



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

6 November 2025

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination, Preliminary Jurisdictional Determination, and Delineation Verification for Department of the Army No. LRB-2023-0094

SBLC Development Corp
Attn: Fred Cimato
9220 Transit Road
East Amherst, New York 14051
Email: cimatoenterprises5647@gmail.com

Dear Mr. Cimato:

I have reviewed the Jurisdictional Determination (JD) request submitted by LaBella Associates (formerly Earth Dimensions, Inc) on your behalf for an approximately 65-acre area, located north of French Road and east of Interstate 990, in the Town of Amherst, Erie County, New York (Latitude: 43.03831 N; Longitude: -78.75525 W). The review area consists of land that was cleared just prior to the delineation in 2023 and undisturbed forest, surrounded by development (roads and residential/commercial development). See attached sheets 1-3 of 3.

Please note that this letter contains two jurisdictional determinations. The approved JD applies to the areas labeled "Approved Jurisdictional Determination (AJD) Area" and the preliminary JD applies to the areas labeled "Preliminary Jurisdictional Determination (PJD) Area" (attached map sheets 2-3 of 3). 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 (map sheet 2-3 of 3) accurately represent the "AJD Area" conditions.

Enclosed is an approved JD which verifies the limits of waters of the U.S. within the "AJD Area" as depicted on map sheets 2-3 of 3. 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 "AJD Area" are not a water of the U.S. as noted on the attached Approved Jurisdictional Determination Memorandum for Record (MFR): LRB-2023-00494 Wetlands 4, 5, 6, 7, 9, 8/10, 11, 12. Therefore, these aquatic resources are not regulated under Section 404 of the Clean Water

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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 "AJD 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:

Suzanne Chubb
Regulatory Program Manager
USACE, Great Lakes & Ohio River Division
550 Main Street, Room 10-780, CELRD-PD-O
Cincinnati, Ohio 45202-3222
Phone: 513-218-1243
e-mail: Suzanne.l.chubb@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 **January 2, 2026**.

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, sheets 2-3 of 3, accurately represent the "PJD 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 "PJD 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 for any or all of the aquatic resources identified on the submitted drawings, you may request an approved JD from this office. If an

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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 "PJD 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.

Due to recent changes in state wetland regulation, you are encouraged to contact the appropriate state and local governmental officials to ensure that the proposed activities comply with their requirements and jurisdiction.

A copy of this letter has been sent to LaBella Associates, SJL Wetlands, LLC, and the New York State Department of Environmental Conservation.

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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,

A handwritten signature in cursive script that reads "Shaina R. Souder".

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

6 November 2025

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-2023-00494 (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.

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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-2023-00494 Wetland 4, 0.012-acre, PEM, not a water of the United States (WOTUS), non-jurisdictional.
 - ii. LRB-2023-00494 Wetland 5, 0.195-acre, PEM, non-WOTUS, non-jurisdictional.
 - iii. LRB-2023-00494 Wetland 6, 0.094-acre, PEM, non-WOTUS, non-jurisdictional.
 - iv. LRB-2023-00494 Wetland 7, 0.01-acre, PEM, non-WOTUS, non-jurisdictional.
 - v. LRB-2023-00494 Wetland 9, 0.226-acre, PEM, non-WOTUS, non-jurisdictional.
 - vi. LRB-2023-00494 Wetland 8/10, 0.535-acre, PEM, non-WOTUS, non-jurisdictional.
 - vii. LRB-2023-00494 Wetland 11, 0.288-acre, PEM, non-WOTUS, non-jurisdictional.
 - viii. LRB-2023-00494 Wetland 12, 0.051-acre, PEM, non-WOTUS, non-jurisdictional.

Note: Additional Aquatic Resources (ARs) associated with the same review area are documented on a preliminary Jurisdictional Determination (JD) form.

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. 651, 143 S. Ct. 1322 (2023)
- d. "Memorandum to the field between the Department of the Army, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency Concerning

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the Proper Implementation of "Continuous Surface Connection" Under the Definition of "Waters of the United States" Under the Clean Water Act," dated March 12, 2025.

3. REVIEW AREA. A 65-acre parcel, located north of French Road and east of 990, in the Town of Amherst, Erie County, New York (Latitude: 43.03831 N; Longitude: -78.75525 W). The review area consists of land that was cleared just prior to the delineation in 2023 and undisturbed forest, surrounded by development (roads and residential/commercial development). See attached sheets 1-3 of 3.

The review area was delineated on June 21, 2023 by Earth Dimensions, Inc. (Now LaBella Associates). U.S. Army Corps of Engineers (USACE) staff performed a site visit on September 18, 2023, additional information was requested, and the file subsequently withdrawn. Upon resubmittal of an updated delineation containing additional information, USACE staff performed an additional site visit on July 1, 2025.

A search of the Corps administrative record does not indicate any previous delineations or Jurisdictional Determinations for these areas.

Note: Additional Aquatic Resources (ARs) associated with the same review area are documented on a preliminary JD form.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A – none of the aquatic resources documented on this Memorandum for Record (MFR) were determined to be connected to a TNW, the territorial seas, or interstate water.⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A – none of the aquatic resources documented on this MFR were determined to have a flowpath to a TNW, the territorial seas, or interstate 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.

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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 documented on this MFR meet the definition of a paragraph (a)(1)(i) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 do not meet the definition of a paragraph (a)(1)(i) Traditional Navigable Water (i.e., are 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).
 - b. The Territorial Seas (a)(1)(ii): N/A - none of the ARs documented on this MFR meet the definition of a paragraph (a)(1)(ii) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 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).

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.

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- c. Interstate Waters (a)(1)(iii): *N/A* – none of the ARs documented on this MFR meet the definition of a paragraph (a)(1)(iii) water. Wetlands 2, 3, 4, 5, 6, 7, 8, and 9 are not a paragraph (a)(1)(iii) interstate water. The wetland does not cross or serve as a state line and as per *Sackett*, paragraph (a)(2) interstate waters do not include wetlands.
- d. Impoundments (a)(2): *N/A*– none of the ARs documented on this MFR meet the definition of a paragraph (a)(2) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are not a paragraph (a)(2) impoundment. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are 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. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are 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.
- e. Tributaries (a)(3): *N/A* – none of the ARs documented on this MFR meet the definition of a paragraph (a)(3) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are not a paragraph (a)(3) tributary because they are wetlands (i.e., is not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water or (a)(2) impoundment).
- f. Adjacent Wetlands (a)(4): *N/A*– none of the ARs documented on this MFR meet the definition of a paragraph (a)(4) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 do not abut another water of the U.S. (i.e. TNW, interstate water, jurisdictional impoundment, jurisdictional tributary, or the territorial seas).
- g. Additional Waters (a)(5): *N/A* – none of the ARs documented on this MFR meet the definition of a paragraph (a)(5) water. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are not a paragraph (a)(5) water as they are not a relatively permanent intrastate lake or a pond with abutting a paragraph (a)(1) water or tributary that is relatively permanent. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 do not have a continuous surface connection to another water of the U.S. (i.e., do not abut another water of the U.S.).

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

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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. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 are wetlands delineated throughout the review area that consist of PEM and PFO wetland types. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 have been determined to not meet the definition of a paragraph (a)(4) adjacent wetlands, nor do they meet the definition of any of the other requisite waters in Item 7 above on this MFR. Thus, Wetlands 2, 3, 4, 6, 7, 8, 9, 11, and 12 are not waters of the United States as supported by the following:
- Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 meet the definition of a wetland as described in 33CFR328.3. Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 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).
 - A review of the wetland delineation submitted by Earth Dimensions, Inc. (now LaBella Associates) describes the wetlands as:
 - Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 were not described in the initial submitted delineation report dated April 2023, but rather requested to be added in the two USACE site visits conducted on September 18, 2023 and July 1, 2025.
 - During two USACE site visits, September 18, 2023 and July 1, 2025, all wetland boundaries were walked. As stated above Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 were requested to be added through the request for additional data at the USACE site visits. Upon submittal of the map dated October 28, 2025, USACE compared the map to the previous delineation reports, an in-office resource, and USACE observations from the site visits and determined that the boundaries of Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 were delineated accurately. Further, as verified during the July 1, 2025 USACE site visit and through comparison to in-office resources including aerial and oblique aerial imagery, Wetlands 4,

⁹ 88 FR 3004 (January 18, 2023)

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5, 6, 7, 8/10, 9, 11, and 12 do not abut any other water (specifically, they do not abut a relatively permanent tributary or any other requisite water identified in Item 7 above on this MFR). No continuous surface connections from Wetlands 4, 5, 6, 7, 8/10, 9, 11, and 12 were observed.

- The U.S. Geological Survey (USGS) topographic map shows wetland symbols throughout the review area with a solid blue-line stream (indicating perennial flow) through the center of the review area and a dotted blue-line stream (indicating intermittent flow) on the east side of the property. The wetland symbols are located near the wetlands on this MFR: 7, 9, 11, and 12.
- A review of the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey shows the following:
 - Wetlands 8/10 and 11 are mapped in Ge – Getzville silt loam with a hydric rating of 85, indicating this is a hydric soil and can easily develop wetland conditions.
 - Wetlands 4, 5, 6, 7, 9, 12 are mapped in soil type Sw – Swormville clay loam with a hydric rating of 10, which suggests hydric inclusions (wetland conditions) can form in this soil type.

None of the soil types provides information about possible surface connectivity to any other water or wetland.

- A review of aerial and oblique imagery was conducted. However, due to the forested nature of majority of the review area prior to 2023, wetland signatures through saturation or inundation and possible flow paths were not observable for Wetlands 4, 5, 6, 7, 8/10, 9, 11. Aerial imagery reviewed dated 2024 and 2025 shows some saturation signatures in the locations of Wetlands 4, 5, 6, 7, 8/10, 9, 11, but does not support that there is any continuous surface connection/abutment to any other wetland or tributary.
- A review of the U.S. Fish and Wildlife Service NWI maps shows one wetland large PFO1C/PSS1C – [P] Palustrine [FO] Forested/[SS] Scrub-shrub [1] Broad-Leaf deciduous [C] seasonally flooded wetland around a R2UBHx - [R] Riverine [2] lower perennial [UB] unconsolidated bottom [H] permanently flooded stream throughout the central and north portion of the review area. The wetland is also shown extending around a second stream on the east side of the review area, labeled as a R4SBC – [R] Riverine [4] Intermittent [SB] Streambed [C] Seasonally flooded.
- A review of the New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper (ERM)

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with the previously mapped freshwater wetlands layer and the informational freshwater wetland mapping on, only shows two large previously mapped NYSDEC freshwater wetlands and majority of the review area consisting of informational freshwater wetland mapping. The informational wetland mapping overlaps the location of Wetlands 4, 5, 6, 7, 8/10, 9, 11.

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.
 - a. In-Office Resource Evaluation: September 25, 2023, June 2025, and October 2025; Site visit evaluation: September 18, 2023 and July 1, 2025.
 - b. Aquatic resources delineation submitted by, or on behalf, of the requestor: "Wetland and Waterbodies Delineation Report for SLBC, Town of Amherst, Erie County, New York", dated April 30, 2023; prepared for Cimato Enterprises; Prepared by Earth Dimensions, Inc.
 - a. Additional information requests sent by the USACE and associated responses received from the requestor and their consultant specific to this review area and the delineation report under LRB-2023-00494.
 - b. Updated maps were received on October 28, 2025 that superseded all previous maps associated with this delineation report.
 - c. Aerial Imagery: Google Earth aerial imagery dated November 2021, May 2022, May 2023, April 2024, June 2024, and June 2025. Connect Explorer (<https://explorer.pictometry.com/>) oblique aerial imagery, dated April 25, 2020 and April 7, 2024.
 - d. Photographs: Photographs included in the delineation report, dated April 11, 2023. Photographs taken by USACE staff dated September 18, 2023 and July 1, 2025.
 - e. U.S. Geological Survey (USGS) topographic maps: <https://ngmdb.usgs.gov/topoview/viewer/>; NY- Tonawanda East, 2013, and 2023.
 - f. USGS Streamstats - <https://streamstats.usgs.gov/ss/>; accessed in September 2023, June/July 2025, and October 2025.

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- g. USDA NRCS Soil Survey:
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> –as provided in the delineation report.
- h. U.S. Fish & Wildlife Service National Wetland Inventory Maps:
<https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>, as provided in the submitted delineation report and accessed through ORM2.
- i. New York State Department of Environmental Conservation Environmental Resource Mapper - <https://gisservices.dec.ny.gov/gis/erm/>; as provided in the submitted delineation report and accessed on October 28, 2025 through the USACE National Regulatory Viewer.

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:
ENG form 6249

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 2027-09-30			
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: 2025-11-06					
B. NAME AND ADDRESS OF PERSON REQUESTING PJD: SBLC Development Corp 9220 Transit Road East Amherst, New York 14051					
C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District (LRB), SBLC Development Corp (Formerly Cimato Enterprises - 1790 & 1860 North French Road; LRB-2023-00494.					
D. PROJECT LOCATION AND BACKGROUND INFORMATION: (USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)					
State: <u>New York</u> County/Parish/Borough: <u>Eric</u> City: <u>Amherst</u>					
Center coordinates of site (lat/long in degree decimal format): Latitude: <u>43.036195</u> ° Longitude: <u>-78.75804</u> °					
Universal Transverse Mercator: <u>17 (682634.02834;4767273.409349)</u>					
Name of nearest waterbody: <u>Ransom Creek</u>					
E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):					
☒ Office (Desk) Determination. Date: <u>2025-11-04</u>					
☒ Field Determination					
Date(s): <u>2023-09-18; 2025-07-01</u>					
TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.					
Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
LRB-2023-00494 Wetland I	43.03512	-78.75783	0.152-acre	Wetland	Section 404

Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
LRB-2023-00494 Wetland 2/13	43.04035	-78.75641	10.91-acres	Wetland	Section 404
LRB-2023-00494 Wetland 3	43.03948	-78.75333	8.83-acres	Wetland	Section 404
LRB-2023-00494 Stream 1	43.03891	-78.75281	61.5 linear feet	Non-Wetland	Section 404
LRB-2023-00494 Stream 2	43.03899	-78.75604	3,794 linear feet	Non-Wetland	Section 404
LRB-2023-00494 Stream 3	43.04048	-78.75677	231 Linear Feet	Non-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:

Map: Attached sheets 1-3 of 3.

☒ 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.

Aquatic resources delineation submitted by, or on behalf, of the requestor: "Wetland and Waterbodies Delineation Report for SLBC, Town of Amherst, Erie County, New York", dated April 30, 2023; prepared for Cimato

Enterprises; Prepared by Earth Dimensions, Inc.

- Rationale:
- Additional information requests sent by the USACE and associated responses received from the requestor and their consultant specific to this review area and the delineation report under LRB-2023-00494.
 - Updated maps were received on October 28, 2025 that superseded all previous maps associated with this delineation report.

☐ 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-Tonawanda East](https://ngmdb.usgs.gov/topoview/viewer/NY-TonawandaEast), 2013, and 2023.

☒ USDA Natural Resources Conservation Service Soil Survey.

Citation: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> -as 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 and accessed through ORM2.

☒ State/Local Wetland Inventory map(s):

New York State Department of Environmental Conservation Environmental Resource Mapper - <https://gisservices.dec.ny.gov/gis/erm/>; as provided in the submitted delineation report and accessed on October 28, 2025 through the USACE National Regulatory Viewer.

☐ FEMA/FIRM maps:

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

☒ Photographs: ☒ Aerial (Name & Date): Google Earth aerial imagery dated November 2021, May 2022, May 2023, April 2024, June 2024, and June 2025. Connect Explorer (<https://explorer.pictometry.com/>) oblique aerial imagery, dated April 25, 2020 and April 7, 2024.

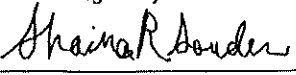
or ☒ Other (Name & Date): Photographs included in the delineation report, dated April 11, 2023. Photographs taken by USACE staff dated September 18, 2023 and July 1, 2025.

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

☒ Other information (please specify):

- U.S. Army Corps of Engineers (USACE) site visits conducted September 18, 2023 and July 1, 2025.
- USGS Streamstats - <https://streamstats.usgs.gov/ss/>

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 2025-11-04	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

Maps:Sheets 1-3 of 3

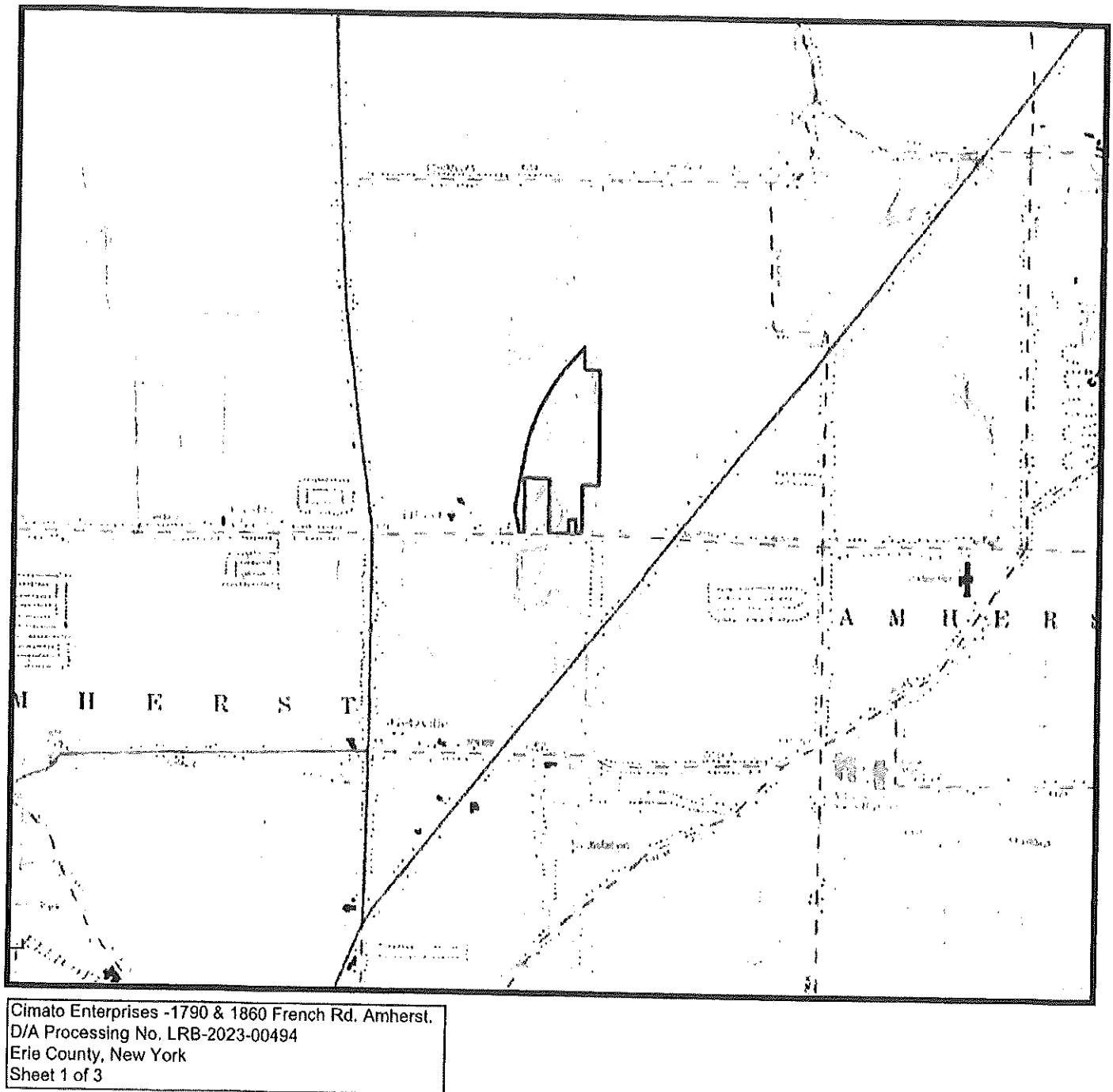


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Tonawanda East Quadrangle / U.S. Geological Survey

SBLC

Town of Amherst, Erie County, New York

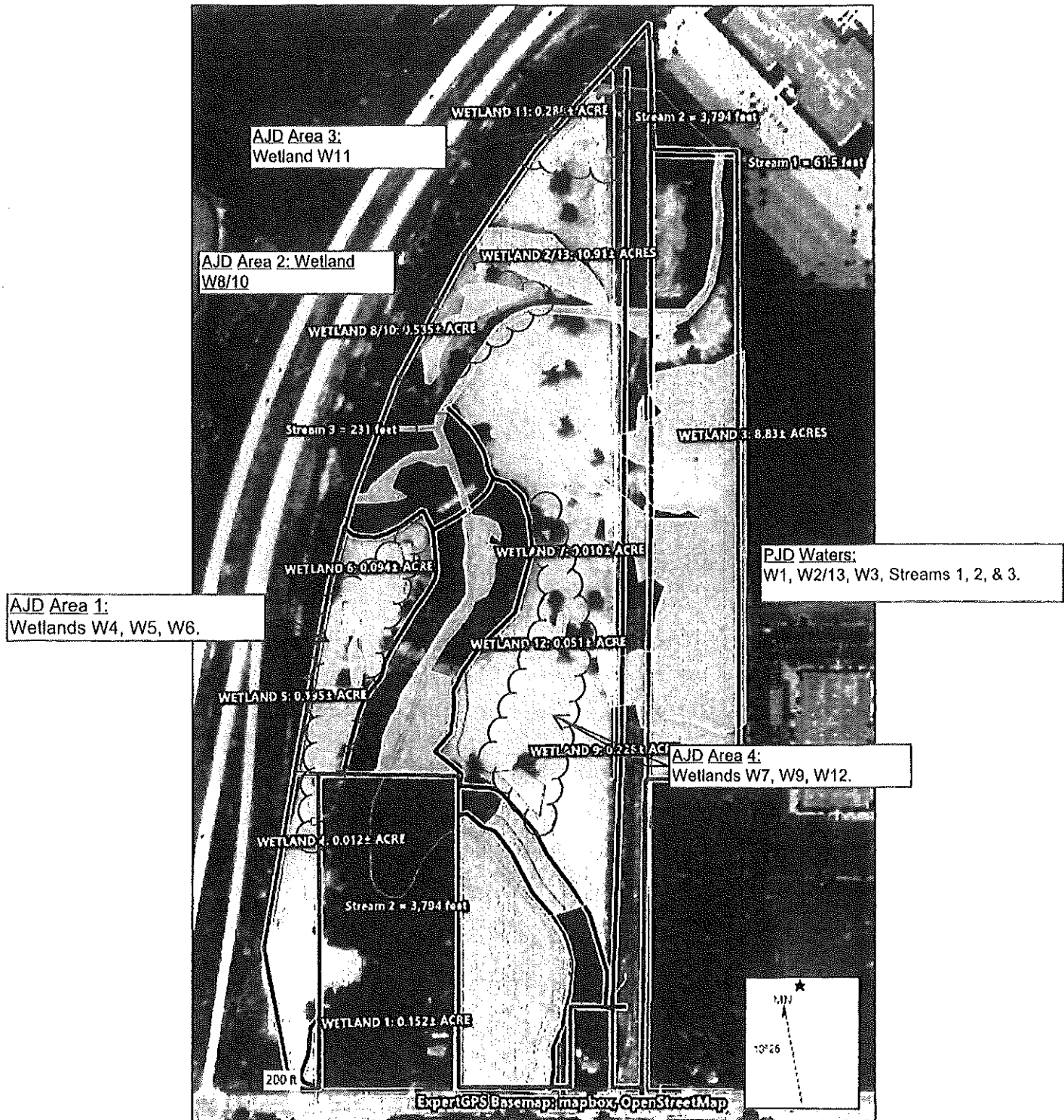


FIGURE 9: AERIAL PHOTO WITH WETLANDS

<https://earth.google.com/web/>

SBLC

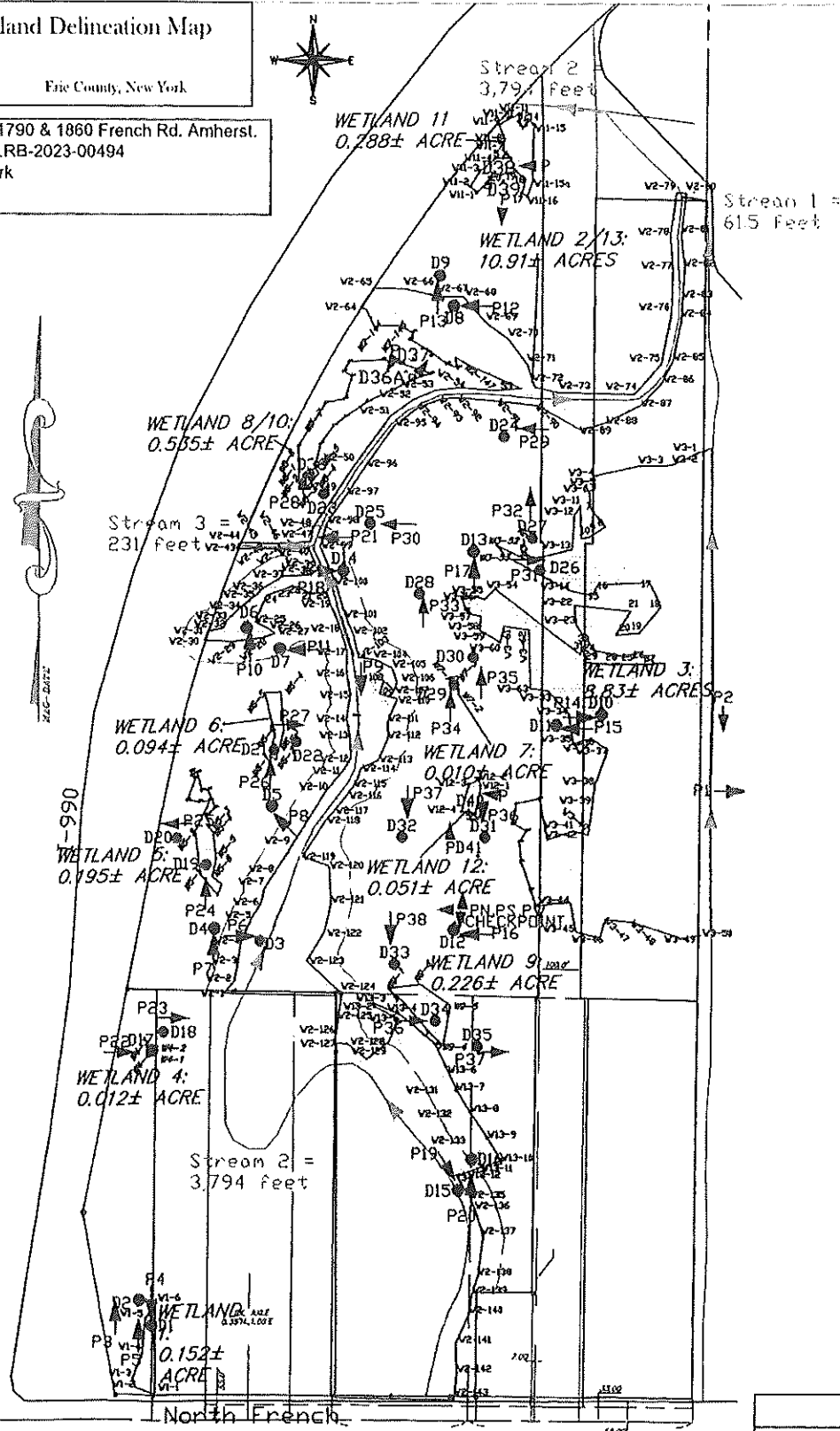
Town of Clarence, Erie County, New York

Cimato Enterprises -1790 & 1860 French Rd. Amherst.
D/A Processing No. LRB-2023-00494
Erie County, New York
Sheet 2 of 3

Figure 6 - Wetland Delineation Map

Town of Amherst Erie County, New York

Cimato Enterprises -1790 & 1860 French Rd. Amherst.
D/A Processing No. LRB-2023-00494
Erie County, New York
Sheet 3 of 3



Scale: 0 200 400

Map Date: October 28, 2025 JMC
Revised:

Base Map Provided By:

File Name: Delineation Map.dwg

EDI Project Code: W23E07a

SBLC LEGEND

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

Appendix D

Appeals Form: ENG form 6287

U.S. Army Corps of Engineers (USACE)
**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.

*Form Approved -
OMB No. 0710-0003
Expires 2027-10-31*

DATA REQUIRED BY THE PRIVACY ACT OF 1974

Authority The authorities for requesting this information are Sections 9, 10, 13, and 14, Rivers and Harbors Act of March 3, 1899; Section 404, Clean Water Act; and Section 103 Marine Protection Research and Sanctuaries Act of 1972.

Principal Purpose This information serves as notification to affected parties regarding the USACE administrative appeal options and process, as well as to facilitate requests for appeal of USACE decisions with which they disagree.

Routine Uses Routine uses will include: (a) To serve as notification to affected parties of the Corps administrative appeal options and process and to facilitate requests for appeal of Corps decisions with which they disagree. (b) Records may be referred to the Department of Justice for possible criminal prosecution. (c) Records may be referred to other Federal, State, and local agencies for evaluation and enforcement purposes.

Disclosure Disclosure of this information is voluntary on your part. However, failure of individual to provide requested information could result in inability to determine all pertinent information regarding a Department of the Army permit matter.

The Agency Disclosure Notice (ADN)

The Public reporting burden for this collection of information, 0710-0003, is estimated to average 1 hour per response, including 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.

PURPOSE: This form is used to facilitate the initiation of the administrative appeals process. The appeals process allows an affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree.

Upon release, this form will also be available on the Corps website <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>

Applicant: SBLC Development Corp	File Number: LRB-2023-00494	Date: 2025-11-06
Documents Attached (select all that apply):		Form Reference Section:
☐	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
☒	APPROVED JURISDICTIONAL DETERMINATION	E
☒	PRELIMINARY JURISDICTIONAL DETERMINATION	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:		If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:	
Name:	Shaina Souder	Name:	Suzanne Chubb, Regulatory Program Manager
Street Address, City, State:	USACE, Buffalo District, Regulatory Branch 478 Main Street, Buffalo, New York 14202-3278	Street Address, City, State:	USACE, Great Lakes & Ohio River Division 550 Main Street, Room 10-780, CELRD-PD-O Cincinnati, Ohio 45202-3222
Phone:	716-879-4240	Phone:	(513) 218-1243
Email:	shaina.r.souder@usace.army.mil	Email:	suzanne.l.chubb@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.

Email address of appellant and/or agent

Telephone number

Signature of appellant or agent

Date

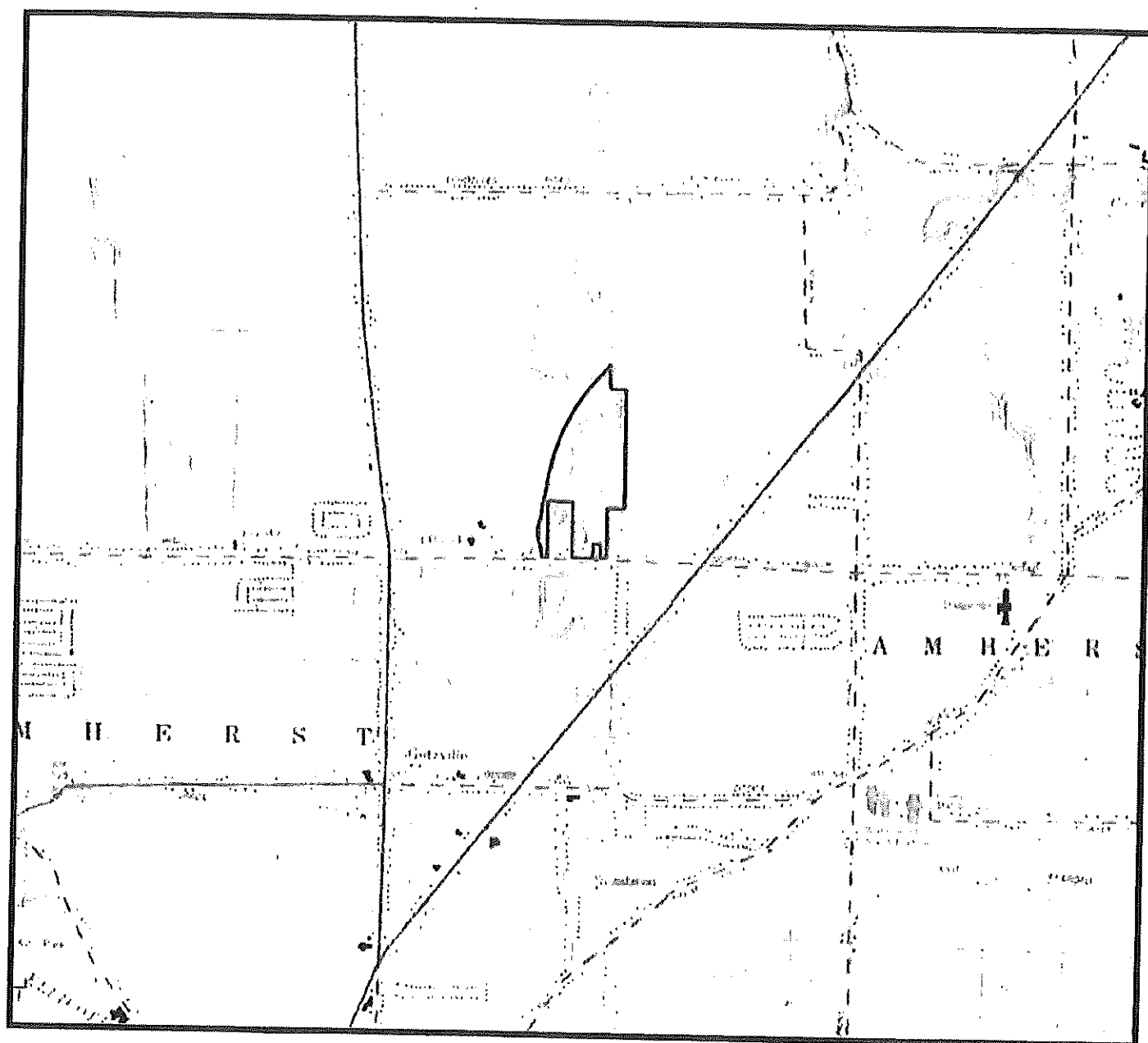


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Tonawanda East Quadrangle / U.S. Geological Survey

SBLC

Town of Amherst, Erie County, New York

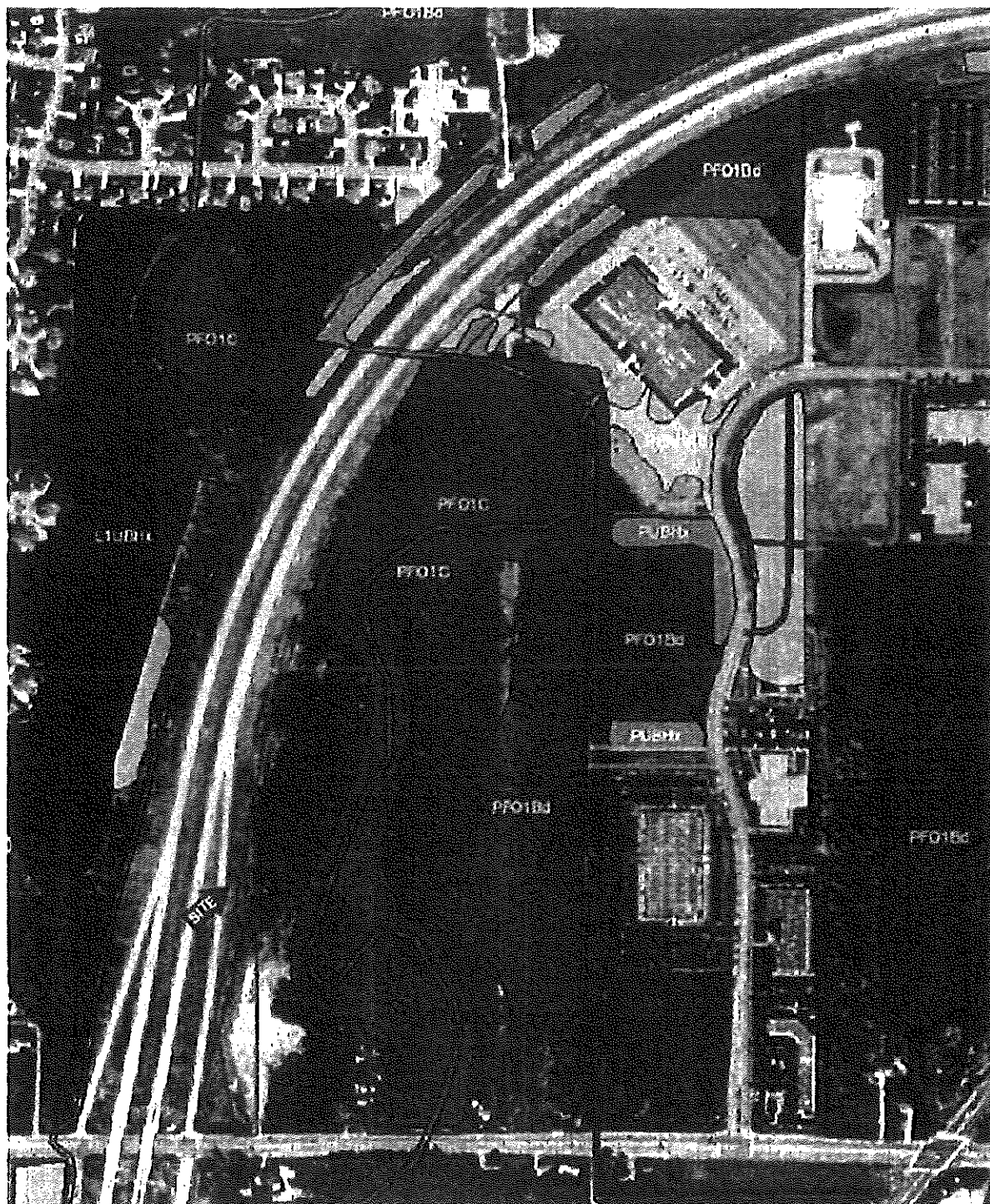


FIGURE 2: NATIONAL WETLANDS INVENTORY MAP
<http://www.fws.gov/wetlands/data/mapper.HTML> (Visited 4/13/23)

SBLC

Town of Amherst, Erie County, New York

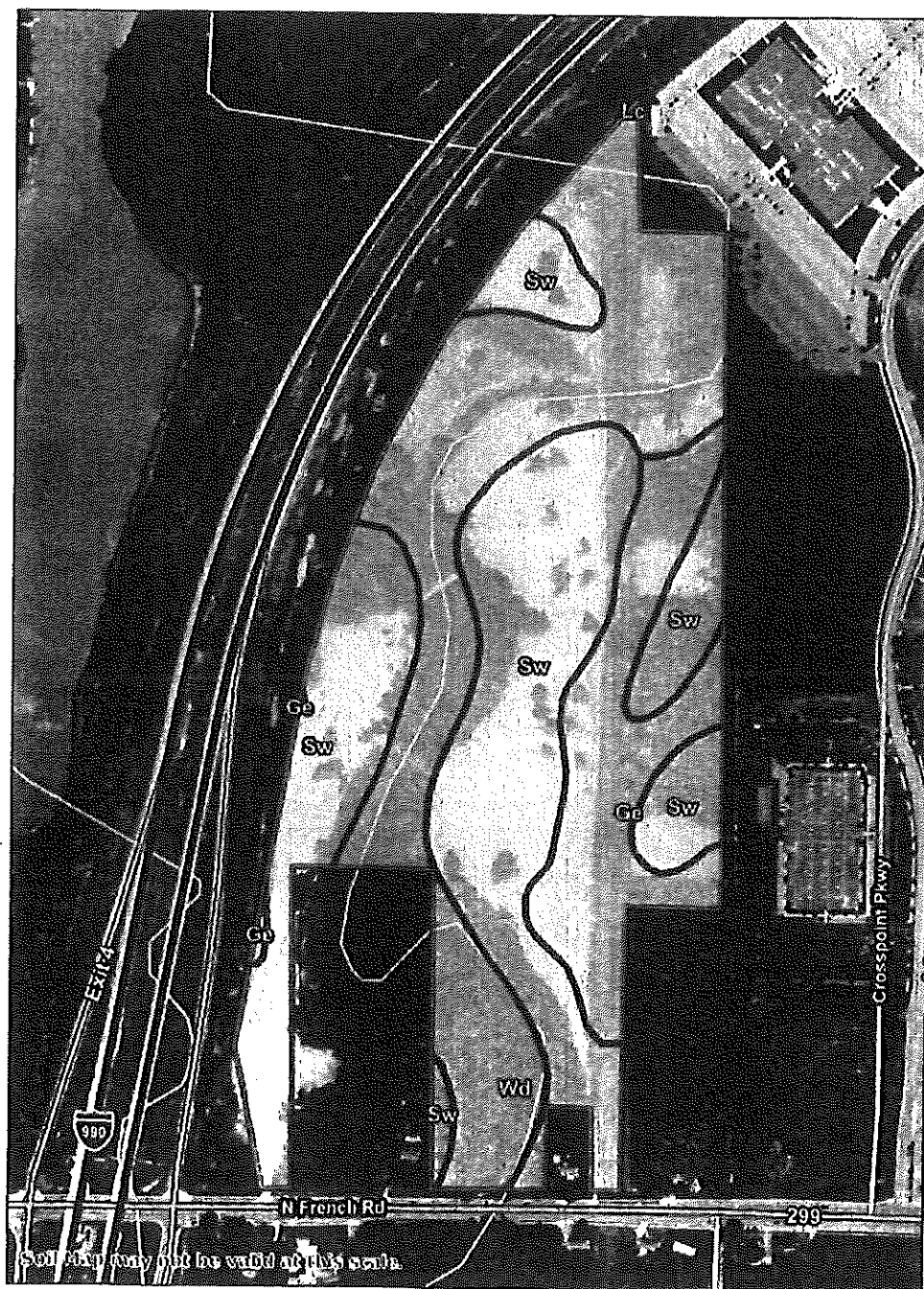


FIGURE 3: NRCS SOIL SURVEY MAP

<http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> (Visited 10/28/25)

SBLC

Town of Amherst, Erie County, New York

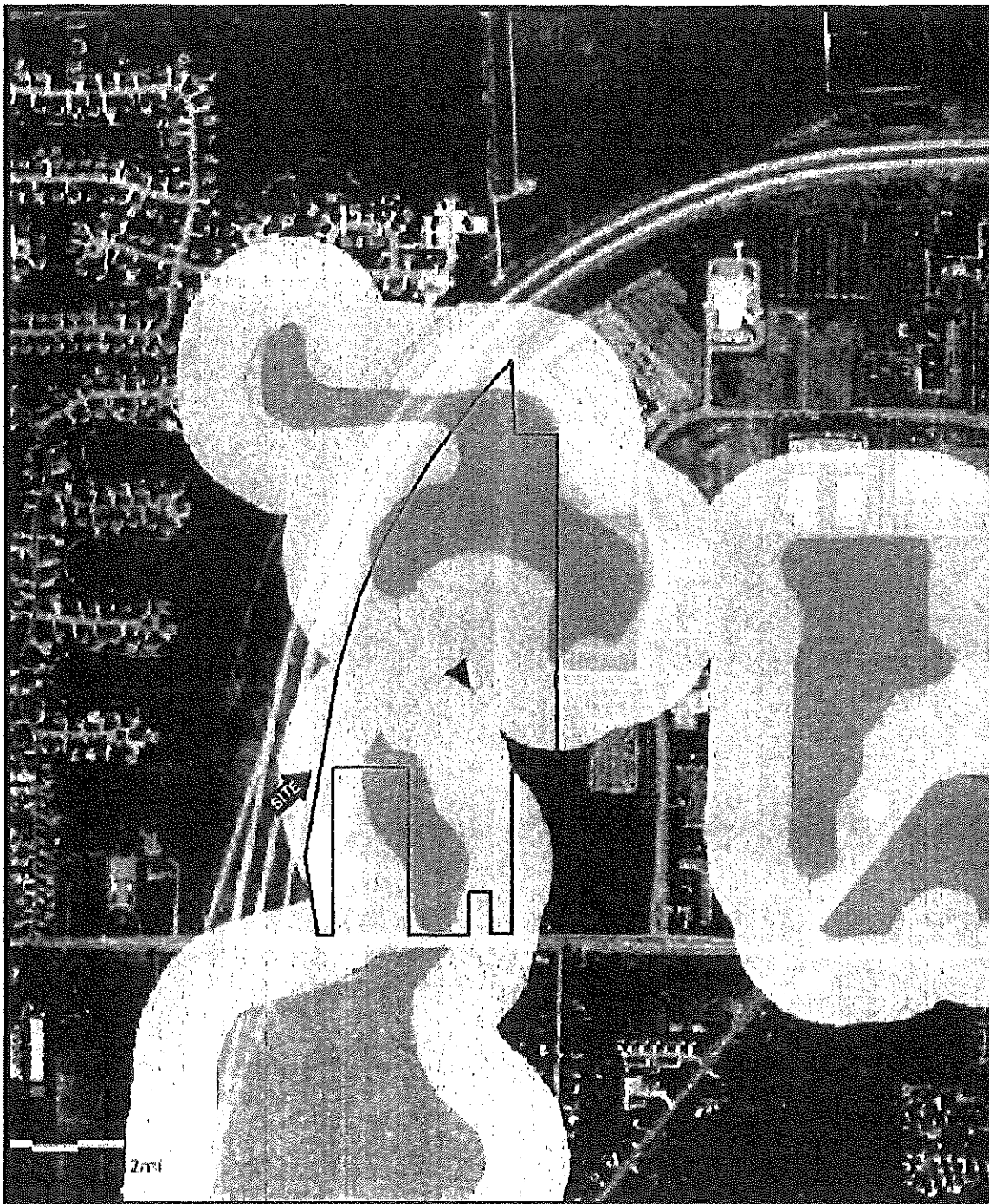


FIGURE 4: NYSDEC ENVIRONMENTAL RESOURCE MAPPER

<https://gisservices.dec.ny.gov/gis/erm/> (Visited 4/13/23)

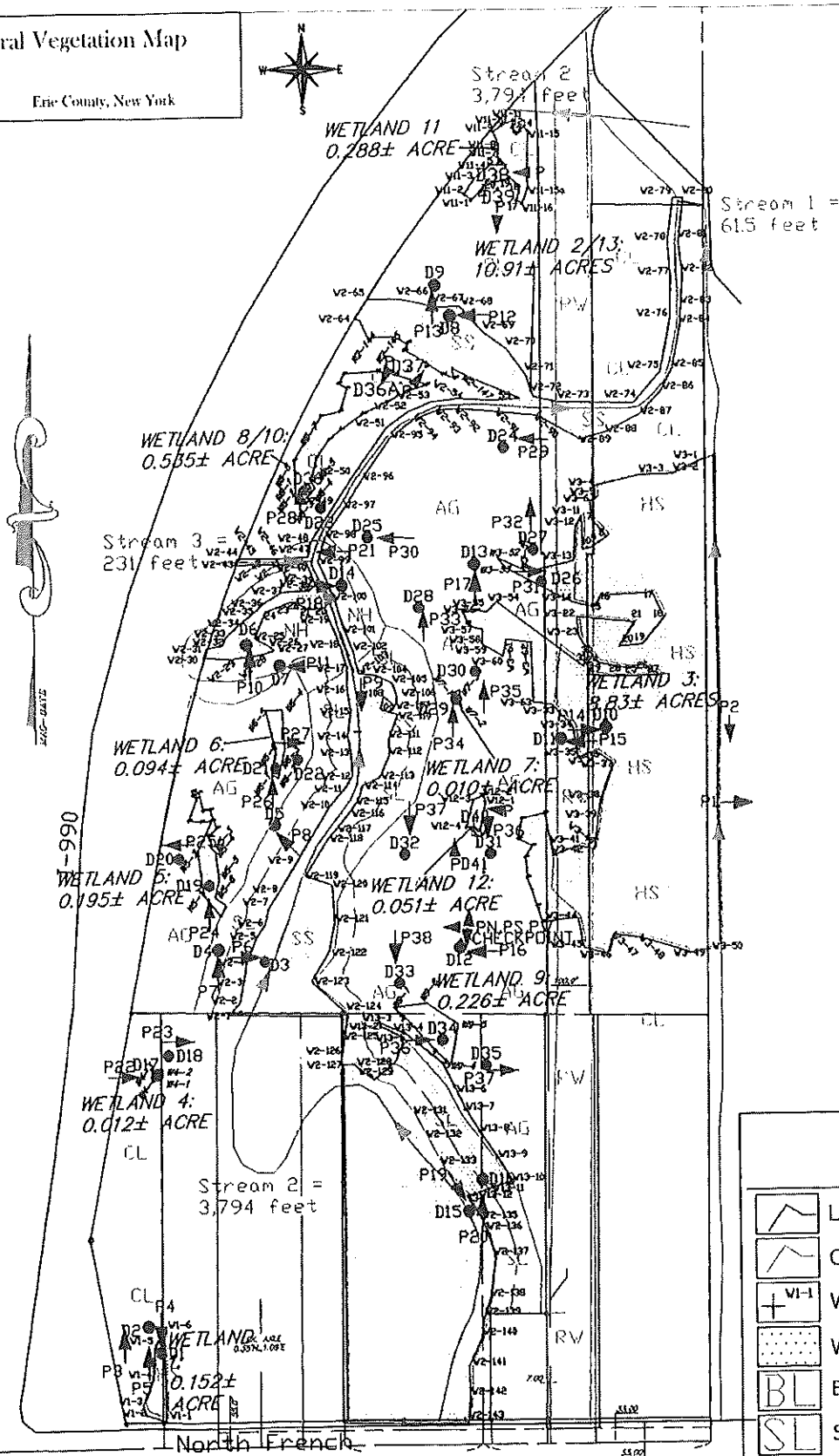
SBLC

Town of Amherst, Erie County, New York

Figure 5- General Vegetation Map

Town of Amherst

Erie County, New York



SBLC LEGEND

- Limits of Investigation
- Community Boundary
- Wetland Boundary Flag
- Wetland Area
- Brushy Cleared Land
- Successional Shrubland
- Successional N. Hardwood
- Right-of-Way
- Scrub-shrub
- Hardwood Swamp
- Agricultural Field

Scale: 0 200' 400'

Map Date: October 28, 2025 JMC/EDI
Revised:

Base Map Provided By: Trimble Geo 7X

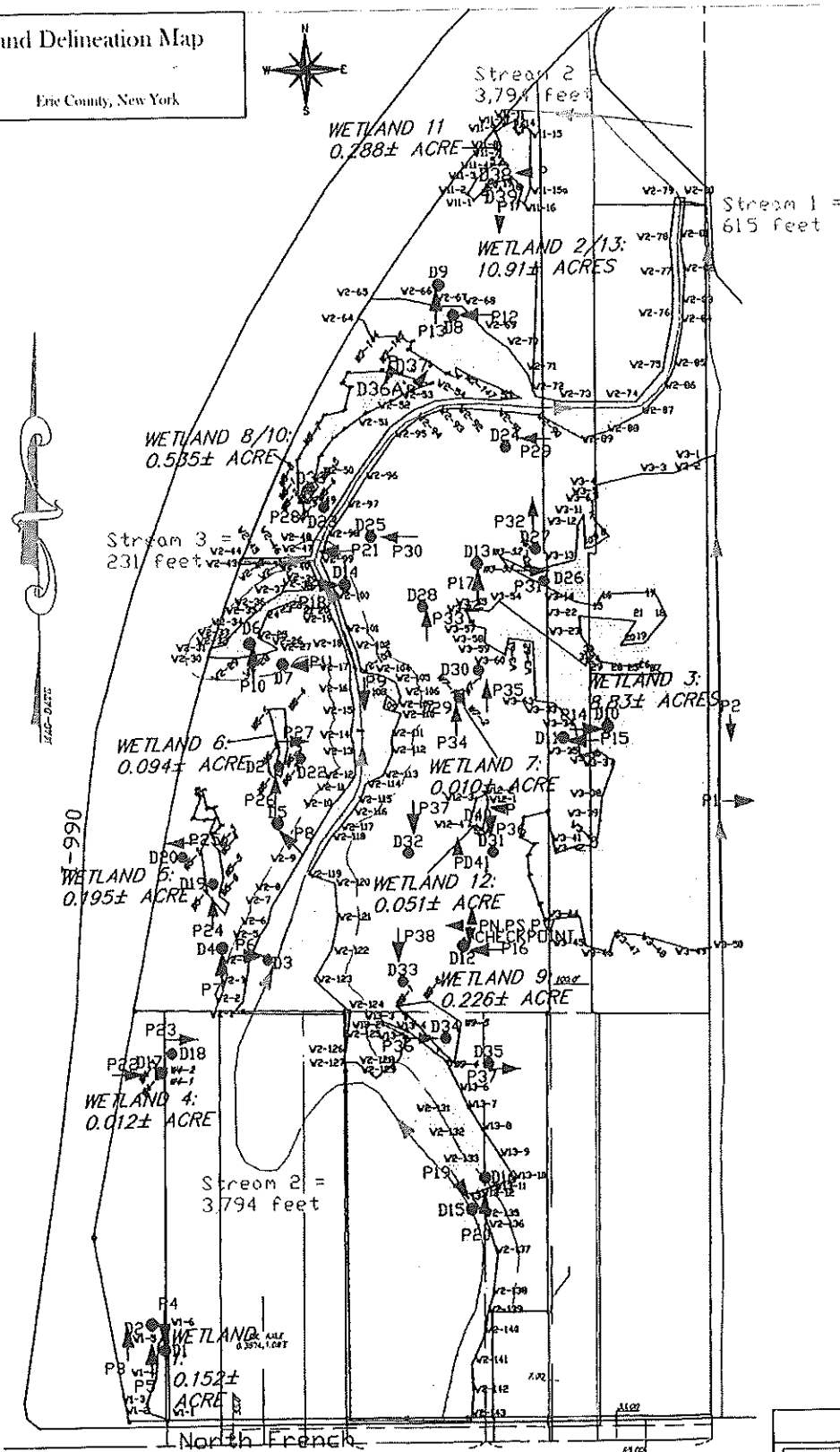
File Name: Delineation Map.dwg

EDI Project Code: W23E07a

Figure 6 - Wetland Delineation Map

Town of Amherst

Eric County, New York



Scale: 0 200 400

Map Date: October 28, 2025 JMC
Revised:

Base Map Provided By:

File Name: Delineation Map.dwg

EDI Project Code: W23E07a

SBLC LEGEND

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



FIGURE 7: DRAINAGE MAP

<https://streamstats.usgs.gov/ss/> (Visited 4/13/23)

SBLC

Town of Amherst, Erie County, New York

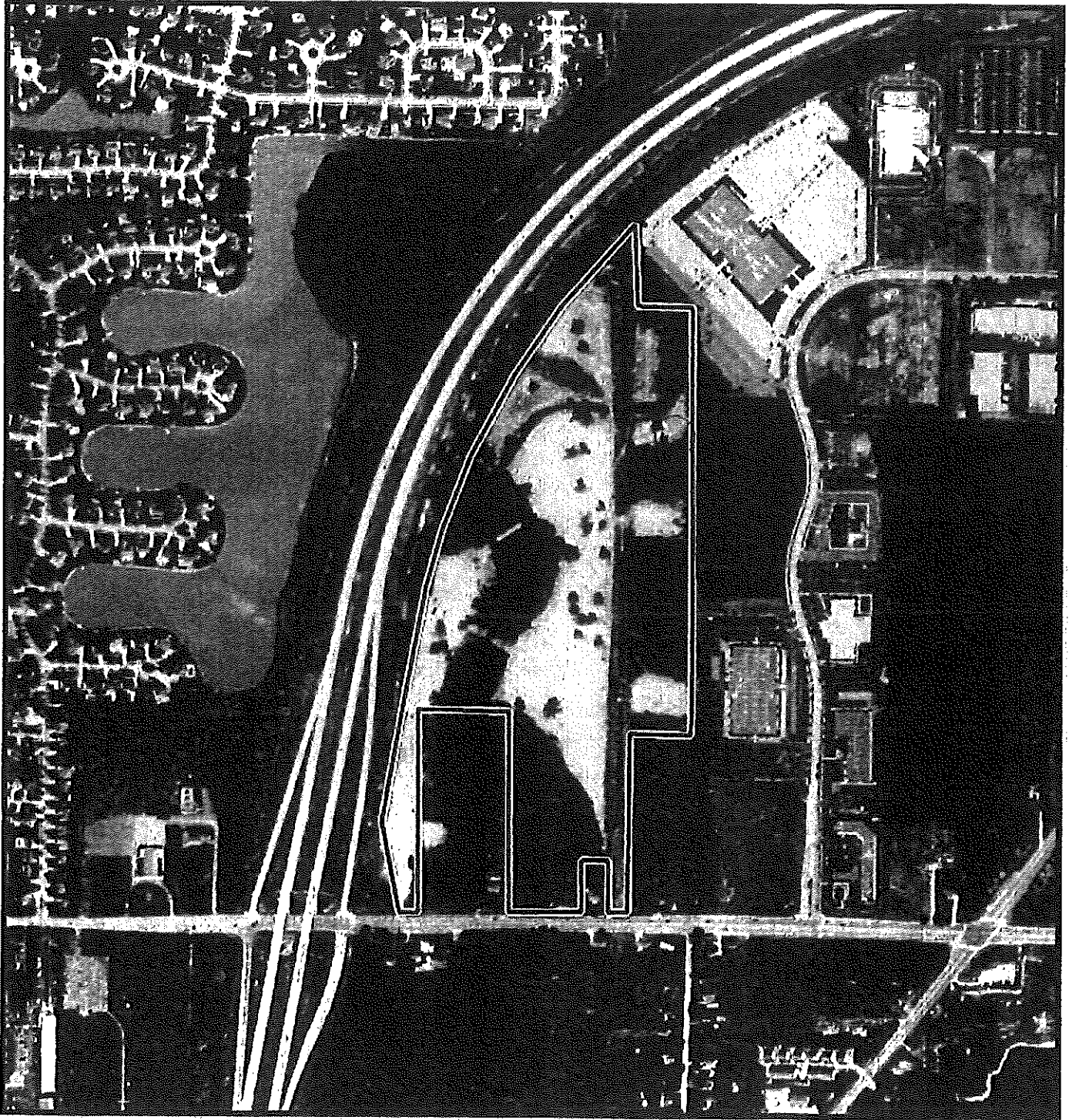


FIGURE 8: SITE AERIAL PHOTOGRAPH

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

SBLC

Town of Amherst, Erie County, New York

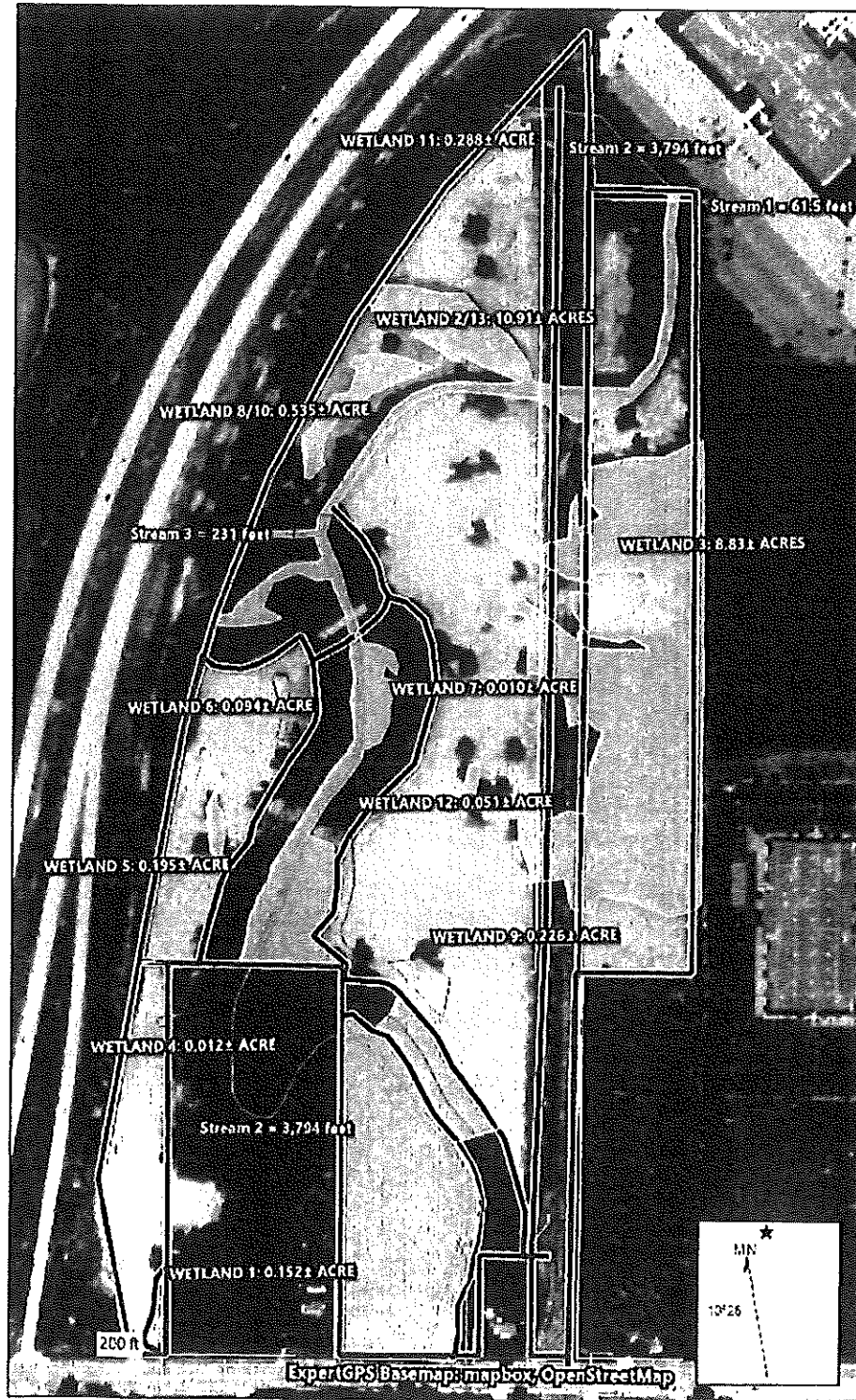


FIGURE 9: AERIAL PHOTO WITH WETLANDS

<https://earth.google.com/web/>

SBLC

Town of Clarence, Erie County, New York

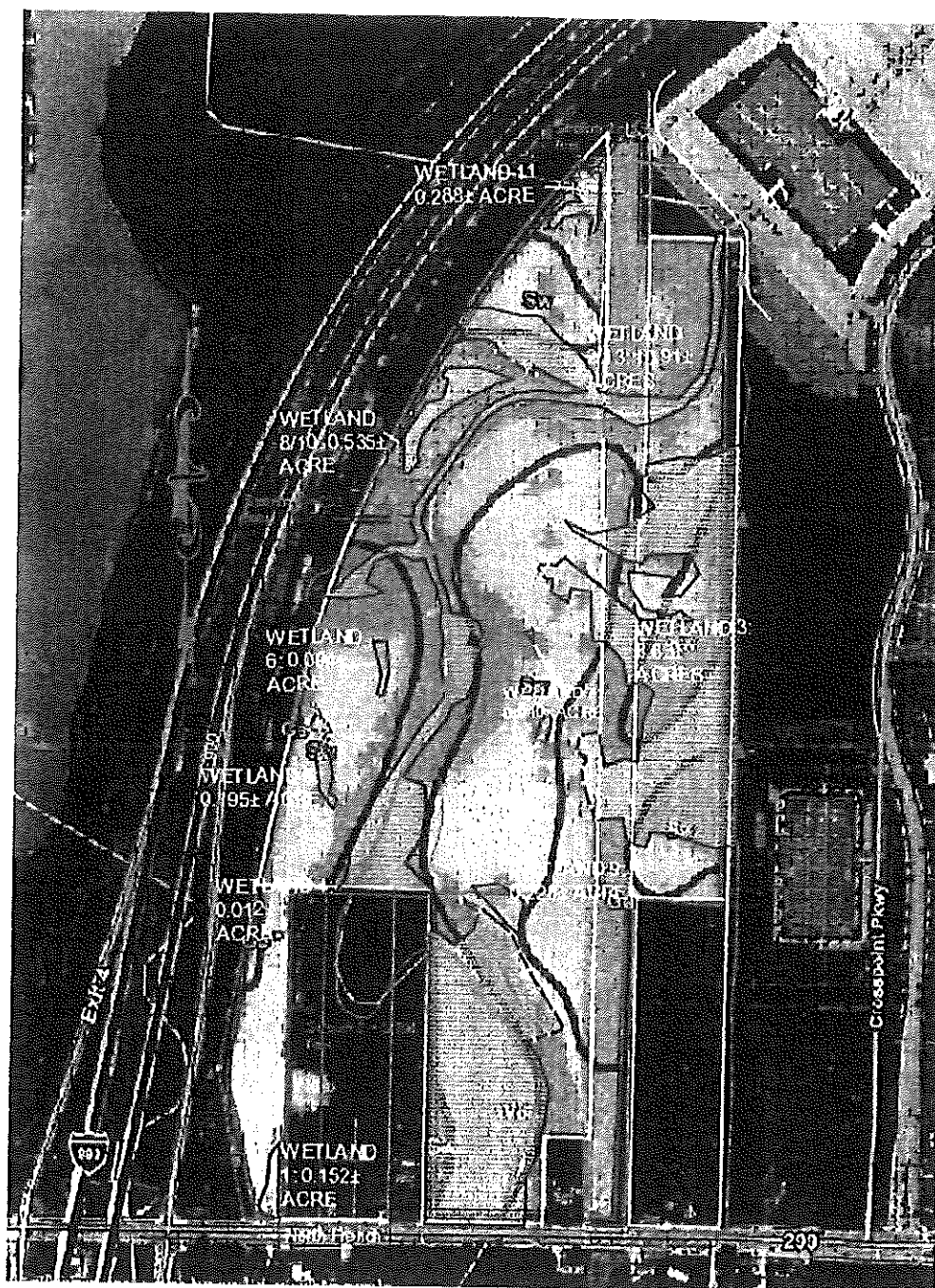


FIGURE 10: SOIL MAP WITH WETLANDS

GPSExpert.com

SBLC

Town of Clarence, Erie County, New York