - iv. *LRB-2023-00696 Wetland 4/Pond 2, 1.09-acre, POW, non-jurisdictional.*
 - v. *LRB-2023-00696 Wetland 5, 2.63-acre, Palustrine Forested (PFO), non-jurisdictional.*
 - vi. *LRB-2023-00696 Wetland 6/Pond 3, 0.94-acre, POW, non-jurisdictional.*
 - vii. *LRB-2023-00696 Wetland 7, 0.02-acre, PSS, non-jurisdictional.*
 - viii. *LRB-2023-00696 Wetland 8, 0.22-acre, PSS, non-jurisdictional.*
 - ix. *LRB-2023-00696 Wetland 9, 0.93-acre, PSS, non-jurisdictional.*
 - x. *LRB-2023-00696 Wetland 11, 0.303-acre, Palustrine Emergent (PEM) non-jurisdictional.*
 - xi. *LRB-2023-00696 Wetland 12/Pond 4, 0.17-acre, POW, non-jurisdictional.*
 - xii. *LRB-2023-00696 Stream 2, 228 linear feet, Riverine ephemeral, non-jurisdictional.*

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. *A 170-acre review area, located on the north side of Sheridan Drive and South side of Maple Road, in the Town of Amherst, Erie County, New York (Latitude: 42.98375°N, Longitude: -78.77276°W) and includes the addresses of 772 North Forest Road, 385 Maple Road and 391 Maple Road. The review area is flat to gently sloping, containing successional northern hardwoods, shrubland, mown lawn, and old field communities. Majority of the review area has been historically operating as a golf course/country club (Westwood Country Club) that is no longer functioning as such. The review area does include multiple golf ponds, a large clubhouse, and several outbuildings that were formerly associated with the country club. See attached map sheets 1-6 of 6.*

Aquatic resource delineation field work was conducted by Earth Dimensions, Inc. on 5 & 6-June-2023.

U.S. Army Corps of Engineers (USACE) staff performed a site visit on 15-November-2023, which resulted in some mapping changes documented below on this AJD MFR.

A previous AJD was completed on this review area under LRB-1990-97632 completed 28-June-2016.

***Additional waters are documented on a Preliminary JD form associated with this review area.*

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. *N/A – the aquatic resources documented on this AJD MFR were*

*determined to not have a flow path to a TNW, the territorial seas, or interstate waters.*⁶

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. *N/A – the aquatic resources documented on this AJD MFR were determined to not have a flow path to a TNW, the territorial seas, or interstate waters.*
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ *N/A.*
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): *N/A– none of the ARs within the review area meet the definition of a paragraph (a)(1)(i) water.*

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) 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.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

- b. The Territorial Seas (a)(1)(ii): *N/A - none of the ARs within the review area meet the definition of a paragraph (a)(1)(ii) water.*
- c. Interstate Waters (a)(1)(iii): *N/A– none of the ARs within the review area meet the definition of a paragraph (a)(1)(iii) water.*
- d. Impoundments (a)(2): *N/A– none of the ARs within the review area meet the definition of a paragraph (a)(2) water.*
- e. Tributaries (a)(3): *N/A– none of the ARs documented on this AJD MFR meet the definition of a paragraph (a)(3) water.*
- f. Adjacent Wetlands (a)(4): *N/A– none of the ARs documented on this AJD MFR meet the definition of a paragraph (a)(4) water.*
- g. Additional Waters (a)(5): *N/A– none of the ARs documented on this AJD MFR meet the definition of a paragraph (a)(5) water.*

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁹ *N/A.*
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
 - i. *LRB-2023-00696 Wetlands 1, 3, 5, 7, 8, 9 and 11, are wetlands located within the review area that were determined to be non-adjacent wetlands with no Continuous Surface Connection (CSC) to a TNW, the territorial seas, interstate water, jurisdictional relatively permanent impoundment, or jurisdictional tributary and does not meet the definition of a paragraph (a)(4) adjacent wetland. Wetlands 1,3, 5, 7, 8, 9, and 11 are not waters of the U.S. for the reasons described below:*

⁹ 88 FR 3004 (January 18, 2023)

- *A review of the wetland delineation submitted by Earth Dimensions, Inc. confirms that Wetlands 1, 3, 5, 7, 8, 9, and 11 meet the definition of a wetland as described in 33CFR328.3. Wetlands 1 and 4 were delineated in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0) and described the wetlands as follows:*
 - *Wetland 1 is a 0.74-acre Palustrine scrub-shrub swamp with a closed boundary and no reported connection to other waters, located in the northwestern corner of the review area.*
 - *Wetland 3 is a 0.34-acre Palustrine scrub-shrub swamp with a closed boundary and no reported connection to other waters, located in the north-central portion of the review area.*
 - *Wetland 5 is a 2.63-acre Palustrine forested wetland with a closed boundary and no reported connection to other waters, located in the central portion of the review area.*
 - *Wetland 7 is a 0.02-acre Palustrine scrub-shrub wetland with a closed boundary and no reported connection to other waters, located in the central portion of the review area.*
 - *Wetland 8 is a 0.22-acre Palustrine scrub-shrub wetland with a closed boundary and no reported connection to other waters, located in the central portion of the review area.*
 - *Wetland 9 is a 0.93-acre Palustrine scrub-shrub wetland with a closed boundary and no reported connection to other waters, located in the central portion of the review area.*
 - *Wetland 11 is a 0.303-acre Palustrine shallow emergent marsh wetland located in the southern portion of the review area. The report originally mapped this area as containing a stream channel.*
- *A previous Approved Jurisdictional Determination (AJD), dated 28-June-2016 under LRB-1990-97632 identified Wetlands 1, 3, 5, 7, 8, and 9 as isolated wetlands that were non-jurisdictional and non-WOTUS at that time for lacking a continuous surface connection or significant nexus to any other waters. The current wetlands correspond to the previous 2016 AJD labels as follows: Wetland 1 to (2016) Wetland 1, Wetland 3 to (2016) Wetland 2, Wetland 5 to (2016) Wetland 5, Wetland 7 to (2016) Wetland 7, Wetland 8 to (2016) Wetland 8, and Wetland 9 to (2016) Wetland 10. Wetland 11 corresponds to (2016) Channel 1. The LRB-1990-97632 Approved JD dated 28-June-2016 identifies Wetland 11 as a Relative Permanent Water (RPW), labeled as Channel 1 that is a manipulated channel that flows seasonally and drains into a stormwater/sanitary sewer system of the Town of Amherst. The 2016 AJD found Channel 1 to be jurisdictional stating the following: "Based on the hydrological connection*

and the functions being performed.....Channel 1 on the delineation map has a significant effect on the chemical, physical, and biological integrity of the downstream waters...”

- *During a 15-November-2023 site visit performed by USACE staff, Wetland 11 was observed functioning completely as a shallow emergent marsh, primarily dominated by cattail species (Typha spp.). Wetland 11 also had Stream 3 mapped through it on the delineation map dated June 2023, but the channel was so highly manipulated with artificially widened, deepened in certain areas, unnatural 90-degree bends, and no evidence of continuity of flow. The channel did not have evidence of flow paths and is now completely functioning as a shallow emergent marsh and not functioning as a stream channel. I requested that the area be re-labeled as a wetland and not stream. Multiple culvert crossings were observed throughout Wetland 11, connecting it all as one wetland. However, the western extent of Wetland 11 had been deepened and widened to the extent that the water level was well below the culvert leading to the west, and as observed the water from Wetland 11 does not typically get into the culvert to reach the stormwater/sanitary sewer system outside of the review area to the west along Frankhauser Road. Wetland 11, extends and flows into Wetland 12/Pond 4 through a tile system, but neither has an outlet to the east. Therefore, no surface connections were observed between Wetland 11 and any other waters.*
- *The nearest Relative Permanent Water to Wetlands 1, 3, 5, 7, 8, 9 and 11 is Ellicott Creek or Stream 1 (documented on an associated Preliminary JD form). Considering the submitted delineation report, USACE site visit, and in-office resource review, no continuous surface connections were found from these wetlands to Stream 1. The nearest distance from each wetland to Stream 1 as measured on a USGS topographic map and aerial imagery, is as follows:*
 - *Wetland 1 is approximately 12300 linear feet to the northwest of Stream 1.*
 - *Wetland 3 is approximately 1500 linear feet to the northwest of Stream 1.*
 - *Wetland 5 is approximately 1500 linear feet to the northwest of Stream 1.*
 - *Wetland 7 is approximately 680 linear feet to the west of Stream 1.*
 - *Wetland 8 is approximately 650 linear feet to the west of Stream 1.*
 - *Wetland 9 is approximately 1500 linear feet to the west of Stream 1.*
 - *Wetland 11 is approximately 1300 linear feet to the southwest from Stream 1.*

- *A review of U.S. Geological Survey (USGS) topographic maps does not show any waters or wetlands at the locations of Wetlands 1, 3, 5, 7, 8, 9, or 11.*
- *Considering the items observed on the USGS quad, all the possible surface connections (CSC) for Wetlands 1, 3, 5, 7, 8, 9 and 11 were explored within aerial/oblique imagery. Aerial imagery does not provide any evidence or any indication that any CSCs exist to any other waters for each of these wetlands.*
- *USGS Streamstats do not indicate any drainages or flow paths from Wetlands 1, 3, 5, 7, 8, 9 and 11.*
- *A review of the USDA NRCS Web Soil Survey shows the soil types mapped as follows:*
 - *Wetlands 1, 3, 5, 7, 8, and 11 are mapped primarily as Od – Odessa silt loam, 0-3% slopes, which has a hydric rating of 5.*
 - *Wetland 1 is also mapped in SaA – Schoharie silt loam, 0-3% slopes with a hydric rating of 0.*
 - *Wetland 9 is mapped in Cv – Cosad Loamy fine sand with a hydric rating of 10.*
 - *Wetland 11 is majorly mapped in Ld-Lamson very fine sandy loam with a hydric rating of 90. Lamson soil series are described as very deep, poorly drained and very poorly drained soil in glacio-fluvial, glacio-lacustrine, and deltaic deposits with slopes rangin from 0-3 percents but typically 2 percent. Further, the saturated hydraulic connectivity is described as moderately high and the surface runoff is very high to negligible for Lamson soil types.*
 - *The soil types above support that hydric soils and wetlands can form. Lamson soil series suggests that flow can occur through this type of soil, but the highly manipulated area has altered the flow and drainage of the water types mapped within the Ld soil type within the review area.*
- *A review of the U.S. Fish and Wildlife Service NWI maps does not show any waters present at the location of Wetlands 1, 3, 5, 7, 8, 9 and 11.*
- *The New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper (ERM) does not show any state-regulated wetlands within the review area.*
- *Wetlands 1, 3, 5, 7, 8, 9, or 11 have been determined to not be paragraph (a)(4) adjacent wetlands. Wetlands 1, 3, 5, 7, 8, 9 and 11 do not have a continuous surface connection to a paragraph (a)(1) water, relatively permanent jurisdictional impoundment, or relatively permanent jurisdictional tributary (i.e., the wetland does not physically abut or touch a paragraph (a)(1) or relatively permanent water, and the wetland is not*

- connected to a paragraph (a)(1) or relatively permanent water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert).*
- *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not paragraph (a)(1)(i) Traditional Navigable Waters (i.e., Wetlands 1 and 4 are not currently used, were not used in the past, and are not susceptible to use in interstate or foreign commerce; and are not subject to the ebb and flow of the tide).*
 - *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not a paragraph (a)(1)(ii) territorial sea (i.e., are not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles).*
 - *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not paragraph (a)(1)(iii) interstate waters. The wetlands do not cross or serve as a state line and as per Sackett, paragraph (a)(2) interstate waters do not include wetlands.*
 - *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not paragraph (a)(2) impoundments. Wetlands 1 and 4 are not impoundments created by impounding one of the “waters of United States” that was jurisdictional under the Amended 2023 Rule’s definition at the time the impoundment was created. Wetlands 1 and 4 are not impoundments of a water that at the time of assessment met the definition of “waters of the United States” under paragraph (a)(1), (a)(3), or (a)(4) of the Amended 2023 Rule, regardless of the water’s jurisdictional status at the time the impoundment was created.*
 - *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not paragraph (a)(3) tributaries as they are wetlands (i.e., are not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water or (a)(2) impoundment).*
 - *Wetlands 1, 3, 5, 7, 8, 9 and 11 are not paragraph (a)(5) waters as they are not a relatively permanent intrastate lake or a pond with a continuous surface connection to a paragraph (a)(1) water or tributary that is relatively permanent.*
- ii. *LRB-2023-00696 Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are labeled as Palustrine Open Water (POW)* *wetlands that are former golf course ponds located throughout the review area. It has been determined that these waters are non-adjacent and not abutting other regulated waters (Waters of the United States), do not meet the definition of any waters described in Items 7(a)-(g) above and are not waters of the United States, as supported by the information below:*
- *A review of the wetland delineation submitted by Earth Dimensions. Inc. described the wetlands as followed:*
 - *Wetland 2/Pond 1 as a 0.60-acre Palustrine Open Water (POW), former golf course pond.*

CELRB-TD-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), *LRB-2023-00696*

- *Wetland 4/Pond 2 is a 1.09-acre POW former golf-course pond.*
 - *Wetland 6/Pond 3 is a 1.09-acre POW former golf-course pond.*
 - *Wetland 12/Pond 4 is a 1.09-acre POW former golf-course pond.*
- *The nearest Relative Permanent Water to Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 is Ellicott Creek or Stream 1 (documented on an associated Preliminary JD form). Considering the submitted delineation report, USACE site visit, and in-office resource review, no continuous surface connections were found from these wetlands to Stream 1. The nearest distance from each wetland to Stream 1 as measured on a USGS topographic map and aerial imagery, is as follows:*
 - *Wetland 4/Pond 2 is approximately 1300 linear feet to the northwest of Stream 1.*
 - *Wetland 2/Pond 1 is approximately 1700 linear feet to the northwest of Stream 1.*
 - *Wetland 6/Pond 3 is approximately 1400 linear feet to the northwest of Stream 1.*
 - *Wetland 12/Pond 4 is approximately 1150 linear feet to the southwest of Stream 1.*
- *A review of U.S. Geological Survey (USGS) topographic maps shows Ponds at the locations of Wetland 2/Pond 1, Wetland 4/Pond 2 and Wetland 6/Pond 3. The USGS topographic map also shows that the area is Westwood Country Club. It also shows Ellicott Creek, a solid blue-line stream (indicating perennial flow) on the east side of the review area.*
- *Considering the items observed on the USGS quad, all the possible surface connections (CSC) for Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 were explored within aerial/oblique imagery. Aerial imagery does not provide evidence or any indication that any CSCs exist.*
- *USGS Streamstats do not indicate any drainages or flow paths from Wetlands 1, 3, 5, 7, 8, 9 and 11. There is a drainage feature or flowpath shown through Wetland 12/Pond 4 from south to north toward Stream 1, but no surface or subsurface connections were observed through on-site observations or on the in-office resource review.*
- *A review of the USDA NRCS Web Soil Survey shows the soil types mapped as follows:*
 - *Wetland 2/Pond 1 and Wetland 4/Pond 2 are mapped primarily as Od – Odessa silt loam, 0-3% slopes, which has a hydric rating of 5.*
 - *Wetland 6/Pond 3 is primarily mapped as SaB – Schoharie silt loam, 3-8% slopes with a hydric rating of 0.*
 - *Wetland 12/Pond 4 is mapped in CrA- Claverack loamy fine sand, 0-3% slopes with a hydric rating of 5.*

- *The soil types do not suggest any sort of continuous surface connection for these waters.*
- *A review of the U.S. Fish and Wildlife Service NWI maps shows ponds labeled PUBHx ([P]alustrine, [U]nconsolidated [B]ottom, [H] permanently flooded, [x] excavated) and PUBf at the locations of Wetland 2/Pond 1, Wetland 4/Pond 2, and Wetland 6/Pond 3. No waters are shown at the location of or near Wetland 12/Pond 4.*
- *The New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper (ERM) does not show any state-regulated wetlands or streams at the locations of these waters.*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(4) adjacent wetlands. Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 do not have a continuous surface connection to a paragraph (a)(1) water, relatively permanent jurisdictional impoundment, or relatively permanent jurisdictional tributary (i.e., the wetland does not physically abut or touch a paragraph (a)(1) or relatively permanent water, and the wetland is not connected to a paragraph (a)(1) or relatively permanent water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert).*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(5) waters as they are not a relatively permanent intrastate lake or a pond with a continuous surface connection to a paragraph (a)(1) water or tributary that is relatively permanent.*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(1)(i) Traditional Navigable Waters (i.e., Wetlands 1 and 4 are not currently used, were not used in the past, and are not susceptible to use in interstate or foreign commerce; and are not subject to the ebb and flow of the tide).*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not a paragraph (a)(1)(ii) territorial sea (i.e., are not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles).*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(1)(iii) interstate waters. The wetlands do not cross or serve as a state line and as per Sackett, paragraph (a)(2) interstate waters do not include wetlands.*
- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(2) impoundments. Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not impoundments created by impounding one of the “waters of United States”*

that was jurisdictional under the Amended 2023 Rule's definition at the time the impoundment was created. Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not impoundments of a water that at the time of assessment met the definition of "waters of the United States" under paragraph (a)(1), (a)(3), or (a)(4) of the Amended 2023 Rule, regardless of the water's jurisdictional status at the time the impoundment was created.

- *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 are not paragraph (a)(3) tributaries as they are wetlands (i.e., are not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water or (a)(2) impoundment).*
 - *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 could not meet a paragraph (b)(5) – 'certain ponds and lakes' exclusion because each does not meet the purposes of stock watering, irrigation, settling basins, or rice growing. Further, soils suggest these areas may not have been dry land.*
 - *Wetland 2/Pond 1, Wetland 4/Pond 2, Wetland 6/Pond 3, and Wetland 12/Pond 4 could not meet a paragraph (b)(6) – 'artificial reflecting or swimming pools, or other small bodies of water' because it could not be determined if the ponds were created in dry land based on soils.*
- iii. *LRB-2023-00696 Stream 2 is a 228 linear feet long by 3 feet wide stream channel that was determined to have ephemeral flow, only flowing in direct response to precipitation. Stream 2 has been determined to not meet the definition of a paragraph (a)(3) tributary, nor does it meet the definition of any other water of the United States category in Item 7 above, for the following reasons:*
- *Stream 2 is a first order tributary in Strahler stream order.*
 - *The relevant reach of Stream 2 is the entire length of 228 linear feet within the review area, from its starting location (approximate) Latitude: 42.983056, Longitude: -78.77 and then to its finishing location converging with Ellicott Creek (Stream 1 – documented on an associated Preliminary JD form), approximate Latitude: 42.983611, Longitude: 78.77.*
 - *The submitted delineation report describes Stream 2 as an unnamed tributary to Ellicott Creek that extends 228 linear feet through the review area with its width approximately 3 feet at Ordinary High-Water Mark. The report further states that Stream 2 was identified to have ephemeral flow based on it not being present on USGS topography maps and having a heavily vegetated (upland species) channel. No flow or water presence was reported to be observed at the date of delineation (5&6-June-2023).*
 - *During the 15-November-2024 USACE site visit, the stream channel was observed as described with heavy upland vegetation. No evidence of flow*

or flowpaths were observed through the vegetation and it appeared the channel was likely a man-made feature associated with the golf course. The observations support that Stream 2 only flows ephemerally.

- The previous AJD for the review area under LRB-1990-97632, dated 28-June-2016 did not identify Stream 2, in the delineation or any of the AJD documents.*
- USGS topographic maps do not show any stream channels or wetland symbols at the location of Stream 2, nor are any topographic lines shown suggesting drainage at this location.*
- USGS Streamstats shows a flowpath or drainage south of this location, oriented west to east into Ellicott Creek, whereas Stream 2 is oriented south to north into Ellicott Creek*
- USFWS maps do not show any waters at this location.*
- Aerial imagery review shows that Stream 2 can be viewed at its location, but most images do not have any water presence. The only aerial observed with water presence was dated April 2024.*
- Stream 2 is not a paragraph (a)(3) tributary because it does not meet the relative permanent standard, does not have relatively permanent flow as it flows ephemerally, only in direct response to precipitation.*
- Ditch 2 is not a paragraph (a)(1)(i) Traditional Navigable Water (i.e., Stream 2 is not currently used, was not used in the past, and is not susceptible to use in interstate or foreign commerce; and is not subject to the ebb and flow of the tide).*
- Stream 2 is not a paragraph (a)(1)(ii) territorial sea (i.e., is not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles).*
- Stream 2 is not a paragraph (a)(1)(iii) interstate water. Stream 2 does not cross or serve as a state line and as per Sackett, paragraph (a)(2) interstate waters do not include wetlands.*
- Stream 2 is not a paragraph (a)(2) impoundment. Stream 2 is not an impoundment created by impounding one of the “waters of United States” that was jurisdictional under the Amended 2023 Rule’s definition at the time the impoundment was created. Ditch 2 is not an impoundment of a water that at the time of assessment met the definition of “waters of the United States” under paragraph (a)(1), (a)(3), or (a)(4) of the Amended 2023 Rule, regardless of the water’s jurisdictional status at the time the impoundment was created.*
- Stream 2 is not a paragraph (a)(4) adjacent wetland. Stream 2 does not have a continuous surface connection to a paragraph (a)(1) water, relatively permanent jurisdictional impoundment, or relatively permanent*

jurisdictional tributary (i.e., the wetland does not physically abut or touch a paragraph (a)(1) or relatively permanent water, and the wetland is not connected to a paragraph (a)(1) or relatively permanent water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert).

- *Stream 2 is not a paragraph (a)(5) water as it is not a relatively permanent intrastate lake or a pond with a continuous surface connection to a paragraph (a)(1) water or tributary that is relatively permanent.*

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- In-Office Resource Review: 14-November-2023, 15-16-October-2024. Site visit Review: 15-November-2023.*
- “Wetland and Waterbodies Delineation Report for Amherst Central Park-772 North Forest Road, Town of Amherst, Erie County, New York,” dated June 12, 2023; prepared for Town of Amherst; prepared by Earth Dimensions, Inc.*
 - The delineation report was primarily agreed with, except for Wetland 11 and Stream 3, which it was determined Stream 3 was only wetland during the USACE site visit. Updated mapping submitted subsequent to the 15-November-2023 USACE site visit modified this change, making the submitted delineation report accurate.*
- Photographs:*
 - Aerial/Oblique Imagery evaluated: Google Earth aerial imagery dated July 2021, November 2021, May 2022, May 2023, and April 2024.*
 - Photographs submitted in the delineation report dated 5&6-June-2023.*
- USGS Streamstats - <https://streamstats.usgs.gov/ss/>; provided in the submitted delineation report.*
- National wetlands inventory map(s): <https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper/>; as provided in the submitted delineation report.*
- U.S. Geological Survey map(s). Cite scale & quad name: <https://ngmdb.usgs.gov/topoview/viewer/> - USGS Quad: Buffalo NE – NY, dated 2023, scale 1:24000; as provided in the submitted delineation report and reviewed in ORM.*

CELRB-TD-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), LRB-2023-00696

- g. *New York State Department of Environmental Resource Mapper - <https://gisservices.dec.ny.gov/gis/erm/>; as provided in the submitted delineation report.*
- h. *USDA NRCS web soil survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> - provided in the delineation report.*

10. OTHER SUPPORTING INFORMATION. N/A.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Appendix B

Preliminary Jurisdictional Determination form

U.S. Army Corps of Engineers (USACE) PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) For use of this form, see Sec 404 CWA, Sec 10 RHA, Sec 103 MPRSA; the proponent agency is CECW-COR.		Form Approved - OMB No. 0710-0024 Expires 2024-06-30
DATA REQUIRED BY THE PRIVACY ACT OF 1974 Authority Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332. Principal Purpose This form is used by USACE staff in evaluating your request to determine whether there are any aquatic resources within the review area that may be subject to federal jurisdiction under the regulatory authorities referenced above. Routine Uses This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice or FOIA request as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in any resulting jurisdictional determination (JD), which may be made available to the public on the District's website and/or on the Headquarters USACE website. Disclosure Submission of requested information is voluntary; however, if information is not provided, the request for a JD cannot be evaluated nor can a PJD be issued.		
The Agency Disclosure Notice (ADN) The public reporting burden for this collection of information, 0710-0024, is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.		
SECTION I - BACKGROUND INFORMATION		
A. REPORT COMPLETION DATE FOR PJD: 2024-10-23		
B. NAME AND ADDRESS OF PERSON REQUESTING PJD: Earth Dimensions, Inc. 1091 Jamison Road Elma, New York 14059 On behalf of: Town of Amherst (Planning Department) 5583 Main Street Williamsville, New York 14221		
C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District (LRB), Amherst, Town of - Amherst Central Park, LRB-2023-00696		
D. PROJECT LOCATION AND BACKGROUND INFORMATION: (USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES) State: New York County/Parish/Borough: Erie City: Amherst Center coordinates of site (lat/long in degree decimal format): Latitude: 42.98375 ° Longitude: -78.77276 ° Universal Transverse Mercator: 17 Name of nearest waterbody: Ellicott Creek		
E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY): ☒ Office (Desk) Determination. Date: 2024-10-23 ☒ Field Determination Date(s): 2023-11-15		
TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.		

	Site Number	Latitude (<i>decimal degrees</i>)	Longitude (<i>decimal degrees</i>)	Estimated amount of aquatic resource in review area (<i>acreage and linear feet, if applicable</i>)	Type of aquatic resource (<i>i.e., wetland vs. non-wetland waters</i>)	Geographic authority to which the aquatic resource "may be" subject (<i>i.e., Section 404 or Section 10/404</i>)
	LRB-2023-00696 Stream 1 (Ellicott Creek)	42.98364	-78.76937	1723 linear feet	non-wetland	Section 404
	LRB-2023-00696 Wetland 10	42.98405	-78.77402	2.25-acres	wetland	Section 404

1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.

2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD or no JD whatsoever, which do not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the USACE has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD or reliance on no JD whatsoever; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of USACE permit authorization based on a PJD or no JD whatsoever constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the USACE will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

F. SUPPORTING DATA. Data reviewed for PJD (*check all that apply*)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:

Attached map sheets 1-6 of 6. Maps from "Wetland and Waterbodies Delineation Report for Amherst Central Park-772 Map: North Forest Road, Town of Amherst, Erie County, New York," dated June 12, 2023; prepared for Town of Amherst; prepared by Earth Dimensions, Inc.

☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.

☐ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

Rationale: _____

☐ Data sheets prepared by the USACE:

☐ Corps navigable waters' study:

☐ U.S. Geological Survey Hydrologic Atlas:

- ☒ USGS NHD data.
- ☒ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name:

<https://ngmdb.usgs.gov/topoview/viewer/> - NY Buffalo NE, dated 2023, scale 1:24000

- ☒ USDA Natural Resources Conservation Service Soil Survey.

Citation: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> - provided in the delineation report.

- ☒ National Wetlands Inventory map(s).

Cite Name: <https://fwspprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - as provided in the submitted delineation report.

- ☒ State/Local Wetland Inventory map(s):

<https://gisservices.dec.ny.gov/gis/erm/> - as provided in the submitted delineation report.

- ☐ FEMA/FIRM maps:

- ☐ 100-year Floodplain Elevation is: _____ . (National Geodetic Vertical Datum of 1929)

- ☒ Photographs: ☒ Aerial (*Name & Date*): Google Earth aerial imagery dated July 2021, November 2021, May 2022, May 2023, and April 2024.

or ☒ Other (*Name & Date*): Photographs provided in the submitted delineation report dated 5 & 6 June 2023

- ☐ Previous determination(s). File no. and date of response letter:

- ☒ Other information (*please specify*):

USGS Streamstats - as provided in the submitted delineation report.
USACE Site Visit on 15-November-2023.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the USACE and should not be relied upon for later jurisdictional determinations.

Name of Regulatory Staff Member Completing PJD Shaina Souder, USACE (LRB) Regulatory Biologist	Date 2024-10-23	Signature of Regulatory Staff Member Completing PJD 
Name of Person Requesting PJD	Date	Signature of Person Requesting PJD (<i>REQUIRED, unless obtaining the Signature is Impracticable</i>)

¹ Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

Appendix C

Jurisdictional Determination Maps

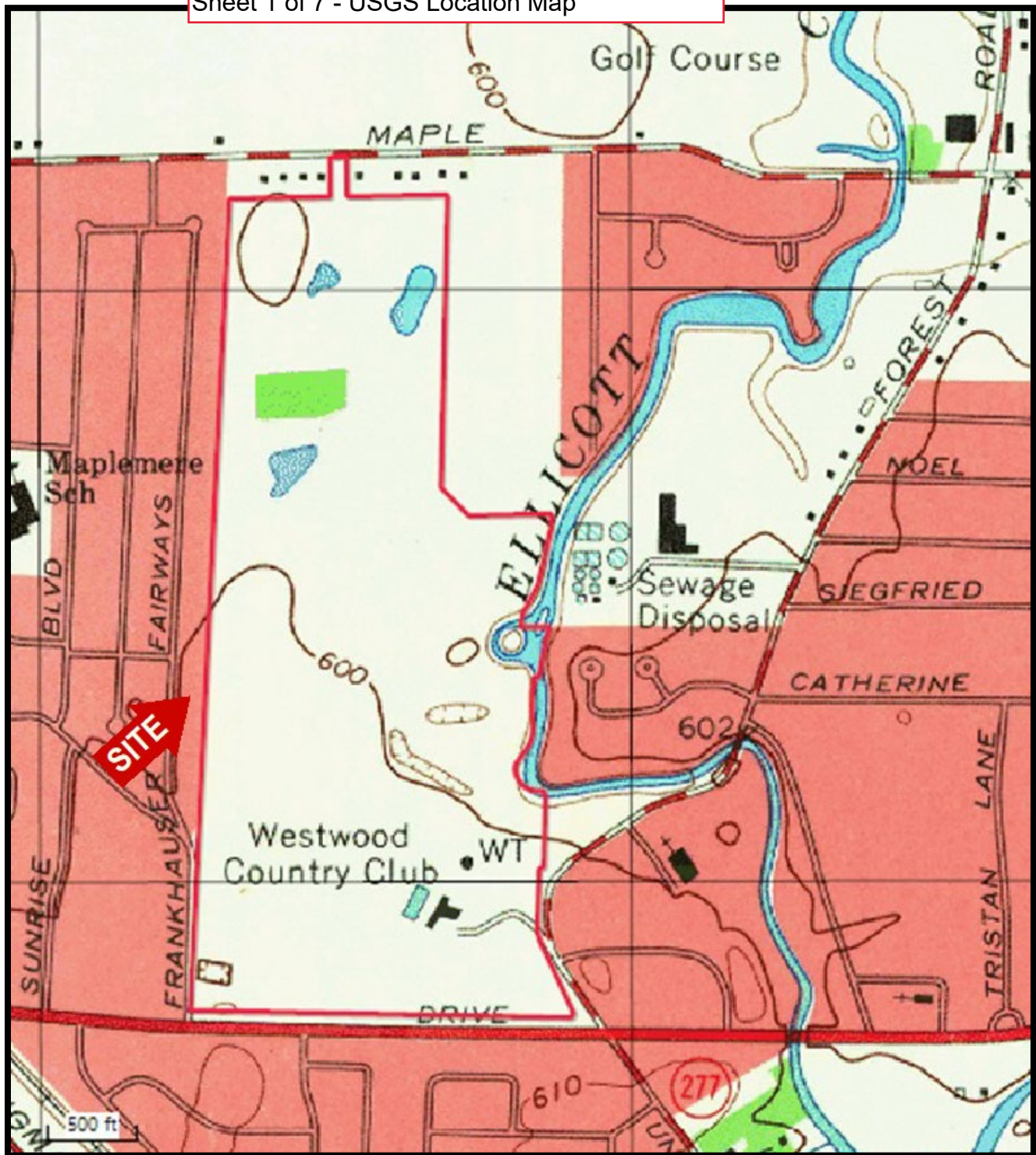


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Buffalo NE Quadrangle / U.S. Geological Survey

Amherst Central Park - 772 North Forest Road

Town of Amherst, Erie County, New York



FIGURE 8: SITE AERIAL PHOTOGRAPH

https://gis.erie.gov/Html5Viewer133/index.html?viewer=ErieCountyNY.HTML5_2_11_0

Amherst Central Park - 772 North Forest Road

Town of Amherst, Erie County, New York

Approved JD Area

Figure 6 - Wetland Delineation Map

Town of Amherst Erie County, New York



EARTH DIMENSIONS, INC.

1091 Jamison Road | Elma New York 14059
(716) 655-1717 | Fax (716) 655-2915

Amherst, Town of - Amherst Central Park
LRB-2023-00696
Erie County, New York
USGS Topo Quad: NY - Buffalo NE
Sheet 3 of 7 - Overall Aquatic Resource
Delineation Map

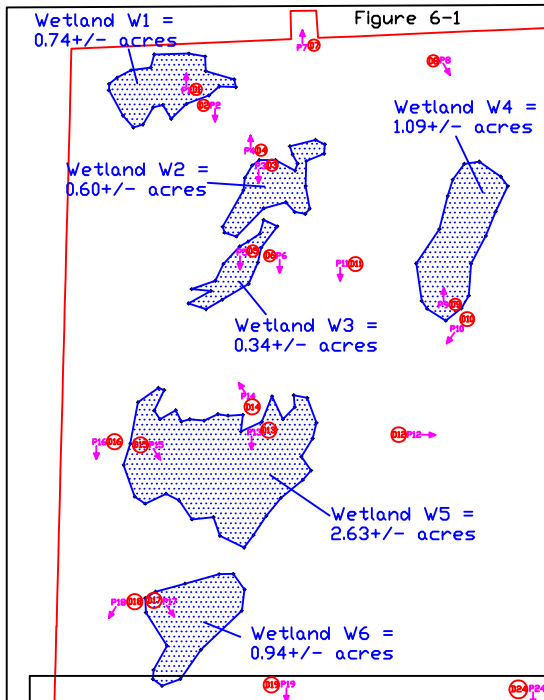
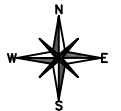
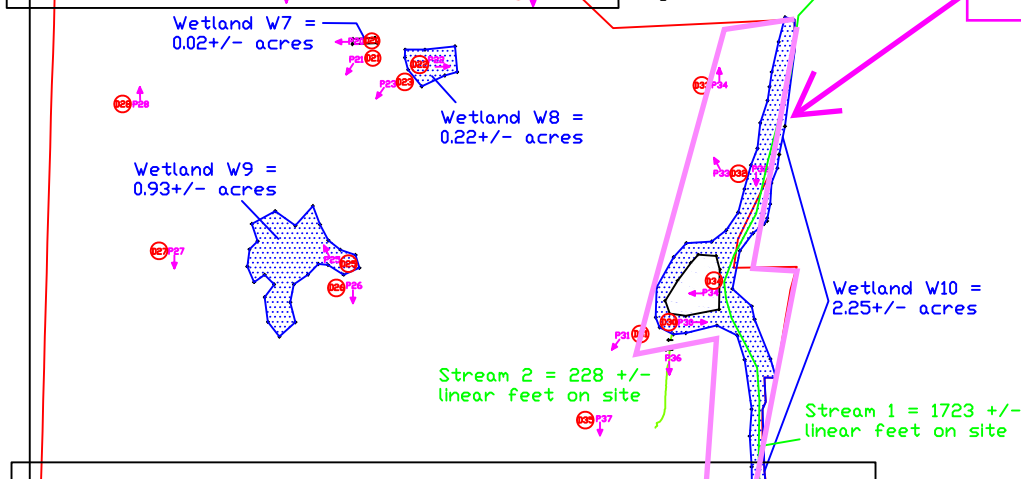


Figure 6-2

Preliminary JD Area



Amherst Central Park LEGEND

	Limits of Investigation
	Streams
	Wetland Boundary Flag
	Wetland Area
	Photo Location
	Data Point Location

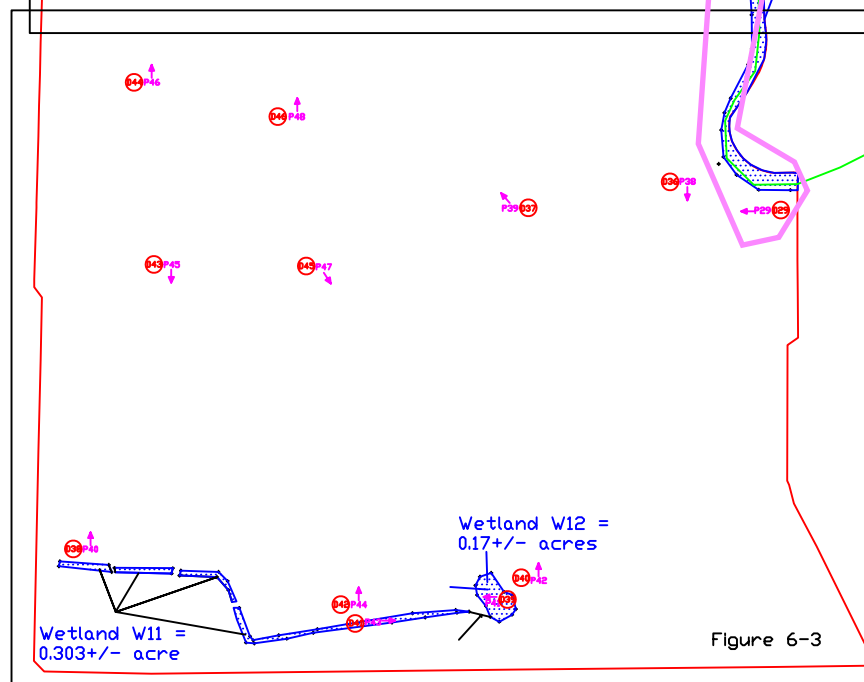
Scale: 0 100' 200'

Map Date: June 7, 2023/ AMM/EDI
Revised: November 21, 2023 JMC/EDI

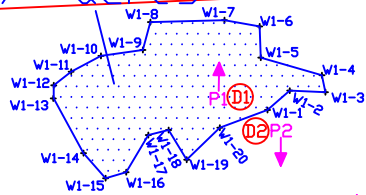
Base Map Provided By: GPSMap 62s

File Name: Delineation map.dwg

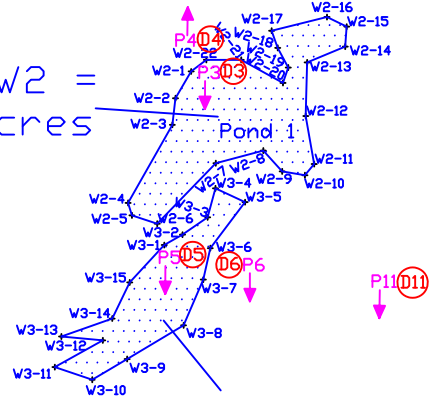
EDI Project Code: W1109d



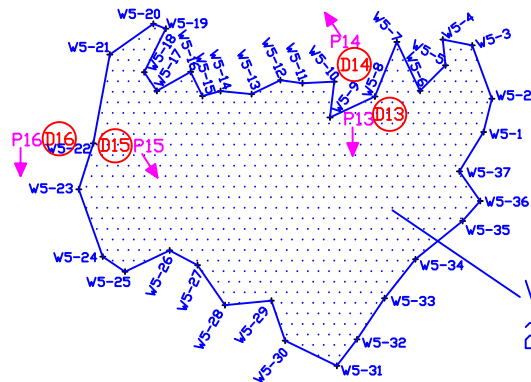
Wetland W1 =
0.74+/- acres



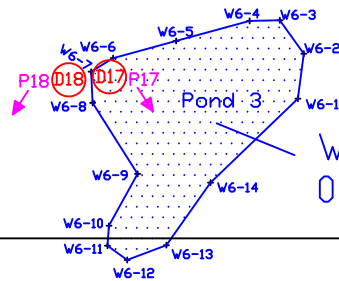
Wetland W2 =
0.60+/- acres



Wetland W3 =
0.34+/- acres



Wetland W5 =
2.63+/- acres



Wetland W6 =
0.94+/- acres

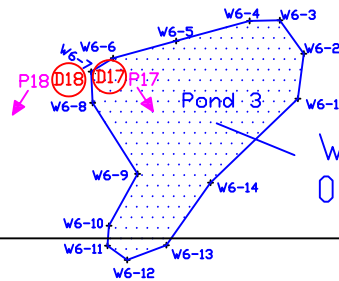


Figure 6-1

Amherst, Town of - Amherst Central Park
LRB-2023-00696
Erie County, New York
USGS Topo Quad: NY - Buffalo NE
Sheet 4 of 7 - Aquatic Resource
Delineation Map - Inset 1



Figure 6-2



Figure 6-2

Preliminary JD Area

P18 D18
P17 D17

Wetland W6 =
0.94+/- acres

P19 D19

P24 D24

Wetland W7 =
0.02+/- acres

P21 D21

P22 D22

P23 D23

Wetland W8 =
0.22+/- acres

P28 D28

Wetland W9 =
0.93+/- acres

P27 D27

P25 D25

P26 D26

P34 D33

P32 D33

P33 D32

P34 D34

P31 D31

P30 D30

P36

P37 D35

Stream 2 = 228 +/-
linear feet on site

Stream 1 = 1723 +/-
linear feet on site

Wetland W10 =
2.25+/- acres

P46 D44

P48 D46

Amherst, Town of - Amherst Central Park
LRB-2023-00696
Erie County, New York
USGS Topo Quad: NY - Buffalo NE
Sheet 6 of 7 - Aquatic Resource
Delineation Map - Inset 3



D44 P46

D46 P48

P39 D37

D36 P38

P29 D29

D43 P45

D45 P47

Preliminary JD Area

D38 P40

Wetland W12 =
0.17+/- acres

D40 P42

P41 D39

D42 P44

D41 P43

Wetland W11 =
0.303+/- acre

Figure 6-3



Amherst, Town of - Amherst Central Park
 LRB-2023-00696
 Erie County, New York
 USGS Topo Quad: NY - Buffalo NE
 Sheet 7 of 7 - Overall Aquatic Resource
 Delineation Map on aerial



FIGURE 9: AERIAL PHOTO WITH WETLANDS
 Amherst Central Park - 772 North Forest Road
 Town of Amherst, Erie County, New York

Appendix D

Jurisdictional Determination Appeals Information Document

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Amherst, Town of		File Number: LRB-2023-00696	Date: 23-October-2024
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL WITHOUT PREJUDICE	C	
	PERMIT DENIAL WITH PREJUDICE	D	
X	APPROVED JURISDICTIONAL DETERMINATION (red area – sheet 3-7 of 7))	E	
X	PRELIMINARY JURISDICTIONAL DETERMINATION (purple area – sheet 3-7 of 7)	F	

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Shaina Souder
U.S. Army Corps of Engineers
478 Main St
Buffalo, NY 14202
Phone: (716)879-4240
Email: Shaina.r.souder@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

 Signature of appellant or agent.	Date:
Email address of appellant and/or agent:	Telephone number: