November 19, 2015

Steven J. Walters, Town Supervisor
Town of Hamburg Town Hall
6100 South Park Avenue
Hamburg, New York 14075

Re: Requested Rezoning of 24.28 Acres from R-A to PRD
Proposed Clustered Residential Subdivision
Location of Project Site: Vacant Land with frontage on Boston State Road, McKinley Parkway and Newton Road
Applicant/Project Sponsor: Glenn Wetzl
File No. 10011.2

Dear Supervisor Walters and Councilmembers Potters-Juda and Quinn:

I am submitting this letter on behalf of Glenn Wetzl ("Project Sponsor") for the purpose of responding to the comments made by the public during the public hearing held by the Town Board on November 9th.

The Project Sponsor is requesting that 24.28 acres of the Project Site be rezoned from R-A to PRD to accommodate a proposed 45 lot clustered residential subdivision as depicted on the PRD Subdivision Plan prepared by Christopher Wood, P.E. of Carmina Wood Morris that was presented during the public hearing held on November 9th. A full size copy of the PRD Subdivision Plan showing the layout of the proposed 45 lot clustered subdivision is attached to this letter.

The proposed clustered subdivision will result in 17.1 acres of the overall 29.29 acre Project Site being preserved as permanent open space and there will not be any homes on the frontage of Newton Road, McKinley Parkway or Boston State Road. The permanent open space buffers along each of these three roadways will remain zoned R-A and this ensure that these permanent open space buffer areas will not be developed at any point in the future as single-family homes or additional roadway or driveway connections to Newton Road, McKinley Parkway or Boston State Road. As the Town Board is aware, previous plans for a higher density clustered residential subdivision included lots fronting on McKinley Parkway and Newton Road. The Project Sponsor eliminated these lots based on input received from nearby property owners during the informational meetings held as part of the lengthy review process.

Ten individuals spoke during the public hearing held on November 9th and responses to the comments made by individuals who spoke is provided below in Part II of this letter.

## I. Project Documentation:

Attached to this letter is documentation for the consideration of the Town Board consisting of the following:

- **Exhibit 1:** Letter from Christopher Wood, P.E., of Carmina Wood Morris DPC dated November 18, 2015;
- **Exhibit 2:** Letter from Sean Hopkins, Esq. to Lisa M. Czechowicz, Deputy Regional Permit Administrator, New York State Department of Environmental Conservation, dated September 14, 2015;
- **Exhibit 3:** Conceptual Elevations for Patio Homes prepared by Carmina Wood Morris [11" x 17"][1];
- **Exhibit 4:** Correspondence from Charles Sickler, P.E., Director Engineering, Erie County Department of Public Works, to Sarah desJardins, dated September 2, 2015;
- **Exhibit 5:** E-mail communication from Edward S. Rutkowski, P.E., SEQR/Site Plan Review Coordinator, New York State Department of Transportation, to Sarah desJardins, dated August 19, 2015;
- **Exhibit 6:** Map 2-4 ("Environmental Constraints") and Map 2-10 ("Generalized Future Land Use") of the Town of Hamburg Comprehensive Plan;
- **Exhibit 7**: Jurisdictional Determination issued by U.S. Army Corps of Engineers dated August 22, 2012;
- **Exhibit 8:** Article XXI of the Town of Hamburg Zoning Code (titled "PRD Planned Residential Development District"); and
- **Exhibit 9:** Article XL of the Town of Hamburg Zoning Code (titled "Supplemental Cluster Housing and Townhouse Regulations")

## II. Response to Input received during Public Hearing held by the Town Board on November 9th:

During the public hearing held by the Town Board on November 9th, five people spoke in support of the pending requested rezoning of 24.28 acres of the Project Site be rezoned from R-A to PRD to accommodate a proposed 45 lot clustered residential subdivision and five people spoke in opposition.

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[1] The conceptual elevations have been provided to confirm that the owner occupied patio homes will be lower than traditional two-story single family homes.

The individuals who spoke in support of the pending requested rezoning indicated there is a demand for the proposed patio homes, which are very attractive to seniors interested in downsizing and moving into a home with a single-story footprint. They also indicated that they believe the project layout will result in a high quality project with positive fiscal impacts to the Town of Hamburg. The individuals who spoke against the pending requested rezoning raised concerns regarding drainage and flooding, traffic, wetlands, size of the lots, consistency with the Town's Comprehensive Plan and spot zoning. Each of these topics is addressed below.

## A. Drainage and Flooding Concerns and Enhanced Stormwater Management System:

The stormwater management system to be installed as part of the clustered residential subdivision will comply with the stringent stormwater quantity and quality standards of the New York State Department of Environmental Conservation ("NYSDEC") and the Town of Hamburg.

Based on concerns raised by Mr. and Mrs. Johnson, the owners of 6411 Boston State Road, the project engineer has proposed an enhanced stormwater management system that will improve existing drainage conditions on the Project Site attributable to the two ditches that cross the Project Site. Attached as Exhibit "1" is a detailed letter prepared by Christopher Wood, P.E., of Carmina Wood Morris, summarizing the proposed enhanced stormwater management system and compliance with the applicable stringent standards.[2] Additionally, attached as Exhibit "2" is a copy of my letter to Lisa M. Czechowicz of the NYSDEC, which confirms that the clustered subdivision will comply with the applicable stringent stormwater quantity and quality standards.[3]

The Project Sponsor has voluntarily agreed to implement the enhanced stormwater management system in connection with the proposed clustered residential subdivision. It is doubtful that any other potential development of the Project Site would include the expensive upgrades to the stormwater management system being proposed based on the drainage and flooding concerns of Mr. and Mrs. Johnson. The proposed clustered subdivision will improve drainage conditions on the Project Site compared to the existing conditions in which the ditches convey water from off-site properties towards Boston State Road without any detention.

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[2] The stormwater management system will be fully designed during the subdivision approval process and detailed drainage calculations will be contained in the Engineer's Report. Both the stormwater management system and the Engineer's Report will need to be reviewed and approved by the Town's Engineering Department prior to the clustered residential subdivision being approved.

[3] This letter also confirms that Project Sponsor will be required to obtain a Nationwide Permit from the U.S. Army Corps of Engineers for the proposed impact to less than 0.5 acres of the approximately 3.5 acres of jurisdictional federal wetlands located on the Project Site. Additionally, this letter confirms the need for off-site sanitary sewer offset work to be completed per the NYSDEC's standards for reduction of infiltration and inflow and also that project will not result in any adverse impacts to cultural or historical resources per the determination letter issued by NYS Office of Parks, Recreation and Historic Preservation ("SHPO") on August 18, 2015. A copy of the SHPO no impact determination letter is provided at Exhibit "C" of the letter to NYSDEC provided at Exhibit "2".

**B. Traffic Impacts:**

As part of the environmental review of the clustered residential subdivision pursuant to SEQRA, a Traffic Impact Study was prepared by SRF Associates, a reputable traffic engineering firm. The comprehensive analysis contained in the Traffic Impact Study demonstrated the proposed patio homes will not result in any potentially significant adverse traffic impacts. Patio homes generate less traffic than traditional single family homes during peak travel periods since the homes are smaller and a higher percentage of the owners are seniors, some of whom no longer travel back and forth to work on weekdays. Table II of the Traffic Impact Study provides information on the projected vehicular trips and copy of Table II is reproduced below.

**TABLE II**
**SITE GENERATED TRIPS**

| *DESCRIPTION* | *UNITS* | *AM PEAK* | | *PM PEAK* | |
|---|---|---|---|---|---|
| | | *ENTER* | *EXIT* | *ENTER* | *EXIT* |
| Patio Homes | 45 | 4 | 12 | 16 | 12 |

As Table II demonstrates, the clustered subdivision consisting exclusively of owner occupied patio homes, will not result in a large number of vehicular trips during the peak weekday A.M. and P.M. travel periods.

McKinley Parkway and Newton Roads are Erie County Highways subject to the jurisdiction of the Erie County Department of Public Works ("ECDPW"). Boston State Road is a New York State Highway subject to the jurisdiction of the New York State Department of Transportation ("NYSDOT"). Attached as Exhibit "4" is a letter issued by Charles Sickler, P.E., Director of Engineering, dated September 2, 2015, confirming that ECDPW evaluated the traffic impacts associated with the clustered subdivision and determined there will not be any potentially significant adverse traffic impacts. The relevant portion of the comment issued by ECDPW stated as follows:

> "This department has completed our review of the subject project Traffic Impact Study (TIS) prepared by SRF Associates dated August 2015 including the Appendices to the TIS. We are in agreement with the methodology utilized and the analysis conducted by SRF Associates. Based on our review of the traffic analysis contained in the TIS prepared by SRF Associates, we concur with the conclusions and recommendations contained in the TIS.
>
> Both McKinley Parkway and Newton Road are Erie County Highways subject to the jurisdiction of ECDPW and the clustered subdivision layout does not involve any roadway or driveway connections to either of these Erie County Highways with the exception of the gated emergency access only connection onto McKinley Parkway, which will not be publicly accessible. The use of a clustered layout that avoids multiple connections to the adjacent roadways is beneficial in terms of

> traffic management and preferred to a layout that with homes fronting on McKinley Parkway and/or Newton Road.
>
> The department, as an involved agency in connection with the environmental review of the project pursuant to the State Environmental Quality Review Act, has determined that this project will not result in any adverse impacts to the affected county highway based on the projected trips to be generated, the capacity analysis contained in the TIS and the existing and proposed project roadway connections as evaluated in the TIS."

NYSDOT also reviewed the Traffic Impact Study for clustered subdivision based on Boston State Road being a NYS Highway. The only public access from the Project Site onto the adjacent roadway network will consist of a roadway connection to Boston State Road. This location was selected based on input received from nearby property owners during the lengthy review process who expressed concerns regarding previously proposed roadway connections to McKinley Parkway and Newton Road.

On August 19, 2015, Edward Rutkowski, P.E., SEQR/Site Plan Coordinator issued an e-mail communication on behalf of NYSDOT confirming NYSDOT's determination that the vehicular trips from the clustered residential subdivision will not have significant adverse traffic impacts on the State Highway System. A copy of the e-mail communication issued by Mr. Rutkowski is provided at Exhibit "5".

## C. <u>Wetland Impacts</u>:

There are approximately 3.5 acres of jurisdictional federal wetlands on the Project Site. On August 22, 2012, the U.S. Army Corps of Engineers ("USACE") issued a Jurisdictional Determination confirming the size and location of the approximately 3.5 acres of jurisdictional wetlands. A copy of the Jurisdictional Determination is provided at Exhibit "7".

In developing the layout for the clustered residential subdivision, a deliberate effort was made Christopher Wood, P.E., working with Earth Dimensions, Inc. the Project Sponsor's wetland consultant, to minimize impact to the federal wetlands to the maximum extent practicable. The clustered residential subdivision will result in less than 0.50 acres of impacts to the approximately 3.5 acres of jurisdictional federal wetlands on the Project Site. The Project Sponsor will be required to obtain a nationwide permit from the USACE. The Project Sponsor is fully aware of the USACE's permitting and mitigation standards and an effort will be made to provide mitigation for the minor wetland impacts on the Project Site by creating new wetlands at an anticipated ratio of at least 1.5 to 1. The approximately 3 acres of on-site federal wetlands that will not be impacted by the clustered residential subdivision will be permanent preserved.

## D. <u>Size of Proposed Lots and Clustering</u>:

During the public hearing held on November 9th, a concern was raised regarding the size of the proposed lots in the clustered subdivision. The size of each proposed lot is labelled on the full PRD Subdivision Plan attached to this letter. The lots are smaller than the exiting lots consisting

of single-family homes in the vicinity of the Project Site. The size of the lots being smaller than traditional residential lots is based on the use of clustering pursuant to Section 280-282 of the Town's Zoning Code. A copy of Article XL of the Zoning Code (titled "Supplemental Cluster Housing and Townhouse Regulations") is provided at Exhibit "9". The existing residential development on properties to the north and west of the Project Site is situated within an R-1 zoning district and the minimum lot size in the R-1 zoning district is 15,000 sq. ft. Clustering allows for the minimum lot size to be reduced to a minimum size of 5,000 sq. ft.

A key benefit resulting from the proposed clustered subdivision layout is that a large portion of the Project Site including the property to remain zoned R-A along the frontage of Newton Road, McKinley Parkway and Boston State Road will consist of permanent open space. Section 280-140B of the Zoning Code states that sites zoned PRD should include at least 40% permanent open space and the clustered subdivision will result in 17.1 acres of permanent open space, which represents 58.4% of the Project Site. A copy of Article XXI of the Zoning Code (titled "PRD Planned Residential Development District") is provided at Exhibit "8". The 17.1 acres of permanent open space being proposed exceeds the 40% recommended amount by nearly 50%. It would be possible to increase the size of the lots considerably while still providing 40% permanent open space, but this would not be beneficial since the increased lot size would simply result in a reduction of the 17.1 acres of proposed permanent open space. It is also important to mention that Section 280-140C of the Zoning Code states that PDD zoning encourages clustered subdivisions to minimize or avoid development along existing roadway frontage, which is accomplished by the proposed clustered layout. The clustered layout accomplishes this objective since no development will front on any of the three contiguous roadways.

## E. <u>Consistency with the Comprehensive Plan</u>:

The proposed clustered subdivision as depicted on the attached full size PRD Subdivision Plan is consistent with the Town of Hamburg Comprehensive Plan. Section 2.4 of the Comprehensive Plan indicates that as of 2000, approximately twenty percent of the Town's population is over the age of 60 years old. The number of seniors in the Town of Hamburg and in all communities in Western New York has increased dramatically over the past two decades and this is a reason there is a strong demand for patio homes with single-story layouts. During the public hearing held on November 9th, individuals indicated there is a strong demand for patio homes and the Project Sponsor has received numerous inquiries from prospective customers interested in residing in a new patio home on the Project Site.

Section 3 of the Comprehensive Plan is titled "Goals and Objectives". This section of the Comprehensive Plan lists six goals and objectives that were the basis for the update of the 2010 Comprehensive Plan adopted in September of 2008. The six goals and objectives described on Pages 3-1 to 3-3 of the Comprehensive Plan are reproduced as follows:

1. Excellent open space lands and conservation areas exist in the Town of Hamburg that should be preserved and protected.

Response: The proposed clustered residential subdivision is consistent with Goal and Objective #1 since it will result in 17.1 acres (58.4%) of the Project Site being preserved as permanent open space.

2. Encourage balanced growth to provide for a diverse living environment for people in the Town, at all income and age levels, that builds upon past development and creates a safe environment for the future.

   Response: The clustered residential subdivision is consistent with Goal and Objective #2 since the 45 clustered patio home lots will provide a type of housing that is attractive to seniors and empty nesters who want to reside in the Town of Hamburg but are no longer interested in residing in a large two-story home with large yard. The clustered subdivision will provide a safe environment for the future owners of the patio homes that is close to a wide assortment of amenities including those offered nearby in the Village of Hamburg.

3. Promote the efficient utilization of public facilities and services through the management of growth and development.

   Response: The text accompanying Goal and Objective #3 encourages the "...in-filling of vacant, developable properties by directing future growth onto lands with adequate public services." The text also "[E]ncourages development in area with utilities (especially water and sewer)." The Project Site is serviced by public services such as sanitary sewer and water and all required approvals and permits needed for infrastructure improvements and connections will need to be obtained as part of the subdivision review process.

4. Protect the natural resources of the Town by respecting the development limitations of environmentally sensitive areas and preserving their integrity.

   Response: Map 2-4 of the Comprehensive Plan is titled "Environmental Constraints" and the Project Site does not contain any environmental constraints. A copy of Map 2-4 is provided at Exhibit "6". The text accompanying Goal and Objective #4 states that streams and creek corridors and floodplains should be protected from encroachment. The clustered subdivision will not have any impact on a NYSDEC designated stream or creek corridor nor will it result in any impacts to a designated floodway or 100 yr. floodplain.

   The text accompanying Goal and Objective #4 also states that development should be restricted in designated wetlands in accordance with State and Federal requirements. There are not any wetlands subject to the NYSDEC's jurisdiction on the Project Site and the clustered residential subdivision will only result in less than 0.50 acres of impact to the approximately 3.5 acres of jurisdictional federal wetlands on the Project Site. The Project Sponsor has acknowledged the need to comply with the federal requirements for minor impacts to federal wetlands.

5. Strive to improve and create an integrated transportation system to provide for the movement of residents, workers, visitors and goods in a safe and efficient manner.

   Response: As described above in Part IIB of this letter, the clustered subdivision will not result in any potentially significant adverse traffic impacts. During the lengthy review process, property owners on both Newton Road and McKinley Parkway expressed concerns about previously proposed roadway connections to these roadways and as such the roadway providing access to the owner occupied patio homes will only connect to Boston State Road.[4]

6. Protect, maintain and improve the aesthetic character of the various neighborhoods and communities in the Town.

   Response: The text accompanying Goal and Objective #6 encourages a higher standard of development through better site design. The proposed 45 lot clustered subdivision consisting of owner occupied patio homes is the result of a lengthy review process incorporating many modifications made based on input received. The Project Sponsor believes that the proposed clustered subdivision represents the best of the various potential alternatives for the development of the Project Site for residential purposes.

Section 4.1 of the Comprehensive Plan is titled "Findings and Recommendations". Finding #1 on Page 4-1 states as follows:

> "Excellent open space lands and conservation areas exist in the Town of Hamburg that should be preserved and protected; and the natural resources of the Town should be protected by respecting the development limitations of environmentally sensitive areas and preserving their integrity."

The Project Site consists of privately owned vacant land and is not protected open space or a protected conservation area. Map 2-4 of the Comprehensive Plan is titled "Environmental Constraints" and the Project Site does not contain any environmental constraints. Page 4.2 of the Comprehensive Plan discuss options for preserving open space and states as follows:

> "The Town should evaluate various options for preserving open space, both on its own and through development actions. The establishment of vegetated buffers, conservation easements, preserved area of habitat through conservation design (clustering) and effective deed restrictions are all means of protecting open space."

The clustered subdivision is consistent with the above text since it will result in 17.1 acres of the Project Site (58.4%) being preserved as permanent open space. The Project Sponsor is willing to grant a conservation easement to the Town to ensure the permanent protection of the 17.1 acres

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[4] The TIS and the review by NYSDOT confirmed that adequate sight distance exists at the location of the roadway connection to Boston State Road.

of permanent open space and the conservation easement would be recorded at the Erie County Clerk's Office.

The existing trees along the frontage of Newton Road, McKinley Parkway and Boston State Road, that are mostly located in the portion of the Project Site to remain zoned R-A along the frontage of these roadways, will be preserved. The location, type, and approximate caliper of the trees to be preserved along the roadway frontage are depicted on the attached full size PRD Subdivision Plan. The Project Sponsor has also proposed a decorative split rail fence with masonry columns and landscaping at the intersections of Newton Road and McKinley Parkway and Boston State Road and McKinley Parkway in order to enhance the appearance of the Project Site.

Page 4-2 of the Comprehensive Plan expressly mentions that preserving open space through conservation subdivision design (clustering) is recommended for the southeastern section of the Town. The text also mentions that consideration should be given to purchasing conservation easements or certain open space lands. The proposed clustered subdivision layout is consistent with recommendation for the southeastern section of the Town referenced above since it will result in the permanent preservation of 17.1 acres (58.4%) of the Project Site as open space without the need for the Town to considering utilizing funds to acquire a conservation easement or ownership of the privately owned land.

Residential development is discussed in Section 4 of the Comprehensive Plan and the text on Page 4-4 discusses the southeastern portion of the Town by stating as follows:

> "The Southeastern area of the Town, south and east of the Village of Hamburg, is a mix of rural and residential land. Much of this area has public sewer and water, making is more conducive for development, but there are environmental constraints that create some limitations. Open space preservation and visual character are important in this area and should be considered when development is proposed. The proximity to the Village is also an important consideration because good planning dictates that denser development should be located closer to developed hamlets and areas with public services. As previously noted, the areas close to the Village should be considered as potential areas for potential R-3 zoning for multi-family residential development."

A developer previously proposed amending the zoning classification of the Project Site to R-3 to accommodate a much higher density project than proposed clustered residential subdivision. The previously proposed rezoning to R-3 was consistent with the suggestion that the Project Site, which is located very close to the Village of Hamburg, should be considered for potential R-3 zoning for multi-family residential development. The previously proposed project consisted of a large church with 202 parking spaces, a multistory senior housing facility and 12 multistory apartment buildings. The previously proposed higher density project was not well received by nearby property owners and did not incorporate clustering as encouraged by the Comprehensive Plan. The previously proposed project has multiple driveways onto both Newton Road and McKinley Parkway and also did not include an enhanced stormwater management system to

improve existing on-site drainage conditions attributable to the two ditches that cross the Project Site.

The Project Site has direct access to public sanitary sewer and water and incorporates 17.1 acres of permanent open space which will preserve the visual character of the Project Site to a greater degree than other alternative residential development scenarios. Patio homes will have less visual impacts than larger traditional two-story homes. The alternative residential development scenarios include frontage lots on Newton Road and McKinley Parkway for large traditional two-story single family homes as expressly permitted by the existing R-A zoning classification, which would not provide any protected permanent open space. Another residential alternative would be the development of the Project Site based on the Town's R-1 zoning classification, which would expressly permit 15,000 square foot lots and a higher density than the 45 proposed clustered lots for owner occupied patio homes. The rezoning of the Project Site to R-1 to accommodate a traditional residential subdivision with lots with a minimum size of 15,000 sq. ft. would be consistent with the zoning classification of the existing residential development on R-1 zoned property directly north and east of the Project Site.

The Project Sponsor believes the proposed 45 lot clustered subdivision for owner occupied patio homes is consistent with the Comprehensive Plan. The Project Sponsor acknowledges that interested parties are entitled to their own opinions regarding the consistency of the pending requested rezoning to accommodate a 45 lot clustered subdivision with the Comprehensive Plan. However, the Project Sponsor believes the rezoning to accommodate the proposed clustered residential subdivision is clearly much more consistent with the Comprehensive Plan than development of the Project Site based on its existing R-A zoning classification or the Town's R-1 zoning standards.

## F. <u>The Rezoning of 24.24 Acres of the Project Site to PRD is not "Spot Zoning"</u>:

During the public hearing held on November 9th, an individual indicated that he believes the pending requested rezoning of 24.24 acres of the Project Site from R-A to PRD is spot zoning. Spot zoning refers to the rezoning of a property to a use category different from the surrounding area, usually to benefit a single owner or a single development interest. The size of the property is relevant but is not determinative.

The landmark case in the field of spot zoning is *Rodgers v. Village of Tarrytown*, 302 N.Y. 115 (1951), in which the Court of Appeals stated that when determining whether a rezoning constitutes spot zoning, "... [T]he relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community." The requested rezoning of 24.24 acres of the Project Site from R-A to PRD to accommodate the proposed 45 lot clustered residential subdivision for owner occupied patio homes is clearly not spot zoning since the use being proposed is owner occupied homes on individual lots, the same use that exists on nearby properties utilized for

residential purposes.[5] The requested rezoning to accommodate owner occupied patio homes on individual lots in an area in which the predominant land use is owner occupied homes, is clearly distinguishable from a use that could be viewed as being incompatible with the surrounding vicinity, although the rezoning of property to accommodate a use that is different and more intensive than existing nearby uses does not mean necessarily result in spot zoning.[6]

## III. Conclusion:

By providing 17.1 acres of permanent open space and no residential development or publicly accessible roadways or driveways onto Newton Road or McKinley Parkway, the proposed clustered residential subdivision consisting of 45 lots for owner occupied patio homes fulfills the Town's clustering standards. The clustered residential subdivision in an area serviced by public water and sanitary sewer and in close proximity to existing residential development directly north and west of the Project Site is consistent with the Town's planning goals and objectives.

The Project Sponsor readily acknowledges that many nearby property owners would prefer the privately owned Project Site remain vacant land, but it is important to keep in mind that the Project Site is not a protected resource such as a publicly owned park or a dedicated conservation area.

The Project Sponsor believes the proposed 45 lot clustered residential subdivision that will provide 17.1 acres of permanent open space is the best residential development alternative for the Project Site. During the lengthy review process, many modifications have been made that have repeatedly reduced the density of the project, which originally consisted of 66 lots, while at the same time increasing the amount of permanent open space and voluntarily providing other improvements such as the proposed enhanced stormwater management system.

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[5] There are also two-family dwelling located on property on the northern side of Newton Road.

[6] The fact that a rezoning will benefit a landowner will not on its own invalidate the action, so long as the action accords with a comprehensive plan. In order to be in accordance with a comprehensive plan, the rezoning needs to further some clearly identified public purpose. In *Save Our Forest Action Coalition, Inc. v. City of Kingston,* 246 A.D.2d 217, 221-222 (3rd Dept. 1998), a 107-acre parcel within a residential district was rezoned "light industrial" in order to accommodate a local manufacturing firm and the local development corporation. The court rejected a spot zoning challenge by holding, "... [T]he primary motivation for the zoning amendment was to support local economic development through retention of the City's largest employer and to reap associated economic and tax benefits in connection with the development of a business park. The determination was made after an extensive review process, including a consideration of the impact on adjoining residential areas, consistency with existing zoning plans, environmental concerns and the availability of other suitable sites....In our view, the record discloses that sufficient forethought has been given to the community's land use problems.... and that there was a reasonable relation between the rezoning determination and the worthwhile goal of improving the economic health of the community.

If there are any questions regarding this letter, the attached documentation, or the proposed clustered residential subdivision for owner occupied patio homes, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC

Sean W. Hopkins, Esq.

Enc.

cc: Cheryl Potter-Juda, Councilmember
Michael Quinn, Councilmember
Andrew Reilly, Planning Consultant
Sarah desJardins, Planning Consultant
Catherine A. Rybczynski, Town Clerk
Christopher Wood, P.E., Carmina Wood Morris, P.C.
Glenn Wetzl

# Exhibit 1 – Letter issued by Christopher Wood, P.E. of Carmina Wood Morris to Supervisor Walters dated November 18, 2015 providing overview of proposed Stormwater Management System

Carmina • Wood • Morris PC

487 Main Street Suite 600 Buffalo, New York 14203 P: 716.842.3165 F: 716.842.0263 W: cwm-ae.com

Architecture Engineering Interior Design

November 18, 2015

Steven J. Walters, Supervisor
Town of Hamburg Town Board
6100 South Park Avenue
Hamburg, New York 14075

**Re: Requested Rezoning of 24.28 Acres from R-A to PRD**
**Vacant Land with frontage on Boston State Road,**
**McKinley Parkway & Newton Road**
**Applicant: Glenn Wetzl**

Dear Supervisor Walters and Councilmembers Potters-Juda and Quinn:

Our firm is the project engineer with respect to the above referenced project consisting of a clustered residential subdivision. I have prepared this letter in response to concerns that have been raised regarding potential drainage impacts. Mr. Wetzl is proposing to develop the project site as a 45 lot clustered residential subdivision and one of the benefit of clustering that is result in less impervious surfaces than a traditional residential subdivision with larger homes, larger lots, larger driveways, more roadways, etc.

The project layout has been updated numerous times during the past two years and in each instance the result has been larger amount of permanent open and less impervious surfaces. The current clustered layout as presented to the Town Board during the public hearing held on November 9th will result in 17.1 acres of the site being preserved as permanent open space, which is more than 50% of the acreage of the project site and the 17.1 acres of permanent open space does not include the yards that will be provided on each clustered patio home lot.

**A. <u>Modifications to Provide Surplus Stormwater Storage</u>:**

During the lengthy review process, Mr. and Mrs. Johnson, the owners of a single family home at 6411 Boston State Road, have expressed concerns about the proposed clustered subdivision increasing the risk of flooding on their property. The Johnson's have experienced past flooding issues. Based on the concerns raised by the Johnson's, our firm has modified the project layout to include an enhanced stormwater management system that exceeds the stormwater quantity standards that apply to new projects. An overview of the stormwater management standards that apply to the proposed clustered residential subdivision per the stringent standards of New York State Department of Environmental Conservation ("NYSDEC") and the Town of Hamburg is provided Part B of this letter below.

The modifications consist of the following: The addition of a detention basin located in the northeast corner and routing of the ditch which flows on site from Newton Road through it to provide a potential area for temporary storage during high flow events, routing of the same ditch through the detention basin located along the east property line which will allow its

outlet to be controlled through the basins outlet control structure, routing of the ditch which flows on site from McKinley Parkway through the westerly basin which will allow its outlet to be controlled through the basins outlet control structure, installation of an overflow detention area for this ditch in the southeast corner of the site, realigning the existing ditch which flows off site in the southeast corner to eliminate the 90 degree turn, lining of this portion of the ditch with rip-rap stone to prevent erosion and cleaning of a portion of the existing ditch to the east to remove vegetation and debris.

Mr. Wetzl has voluntarily agreed to install an enhanced stormwater management system at his sole expense based on the concerns raised by the Johnson's. The enhancements will be expensive but provide an assurance that the runoff conditions currently existing on the Project Site due to the ditches that cross the Project Site will be improved, which will be beneficial to the Johnson's and the Town of Hamburg. It is highly doubtful that any other party developing the project site would be willing to voluntarily incur the cost of providing an enhanced stormwater management designed to address existing runoff conditions which are 100% attributable to off-site runoff that crosses the Project Site.

**B. Overview of Stormwater Management System Standards:**

During the subdivision review stage of the project, our firm would be responsible for preparing fully engineered plans for the clustered subdivision as well as an Engineer's Report and Storm Water Pollution Prevention Plan ("SWPPP"). The Engineer's Report will need to include detailed calculations demonstrating that the storm water management system to be constructed as part of the clustered subdivision will comply with the applicable stringent stormwater quality and quantity standards. The fully engineered plans, Engineer's Report and SWPPP will need to be reviewed and approved by the Town's Engineering Department prior to the commencement of any on-site construction activities.

The following sections of this letter provide a summary of the manner by which runoff from the impervious surfaces within the clustered subdivision will be handled to satisfy the applicable standards and it is important to reiterate that the Applicant has committed to installing an enhanced stormwater management system as described in Part A of this letter above.

<u>Storm Water Design Narrative</u>

A storm water collection system is proposed for the new roadway system. This system will consist of catch basins placed appropriately along the edge of the proposed road to collect runoff generated by the roadway and portions of the patio home lots. Roof downspouts from the proposed homes will be connected to this system. The proposed catch basins will be connected by a series of storm pipes which will convey the runoff to the storm water management areas. The storm water management areas will be designed in accordance with the Town of Hamburg requirements in addition to the New York State Department of Environmental Conservation ("NYSDEC") Stormwater Management Design Manual. These areas will provide both water quality and water quantity storage components.

Back yard and side yard swales will be installed on the individual lots to direct storm water away from the proposed houses and adjacent properties. These swales will provide a path to convey the storm water into the storm water system described above. Vegetated portions of the back yards along the existing drainage way and wetlands will sheet drain directly to the drainage way/wetlands.

The existing drainage paths that enter the site from Newton Road and McKinley Parkway and flow south and east, converge and flow off-site will remain and be improved as discussed above. This drainage path is the primary location of the discharge from the existing site. In its development condition, the existing runoff that is currently conveyed onto the Project Site from off-site locations will continue to discharge to this drainage path following treatment and attenuation through the proposed storm water management areas.

Detention System

The proposed detention system will consist of wet or dry detention basins which will provide both volume attenuation and water quality treatment. The current PRD Subdivision Plan prepared by our firm shows five storm water management areas (only three would be required if an enhanced stormwater system was not being proposed) and the locations are based on an evaluation of on-site topography and the project site. The exact location and size of the storm water management areas has not yet been determined but these storm water management areas will be designed to exceed the applicable stringent standards to ensure they provide adequate stormwater runoff capacity.

The NYSDEC Stormwater Management Design Manual requires (5) five different criteria be considered when designing a storm water management system. Those criteria are Water Quality, Runoff Reduction Volume, Channel Protection, Overbank Flooding and Extreme Storm Protection. Below is a summary of each item and how it will be incorporated into the proposed clustered subdivision.

Water Quality:
The NYSDEC requires water quality treatment prior to discharge. The goal of the design will be to achieve 100% of the water quality volume requirement by applying a practice recognized in the design manual, a Standard SMP with Runoff Reduction capacity. Standard SMP's include bioretention or a wet pond which provides a permanent pool of water for water quality purposes. In the event that a Standard SMP cannot be implemented to achieve 100% of the Water Quality volume, a NYSDEC approved alternative practice would be implemented. These alternative practices include a hydrodynamic or filter type treatment structure.

Runoff Reduction Volume:
As stated above, the goal is for the total water quality volume for the site to be reduced by the implementation of a Standard SMP used to achieve the Water quality requirement. The design

methodology will be based on the NYSDEC Stormwater Management Design Manual five-step process for Stormwater Management Planning as outlined in Chapter 3.

Channel Protection:
The NYSDEC requires that extended detention be provided for the proposed 1-year storm event. The storage volume will be accommodated in the proposed storm water management areas and the outlet will be restricted through the use of an engineered outlet structure designed in accordance with both the Town and NYSDEC criteria.

Overbank Flooding:
The NYSDEC requires that the 10-year proposed storm event be attenuated with detention and that the outlet be restricted to the 10-year existing storm event. The storage volume will be accommodated in the proposed storm water management areas and the outlet will be restricted through the use of an engineered outlet structure designed in accordance with both the Town and NYSDEC criteria.

Extreme Storm Protection:
The NYSDEC requires that the 100-year proposed storm event be attenuated with detention and that the outlet be restricted to the 100-year existing storm event. The storage volume will be accommodated in the proposed storm water management areas and the outlet will be restricted through the use of an engineered outlet structure designed in accordance with both the Town and NYSDEC criteria.

Town of Hamburg Criteria:
The Town of Hamburg requires that the 25-year proposed storm event be attenuated with detention and that the outlet be restricted to the 10-year existing storm event. The storage volume will be accommodated in the proposed storm water management areas and the outlet will be restricted through the use of an engineered outlet structure designed in accordance with both the Town and NYSDEC criteria.

Design Criteria
Storm pipes: 10-year storm
Detention:

Designed to contain the 1-year, 10-year, 25-year, 50-year and the 100-year 24-hour design storms for the post-development peak rates of runoff, while restricting the outflow rate equal to the 1-year, 10-year, 25-year, 50-year and the 100-year 24-hour design storms for the pre-development peak rates of runoff respectively.

In accordance with Town of Hamburg and NYSDEC requirements, a Notice of Intent and Stormwater Pollution Prevention Plan ("SWPPP") will be prepared for this project due to the total disturbance of over one acre.

As demonstrated by the above overview, the clustered subdivision will incorporate storm water management improvements that both satisfy and exceed the applicable stringent standards of both the Town of Hamburg and the NYSDEC. This will ensure that the clustered subdivision will not result in any potentially significant drainage or flooding impacts but instead will improve existing conditions associated with the project consisting currently of vacant land.

Please contact me at 842-3165 (Ext. 103) with any questions regarding this letter or the proposed clustered subdivision.

Sincerely,

CARMINA WOOD MORRIS, P.C.

R. Christopher Wood, P.E.

cc: Cheryl Potter-Juda, Councilmember
Michael Quinn, Councilmember
Andrew Reilly, AICP, Planning Consultant
Sarah desJardins, Planning Consultant
Richard J. Lardo, Principal Engineer, Engineering Department
Ryan F. McCann, Esq., Planning Board Attorney
Sean W. Hopkins, Esq.
Glenn Wetzl

# Exhibit 2 – Letter from Sean Hopkins, Esq. to Lisa M. Czechowicz, Deputy Regional Permit Administrator, New York State Department of Environmental Conservation, dated September 14, 2015

September 14, 2015

Lisa M. Czechowicz, Deputy Regional Permit Administrator
NYS Department of Environmental Conservation
Division of Environmental Permits, Region 9
270 Michigan Avenue
Buffalo, New York 14203-2915

Re: Proposed Clustered Residential Subdivision – 29.29 Acre
Project Site with frontage on Boston State Road,
McKinley Parkway & Newton Road
Town of Hamburg - Applicant: Glenn Wetzl
File No. 100011.2

Dear Ms. Czechowicz:

Our firm represents the Project Sponsor in connection with the above referenced project. I have prepared this letter for the purpose of responding to the four numbered comments contained in your lead agency response letter to Sarah desJardins dated June 1st. A copy of your letter is attached as Exhibit "A". For purposes of convenience, the four comments contained in your letter have been reproduced below in *italics* followed by the Project Sponsor's responses.

**Comment #1:** *Please note if a United States Department of the Army, Corps of Engineers (Corps) permit is required for this project, the Corps may require the project sponsor to obtain Section 401 Water Quality Certification from this Department.*

**Response to Comment #1:** The proposed clustered residential subdivision would result in impacts to approximately .49 acres of federal wetlands on the Project Site. Attached as Exhibit "B" is a is copy of the current PRD Subdivision Plan prepared by Christopher Wood, P.E., of Carmina Wood Morris, P.C. depicts the proposed wetland impacts [highlighted in pink]. The current project layout consists of 45 clustered residential lots for owner occupied single family homes. There will be 16.83 acres of permanent open space, which equals 57.4% of the overall acreage of the Project Site.

The Project Sponsor acknowledges that a Nationwide Permit will be required from the United States Army Corps of Engineers ("USACE") and that Water Quality Certification will be required from the NYSDEC. Given that the NYSDEC will not be in a position to review a request for WQC until after a SEQRA determination has been issued by the Town of Hamburg in its capacity as the designated lead agency, it is premature to seek WQC at this juncture.

**Comment #2:** *Please be aware that if this project requires Sewer Extension Approval, the Erie County Department of Health, 503 Kensington Avenue, Buffalo, New York 14214, telephone: 716/961-6800, which acts as our agent, will be the approving agency. Separate approval may be required from the Erie County Department of Environment and Planning, Division of Sewerage Management.*

*A detailed Downstream Sewer Capacity Analysis must be performed and submitted for the prosed project. Recent wet weather flow monitoring data and proposed new development flow should be analyzed relative to theoretical capacity at key nodes in the downstream sewer system and at pump stations (if any) to determine if capacity exists.*

*Recent wet weather system flow data can consist of:*

- *Comprehensive information from recent Sanitary Sewer System Evaluation Studies, or*
- *Wet weather data collected at (minimum of 3) key downstream nodes specified by the municipality.*
    - *This dated information can consist of instantaneous flow measurements or continuous flow or sewer depth measurements obtain during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.*
    - *Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of ½" or greater.*

*The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity and pump stations must be identified and included in the analysis.*

*This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I rehabilitation offset work, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission from the municipality (sewer owner) that signs the "application for Approval of Plans" form. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.*

**Response to Comment #2:** The Project Sponsor acknowledges that Sewer Extension Approval will be required as is the case for all residential subdivisions in Erie County that will connect into a municipality's sanitary sewer system. The Project Sponsor also acknowledges that during the subdivision review process that it will be necessary for a Downstream Sewer Capacity Analysis to be prepared and that it will be necessary for infiltration and inflow ("I&I") offset work to be provided since the clustered residential subdivision will generate more than 2,500 gpd of sanitary

sewer flow. Christopher Wood, P.E., the Project Sponsor's engineer, is well aware of the requirements cited above in Comment #2 and the Downstream Sewer Capacity Analysis will be submitted as part of the subdivision review process, which cannot occur until after a SEQRA determination has been issued by the Town of Hamburg.

**Comment #3:** *Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-15-002, as well as the NOI form, is available on the Department's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.*

*The Town of Hamburg is designated as a MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at the NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4th Floor, Albany, New York 12233-3505, telephone (518) 402-8111 to receive Department approval before construction commences.*

**Response to Comment #3:** The Project Sponsor acknowledges the need to submit a SWPPP and to obtain the approvals referenced in Comment #3 above based on the fact the proposed clustered residential subdivision will result in greater than one acre of land disturbance.

**Comment #4:** *The project site appears to within an archaeologically sensitive area, as shown on the enclosed New York State Cultural Resource Information System (CRIS) map (Website https://cris.parks.ny.gov/). As art of the SEQR process, the Town should evaluate this concern, unless it can be verified by appropriate documentation that the site has been significantly disturbed in a way that would destroy potential artifacts. Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (Office of Parks, Recreation and Historic Preservation) (telephone: 518/237-8643). Note: If any of the described Department approvals are required, an appropriate archaeological investigation must be conducted in order to satisfy the New York State Historic Preservation Act.*

**Response to Comment #4:** A Phase I Cultural Resource Report was prepared by Robert Dean of Heritage Preservation & Interpretation Inc. and submitted to the NYS Office of Parks, Recreation and Historic Preservation ("SHPO") for its review. On August 18th, Ruth L. Pierpont, Deputy Commissioner for Historic Preservation, issued a written determination stating as follows:

> "[I]t is the New York State Office of Parks, Recreation and Historic Preservation's opinion that your project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Register of Historic Places."

A copy of the letter cited above as issued by Ms. Pierpont of SHPO dated August 18th is attached as Exhibit "C" and this letter provides the Town of Hamburg with the necessary information to demonstrate the proposed clustered residential subdivision will not result in any potentially significant adverse environmental impacts.

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the proposed clustered residential subdivision.

Thank you for your continued cooperation.

Sincerely,

HOPKINS SORGI & ROMANOWSKI PLLC

Sean Hopkins

cc: Sarah desJarsdins, Planning Consultant
Glenn Wetzl
Christopher Wood, P.E., Carmina Wood Morris, P.C.

**Exhibit A – Correspondence from Lisa M. Czechowicz, Deputy Regional Permit Administrator, NYSDEC to Sarah desJardins, dated June 1, 2015**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Division of Environmental Permits, Region 9**
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 | F: (716) 851-7168
www.dec.ny.gov

June 1, 2015

Ms. Sarah desJardins
Town of Hamburg Planning Department
6100 South Park Avenue
Hamburg, New York 14075

Dear Ms. desJardins:

**SEQR LEAD AGENCY DESIGNATION**
**PROPOSED RESIDENTIAL SUBDIVISION**
**TOWN OF HAMBURG, ERIE COUNTY**

This is in response to your February 17, 2015 letter which requested SEQR Lead Agency status for the Town of Hamburg Town Board, regarding the rezoning of a parcel on Boston State Road for proposed development of a 45-lot residential subdivision. Please be advised that this Department does not have jurisdiction over rezoning or other municipal ordinances. However, we performed an environmental screening of the site and offer the following comments for your consideration when reviewing the proposal:

1. Please note if a United States Department of the Army, Corps of Engineers (Corps) permit is required for this project, the Corps may require the project sponsor to obtain a Section 401 Water Quality Certification from this Department.

2. Please be aware that if this project requires Sewer Extension Approval, the Erie County Department of Health, 503 Kensington Avenue, Buffalo, New York 14214, telephone: 716/961-6800, which acts as our agent, will be the approving agency. Separate approval may be required from the Erie County Department of Environment and Planning, Division of Sewerage Management.

   A detailed Downstream Sewer Capacity Analysis must be performed and submitted for this subdivision project. Recent wet weather flow monitoring data and proposed new development flow should be analyzed relative to theoretical capacity at key nodes in the downstream sewer system and at pump stations (if any) to determine if capacity exists.

   Recent wet weather system flow data can consist of:

   - Comprehensive information from recent Sanitary Sewer System Evaluation Studies, or
   - Wet weather data collected at (minimum of 3) key downstream nodes specified by the municipality.
     - This dated information can consist of instantaneous flow measurements or continuous flow or sewer depth measurements obtained during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.

- Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of ½" or greater.

The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity and pump stations must be identified and included in the analysis.

This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I) rehabilitation offset work, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission from the municipality (sewer owner) that signs the "Application for Approval of Plans" form. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.

Sanitary sewer extensions tributary to a known SSO will not be approved unless the municipality is actively working to develop a satisfactory abatement plan.

The above guidance will help in the preparation of a complete Sewer Extension submission, which will facilitate our review. If you have any questions or require additional information, please contact our office (Division of Water, telephone: 716/851-7070) or the Erie County Health Department.

3. Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-15-002, as well as the NOI form, is available on the Department's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.

   The Town of Hamburg is designated as an MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4th Floor, Albany, New York 12233-3505, telephone: 518/402-8111 to receive Department approval before construction commences.

4. The project site appears to be within an archaeologically sensitive area, as shown on the enclosed New York State Cultural Resource Information System (CRIS) map (Website https://cris.parks.ny.gov/). As part of the SEQR process, the Town should evaluate this concern, unless it can be verified by appropriate documentation that the site has been significantly disturbed in a way that would destroy potential artifacts. Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (Office of Parks, Recreation and Historic Preservation) (telephone: 518/237-8643). Note: If any of the described Department approvals are required, an appropriate archaeological investigation must be conducted in order to satisfy the New York State Historic Preservation Act.

We concur that the Town of Hamburg should act as SEQR Lead Agency, since the environmental impacts of the proposal are primarily of local significance.

If you have any questions, please feel free to contact me at 716/851-7165.

Sincerely,

Lisa M. Czechowicz

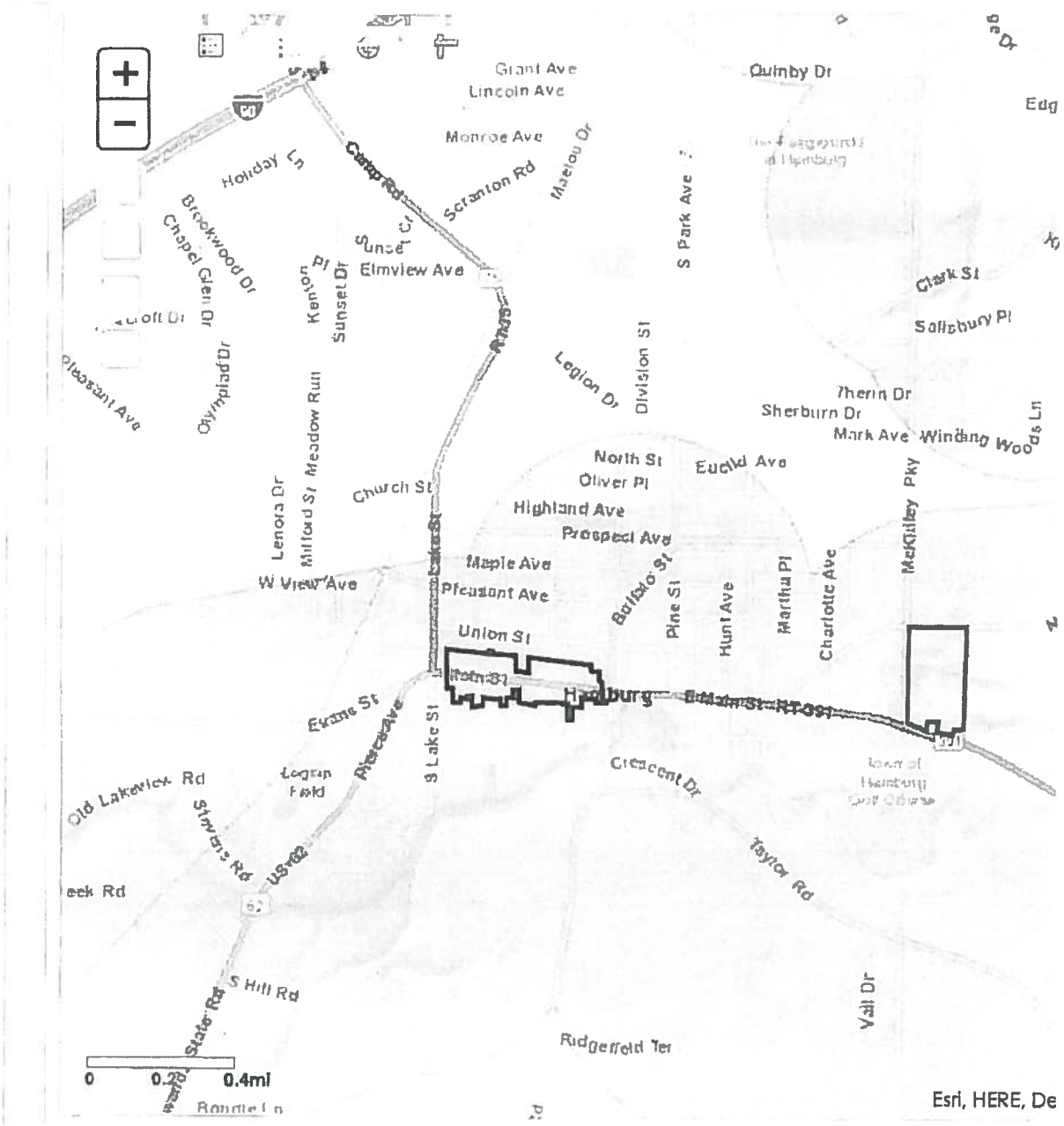
Lisa M. Czechowicz
Deputy Regional Permit Administrator

Ecc: Daniel Judd, P.E., NYSDEC, Division of Water
William Murray, P.E., NYSDEC, Division of Water
Mikhail Boutsko, U.S. Army Corps of Engineers, Buffalo District Office
Sean Hopkins, Hopkins & Sorgi

CRIS

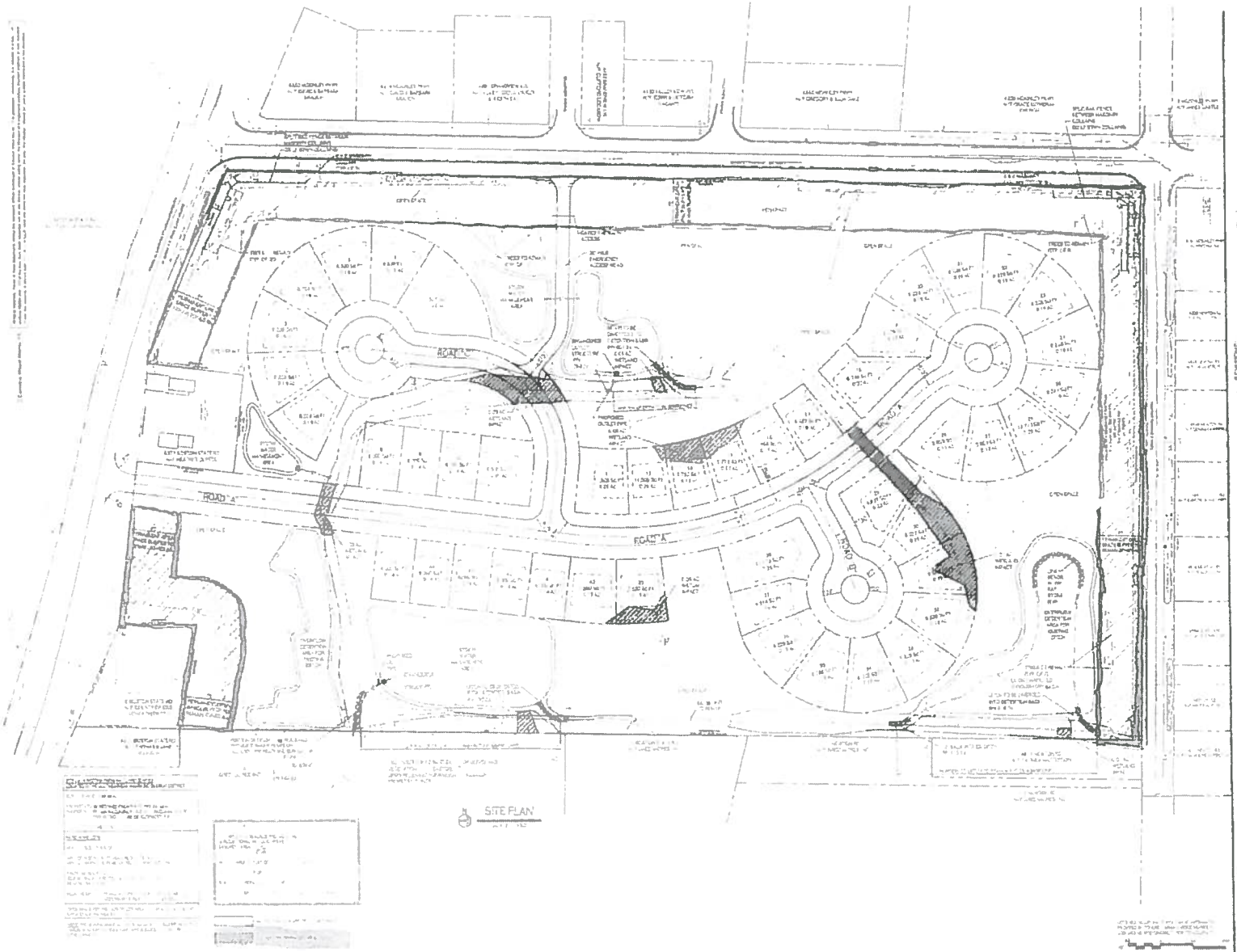
Welcome DENISE MATTHEWS | My

HOME SUBMIT SEARCH COMMUNICATE




© 2015 New York State Office of Parks, Recreation & Historic Preservation. All ri

**Exhibit B – Copy of PRD Subdivision Plan prepared by Christopher Wood, P.E. of Carmina Wood Morris dated September 1, 2015 [Drawing C-100]**




Camina
Wood
Morris

New Construction
Proposed Subdivision
McKinley Pkwy Boston State Rd and Newton Rd
Hamburg New York

PRD Subdivision
Plan

C-100

**Exhibit C – Correspondence issued by Ruth L. Pierpont, Deputy Commissioner for Historic Preservation, NYS Office of Parks, Recreation and Historic Preservation, dated August 18, 2015**

NEW YORK
STATE OF
OPPORTUNITY

# Parks, Recreation, and Historic Preservation

**ANDREW M. CUOMO**
Governor

**ROSE HARVEY**
Commissioner

August 18, 2015

Mr. Robert Dean
President
Heritage Preservation & Interpretation Inc
P.O. Box 277
10255 Old Rte 17
Steamburg, NY 14783-0277

Re: DEC
McKinley Parkway Proposed Development
Town of Hamburg, Erie County, NY
15PR04327

Dear Mr. Dean:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the project in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the OPRHP and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and its implementing regulations (6 NYCRR Part 617).

Based upon this review, it is the New York State Office of Parks, Recreation and Historic Preservation's opinion that your project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont

Ruth L. Pierpont

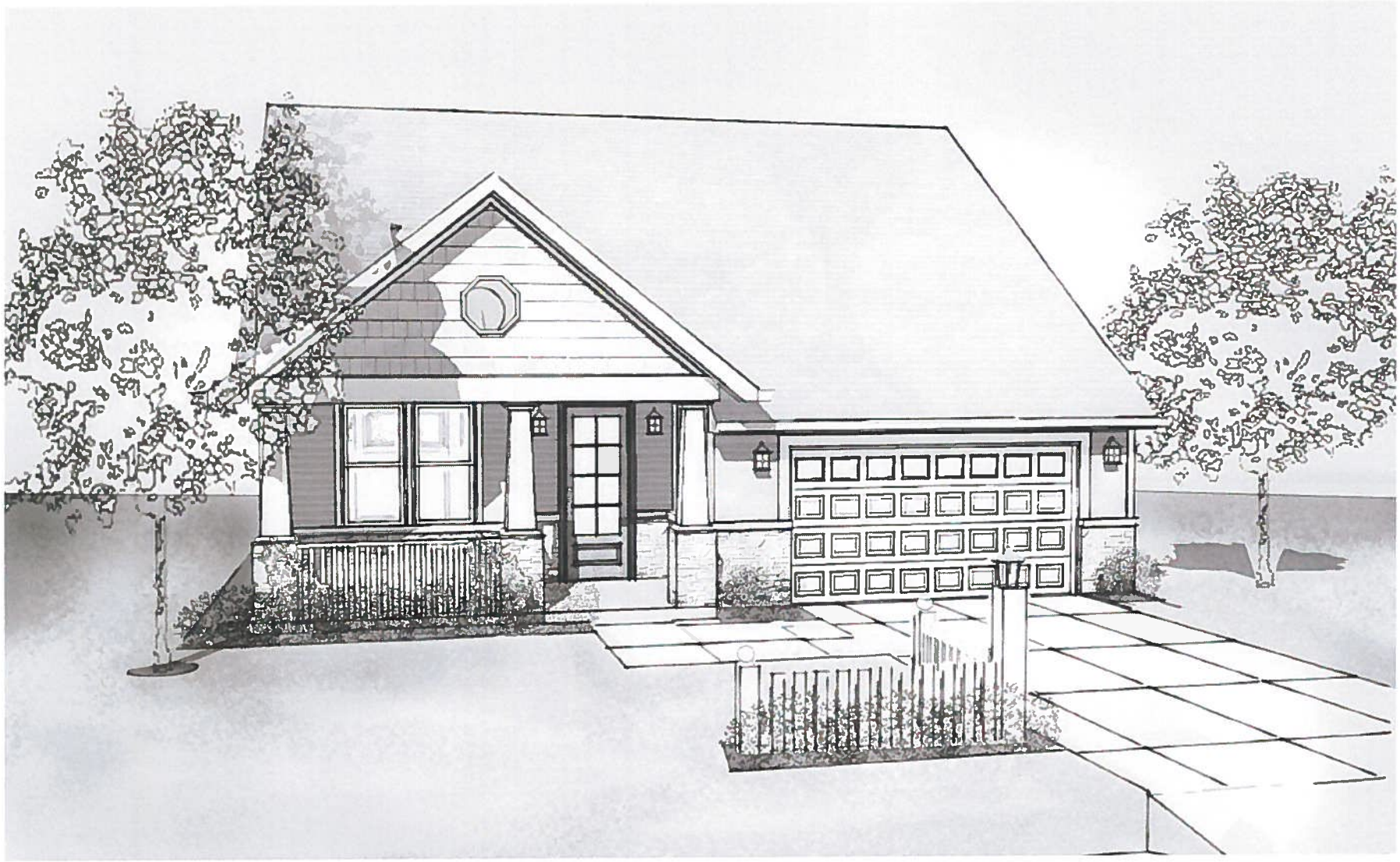
Deputy Commissioner for Historic Preservation

# Exhibit 3 – Conceptual Elevations for Patio Homes prepared by Carmina Wood Morris

CONCEPT FRONT ELEVATION 1

Carmina·Wood·Morris DPC

WETZL DEVELOPMENT



CONCEPT FRONT ELEVATION 2

Carmina·Wood·Morris DPC

WETZL DEVELOPMENT

CONCEPT FRONT ELEVATION 3

Carmina·Wood·Morris DPC

WETZL DEVELOPMENT

# Exhibit 4 – Correspondence from Charles Sickler, P.E., Director Engineering, Erie County Department of Public Works, to Sarah desJardins, dated September 2, 2015

# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE

**John C. Loffredo P.E.**
**COMMISSIONER**

**DEPARTMENT OF PUBLIC WORKS**
**RATH BUILDING – 14TH FLOOR**

September 2, 2015

Sarah desJardins, Planning Consultant
Town of Hamburg Planning Department
6100 South Park Avenue
Hamburg, New York 14075

Re: Rezoning of Portion of 29.29 Acres of Vacant Land from R-A to PRD - Clustered Subdivision - Property on Boston State Road, McKinley Pkwy & Newton Road - Town of Hamburg

Dear Ms. desJardins:

This department has completed our review of the subject project Traffic Impact Study (TIS) prepared by SRF Associates dated August 2015 including the Appendices to the TIS. We are in agreement with the methodology utilized and the analysis conducted by SRF Associates. Based on our review of the traffic analysis contained in the TIS prepared by SRF Associates, we concur with the conclusions and recommendations contained in the TIS.

Both McKinley Parkway and Newton Road are Erie County Highways subject to the jurisdiction of ECDPW and the clustered subdivision layout does not involve any roadway or driveway connections to either of these Erie County Highways with the exception of the gated emergency access only connection onto McKinley Parkway, which will not be publicly accessible.

The Department, as an involved agency in connection with the environmental review of the project pursuant to the State Environmental Quality Review Act, has determined that this project will not result in any adverse impacts to the affected county highway based on the projected trips to be generated, the capacity analysis contained in the TIS and the existing and proposed project roadway connections as evaluated in the TIS.

Should you have any questions, please contact me at 858-8372.

Sincerely,

John C. Loffredo, P.E.
COMMISSIONER OF PUBLIC WORKS

By: Charles A. Sickler
Charles Sickler, P.E., Director of Engineering

cc: Sean Hopkins, Esq.
Amy Dake, P.E., SRF Associates
William Geary
Wayne Scibor

# Exhibit 5 – E-mail communication from Edward S. Rutkowski, P.E., SEQR/Site Plan Review Coordinator, New York State Department of Transportation, to Sarah desJardins, dated August 19, 2015

## Sean Hopkins

**From:** Rutkowski, Edward (DOT) <Edward.Rutkowski@dot.ny.gov>
**Sent:** Wednesday, August 19, 2015 4:39 PM
**To:** sdesjard@townofhamburgny.com
**Cc:** Sean Hopkins
**Subject:** RE: Wetzl - Clustered Subdivision - Property on Boston State Road & McKinley Pkwy - Town of Hamburg - File 4137.6

Sarah,

NYSDOT reviewed the Traffic Impact Study prepared for the subject project. The additional traffic generated by the proposed development will not have a significant impact to traffic on the State Highway System.

A NYSDOT Highway Work Permit will be required for any work located within the State Highway Right-of-Way. Additional site engineering review will be completed during the Highway Work Permit process. This correspondence does not constitute approval for the purpose of a Highway Work Permit.

Sincerely,
Ed

**Edward S. Rutkowski, P. E.**
SEQR/Site Plan Review Coordinator
NYSDOT - Region 5
100 Seneca Street
Buffalo, New York 14203
716-847-3575

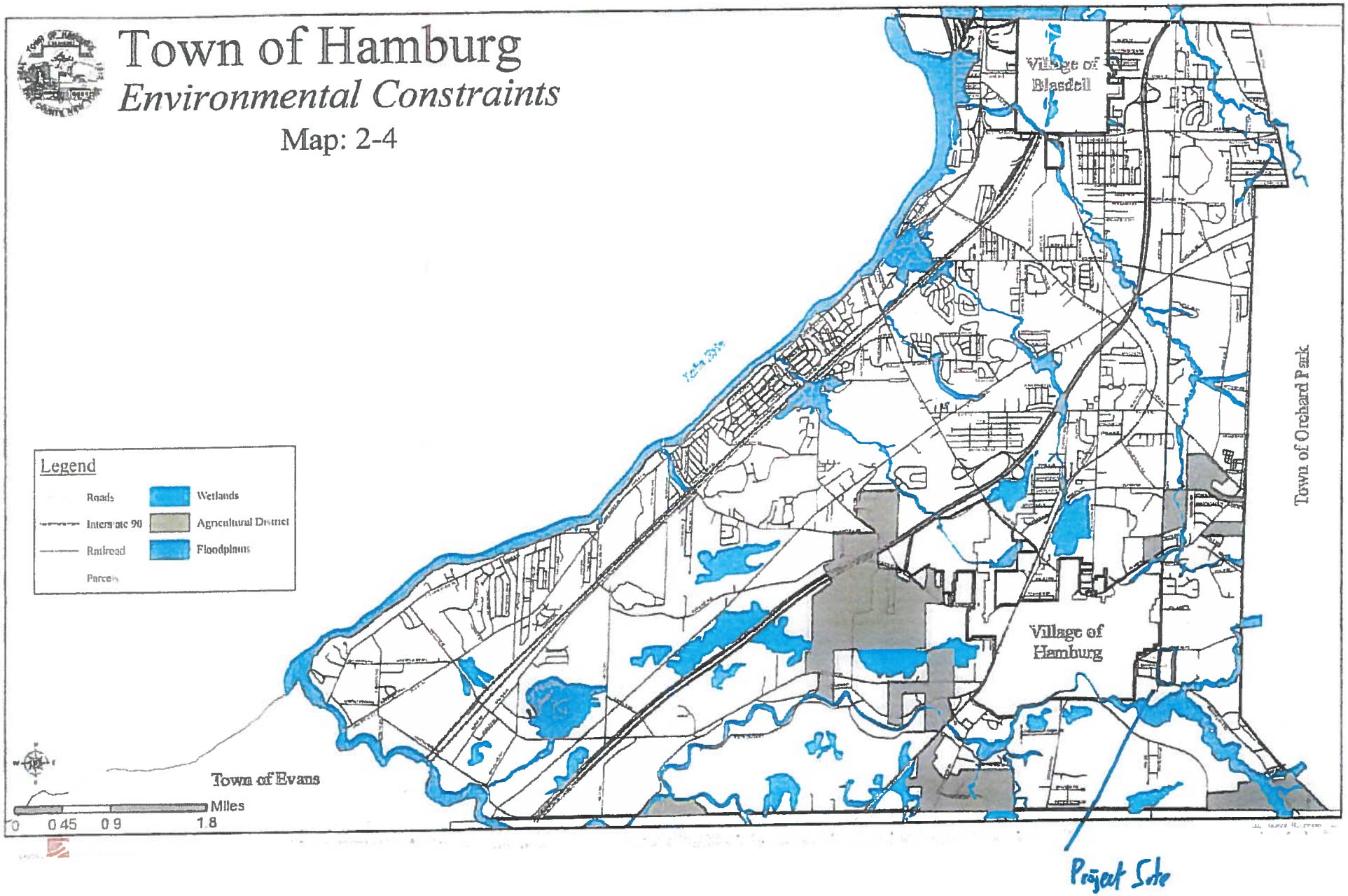
NEW YORK STATE OF OPPORTUNITY | Department of Transportation

# Exhibit 6 – Map 2-4 ("Environmental Constraints") and Map 2-10 ("Generalized Future Land Use") of the Town of Hamburg Comprehensive Plan

# Town of Hamburg

## *Environmental Constraints*

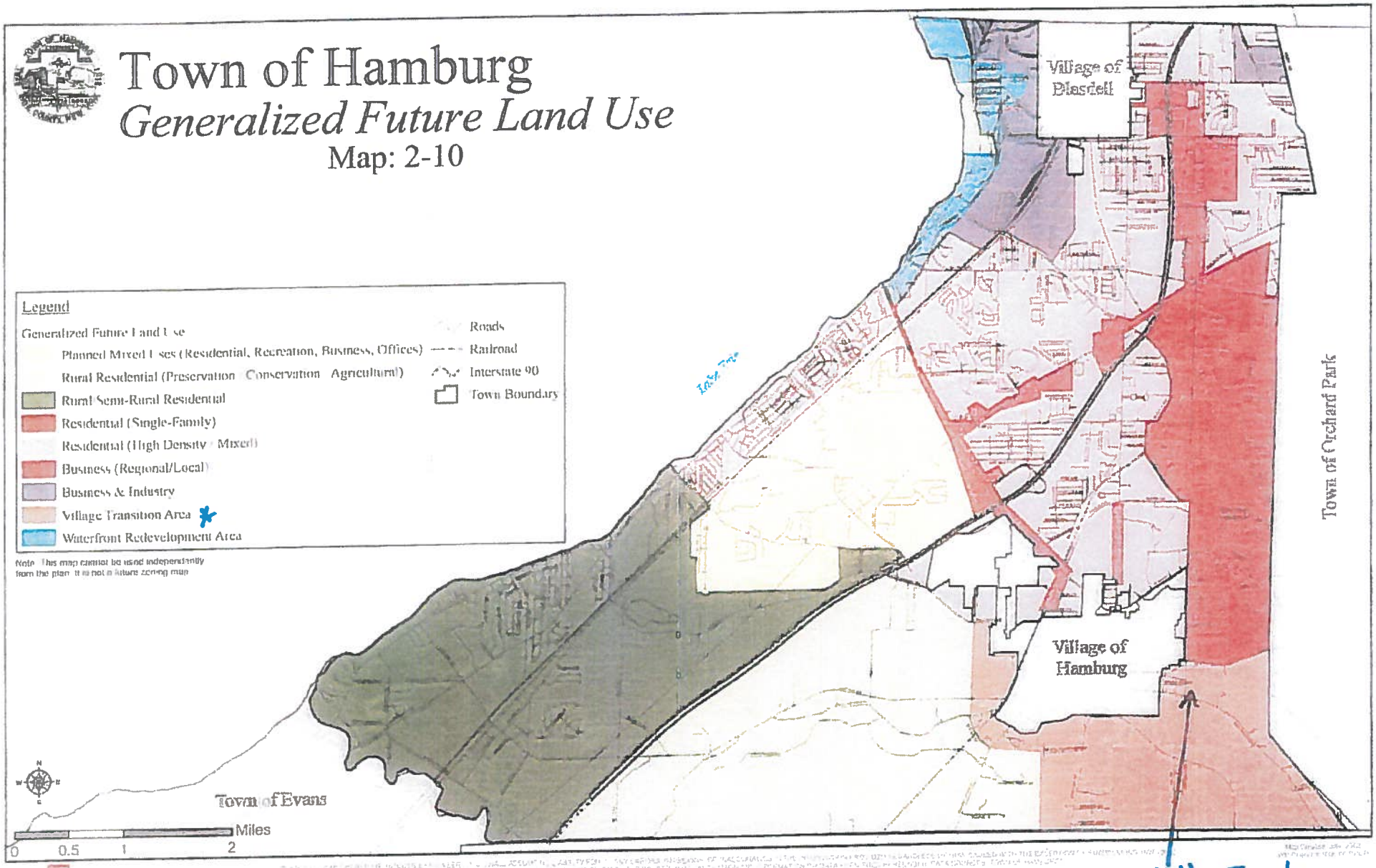
Map: 2-4



# Town of Hamburg

## *Generalized Future Land Use*

Map: 2-10



# Exhibit 7 – Jurisdictional Determination issued by U.S. Army Corps of Engineers dated August 22, 2012

RECEIVED
AUG 23 2012
EARTH DIMENSIONS, INC.

**DEPARTMENT OF THE ARMY**
**BUFFALO DISTRICT, CORPS OF ENGINEERS**
**1776 NIAGARA STREET**
**BUFFALO, NEW YORK 14207-3199**

COPY

REPLY TO

August 22, 2012

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Application No. 2011-01366

Mr. Dominic Palmisano
AP Architects
295 Main Street, Suite 222
Buffalo, New York 14203

Dear Mr. Palmisano:

This pertains to your request for a jurisdictional determination for a property located on the Southeast corner of Newton Road and McKinley Parkway intersection, in the Town of Hamburg, Erie County, New York.

The Corps of Engineers regulatory responsibilities under Section 404 of the Clean Water Act establishes jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands.

The wetland delineation you submitted confirms that wetlands under Federal jurisdiction exist on the property, but I understand that you do not intend to impact them at this time. In this regard, I would like to point out that the Federal wetland boundary located on your property, as shown on the attached drawings, was confirmed on November 4, 2011 and will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. Further, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/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 request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Based upon my review of the submitted delineation and on-site observations, I have determined that the wetlands W1, W5, and W6 on the subject parcel are part of a surface water tributary system to a navigable water of the United States as noted on the attached Jurisdictional Determination form. Therefore, the wetlands W1, W5, and W6 are regulated under Section 404 of the Clean Water Act. Department of the Army authorization is required if you propose a discharge of dredged or fill material in this area.

Regulatory Branch
SUBJECT: SUBJECT: Acceptance of Wetland Delineation, Application No. 2011-01366

Additionally, based upon our evaluation of the subject project site, we have determined that there is no clear surface water connection or ecological continuum between the wetlands W2, W3, W4, and W7 on the parcel and a surface tributary system to a navigable water of the United States. Therefore, these waters are considered isolated, non-navigable, intrastate waters and not regulated under Section 404 of the Clean Water Act. Accordingly, you do not need Department of the Army authorization to commence work in these areas.

Finally, this letter contains an approved jurisdictional determination for the subject parcel. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, 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:

Review Officer
Great Lakes and Ohio River Division
CELRD-PDS-O
550 Main Street, Room 10032
Cincinnati, OH 45202-3222
Phone: 513-684-6212; FAX(513) 684-2460

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 **October 22, 2012**.

It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.

A copy of this letter with attachments has been forwarded to Thomas Somerville of Earth Dimensions, Inc.

Questions pertaining to this matter should be directed to me at (716) 879-4296, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: mikhail.a.boutsko@usace.army.mil

Sincerely,

SIGNED
Mikhail Boutsko
Biologist

Enclosures

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| Applicant: AP Architects | | File Number: 2011-01366 | Date: 8/22/2012 |
|---|---|---|---|
| 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 | | C |
| X | APPROVED JURISDICTIONAL DETERMINATION | | D |
| | PRELIMINARY JURISDICTIONAL DETERMINATION | | E |

**SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx 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. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. 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:** 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.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **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.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** 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.

**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. 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.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

| If you have questions regarding this decision and/or the appeal process you may contact: | If you only have questions regarding the appeal process you may also contact: |
|---|---|
| Mikhail Boutsko<br>U.S. Army Corps of Engineers<br>1776 Niagara Street<br>Buffalo, New York 14207<br>(716) 879-4296<br>mikhail.a.boutsko@usace.army.mil | Review Officer<br>Great Lakes and Ohio River Division<br>CELRD-PDS-O<br>550 Main Street, Room 10032<br>Cincinnati, OH 45202-3222<br>Phone: 513-684-6212;FAX(513) 684-2460 |

**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.

| | Date: | Telephone number: |
|---|---|---|
| _____<br>Signature of appellant or agent. | | |

**APPROVED JURISDICTIONAL DETERMINATION FORM**
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

## SECTION I: BACKGROUND INFORMATION

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): July 25, 2012**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, AP Architects - SE Corner of Newton Rd. & McKinley Pkwy, 2011-01366, JD determination for wetlands W1, W2, W3, W4, W5, W6, W7, and drainageways DW1, DW2, DW3 and DW4, Form 1 of 1**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State:New York County/parish/borough:Erie City: Hamburg
Center coordinates of site (lat/long in degree decimal format): Lat. 42.718309° N, Long. -78.812847° W.
Universal Transverse Mercator: 17
Name of nearest waterbody: Neuman Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Lake Erie
Name of watershed or Hydrologic Unit Code (HUC): 4120103

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- ☒ Office (Desk) Determination. Date: 3/22/12
- ☒ Field Determination. Date(s): 11/4/11

## SECTION II: SUMMARY OF FINDINGS

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There Are no "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There Are "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☐ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☒ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 2990.3 linear feet: width (ft) and/or acres.
   Wetlands: 4.12 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   - ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **Wetlands W2 (0.22 acres), W3 (0.04 acres), W4 (0.04 acres) and W7 (0.75 acres) have no potential to affect interstate commerce under 328.3(a)(3)(i-iii) (See Section IVB of this form); therefore, Wetlands W2, W3, W4 and W7 are considered to be an intrastate, non-navigable, isolated water.**

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

## SECTION III: CWA ANALYSIS

### A. TNWs AND WETLANDS ADJACENT TO TNWs

**The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.**

1. **TNW**
   Identify TNW: .

   Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": .

### B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

**This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.**

**The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.**

**A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.**

**If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.**

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: 817 square miles
   Drainage area: 817 square miles
   Average annual rainfall: 40.55 inches
   Average annual snowfall: 96.3 inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☒ Tributary flows through 2 tributaries before entering TNW.

   Project waters are 10-15 river miles from TNW.
   Project waters are 1 (or less) river miles from RPW.
   Project waters are 5-10 aerial (straight) miles from TNW.
   Project waters are 1 (or less) aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain: .

   Identify flow route to TNW[5]: Unnamed Tributary DW3, DW2, and DW4 flow into DW1 (DW1 is a continuation of DW3, the DW3 and DW1 tributaries shall hereinafter be referred to as DW3/1) that flows to Neuman Creek to Eighteen Mile Creek to Lake Erie.

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[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):
**Tributary** is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Unnamed Tributary DW2 is a man-altered tributary that runs North to South.

**Tributary** properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 0.5 feet
Average side slopes: 2:1.

Primary tributary substrate composition (check all that apply):
☒ Silts ☐ Sands ☐ Concrete
☐ Cobbles ☒ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Relatively straight and stable.
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: Relatively straight
Tributary gradient (approximate average slope): 2 %

(c) Flow:
Tributary provides for: Seasonal flow
Estimate average number of flow events in review area/year: 20 (or greater)
Describe flow regime: Flow was noted on November 4 site visit.
Other information on duration and volume: .

Surface flow is: Discrete and confined. Characteristics: .

Subsurface flow: No. Explain findings: Only surface flow was noted on site.
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):
☐ clear, natural line impressed on the bank ☒ the presence of litter and debris
☐ changes in the character of soil ☐ destruction of terrestrial vegetation
☐ shelving ☐ the presence of wrack line
☐ vegetation matted down, bent, or absent ☐ sediment sorting
☐ leaf litter disturbed or washed away ☐ scour
☐ sediment deposition ☐ multiple observed or predicted flow events
☒ water staining ☐ abrupt change in plant community
☐ other (list):
☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by: ☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects ☐ survey to available datum;
☐ fine shell or debris deposits (foreshore) ☐ physical markings;
☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges
☐ other (list):

**(iii) Chemical Characteristics:**
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Clear water on November 4 site visit.
Identify specific pollutants, if known: The surface water was clear on November 4 site visit.

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[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 4.12 acres

Wetland type. Explain:Emergent.

Wetland quality. Explain:Wetlands W1, W5 and W6 are characterized as seasonally saturated palustrine emergent wetlands. Species tolerant to human activity use this mildly disturbed suburban site. Wetlands W1, W5 and W6 were 25-50 percent inundated on November 4 site visit. Wetland W1 at the site of confluence of DW2 and DW3 was noted to have a large presence of invasive species. Wetland W1 abuts tributaries DW1, DW2, DW3, and DW4. Wetland W6 was determined in the field to be a continuation of wetland W1, flag marker identifications remained identified as W6, and hereforth will be called W1/W6. Wetland W5 is connected to DW3 by a culvert that is located outside the investigation area.

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: Intermittent flow. Explain: Seasonal flow.

Surface flow is: Overland sheetflow

Characteristics: .

Subsurface flow: No. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☒ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are 10-15 river miles from TNW.

Project waters are 5-10 aerial (straight) miles from TNW.

Flow is from: Wetland to navigable waters.

Estimate approximate location of wetland as within the 500-year or greater floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Small pools of clear water were noted on the November 4 site visit.

Identify specific pollutants, if known: .

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- ☐ Riparian buffer. Characteristics (type, average width): .
- ☒ Vegetation type/percent cover. Explain:Approximately 80 percent is vegetated and is characterized as emergent wetland (large area is mowed).
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: 3

Approximately ( 4.12 ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

| Directly abuts? (Y/N) | Size (in acres) | Directly abuts? (Y/N) | Size (in acres) |
|---|---|---|---|

W1/W6 - Directly abuts unnamed tributaries DW1, DW2, DW3 and DW4 ( DW3 is a Seasonal RPW) and is 3.15 acres. W5 - Abuts DW3 off-site through a culvert and is 0.97 acres.

Summarize overall biological, chemical and physical functions being performed: The November 4 site visit showed the wetlands W1/W6 and W5 in a 25-50 percent inundated condition, slowly releasing water to their one primary drainage, DW3. Flood attenuation/runoff storage, pollutant trapping/water quality, removal of suspendid solids, dissolved solids, toxins and treatment of nitrogen and phosphorus, functions are considered moderate. Wildlife habitat functions are considered low to moderate.

## C. SIGNIFICANT NEXUS DETERMINATION

**A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.**

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

## D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .

☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Drainage DW3/1 and DW2 drains an area that is characterized as a suburban landscape with a patchwork of undeveloped and developed areas. Drainage DW3/1 (Seasonal RPW) flows into Neuman Creek (RPW), which flows into Eighteen Mile Creek (RPW) that flows into Lake Erie(TNW). Based on historic aerial imagery Drainage DW3/1 is a seasonally relatively permanent water (Seasonal RPW), and depicted as an intermittent stream on USGS map.

Provide estimates for jurisdictional waters in the review area (check all that apply):
☒ Tributary waters: **2990.3** linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☒ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: There are no barriers between wetlands W1/W6 and W5 and unnamed tributaries DW3/1 and DW2.

Provide acreage estimates for jurisdictional wetlands in the review area: **4.12** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**
☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 1.05 acres.

## SECTION IV: DATA SOURCES.

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply** - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ 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:1:24K NY-Hamburg.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Erie County Soil Survey.
☒ National wetlands inventory map(s). Cite name: .
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):1995-2011 Google Earth, 2011 Bing Birds Eye.
or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Office concurs with data sheets/ delineation report with modifications dated 11/21/11.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The contents of this JD form represent the summary of field observations from a site visit conducted on November 4, 2011 and an office review of the data sources listed above. Based on review and site visit, wetlands W1/W6 (3.15 acres) and W5 (0.97 acres) directly abut and are continuous with the seasonal RPW tributary (DW3/1) and are therefore jurisdictional per USACE/USEPA guidelines. Wetland W5 is connected to DW3/1 through a culvert that runs outside the area of interest. Functioning as headwater wetlands, Wetlands W1/W6 and W5 serve as the primary collectors and processors of organic matter for downstream waters. Wildlife functions are considered to be low to moderate for this wetland.

The cumulative 4.12 acre wetlands W1/W6 and W5 are characterized as seasonally saturated emergent wetlands. Wetlands W1/W6 and W5 directly abut DW3. DW3 drains an area that is characterized as a suburban landscape with a patchwork of undeveloped and developed areas. DW3/1 (Seasonal RPW) flows into Neuman Creek (RPW) which flows into Eighteen Mile Creek (RPW) which empties into Lake Erie (TNW).

Given the flow regime, DW3/1 and wetlands W1/W6 and W5 through their capacity to store, process, and transport food and nutrients and their capacity to treat stormwater runoff play an important cumulative role in improving water quality and providing habitat and lifecycle support functions for species of wildlife present in Neuman Creek, Eighteen Mile Creek and Lake Erie.

The seasonal RPW DW3/1 is jurisdictional by definition. In addition DW3/1 and its abutting wetlands were found to influence the chemical, physical, and biological integrity of downstream waters. Based upon the evaluation presented herein, there is a significant nexus between the RPW DW3/1 and its adjacent wetlands and Lake Erie. Therefore, the entire reach of the unnamed tributary and wetlands W1/W6 and W5 are jurisdictional waters of the US.

I walked the perimeter of Wetlands W2, W3, W4, and W7 and found no connection or outlets to any other bodies of water. Wetlands W2, W3, and W4 are depressional wetlands; Wetland W7 was created by placement of fill and has no connections to other bodies of water. The 1.05 acre Wetlands W2 (0.22 acres), W3 (0.04 acres), W4 (0.04 acres) and W7 (0.75 acres) are outside Department of the Army jurisdiction and do not meet the criteria for jurisdictional waters of the United States according to 33 CFR Part 328.3(a)(1-7).

Wetlands W2, W3, W4, and W7:

1. do not/have not supported interstate or foreign commerce;

2. are not interstate waters/wetlands;

3. the degradation or destruction of which would not affect interstate or foreign commerce and does not include such waters:

   (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
   (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
   (iii) which are used or could be used for industrial purpose by industries in interstate commerce

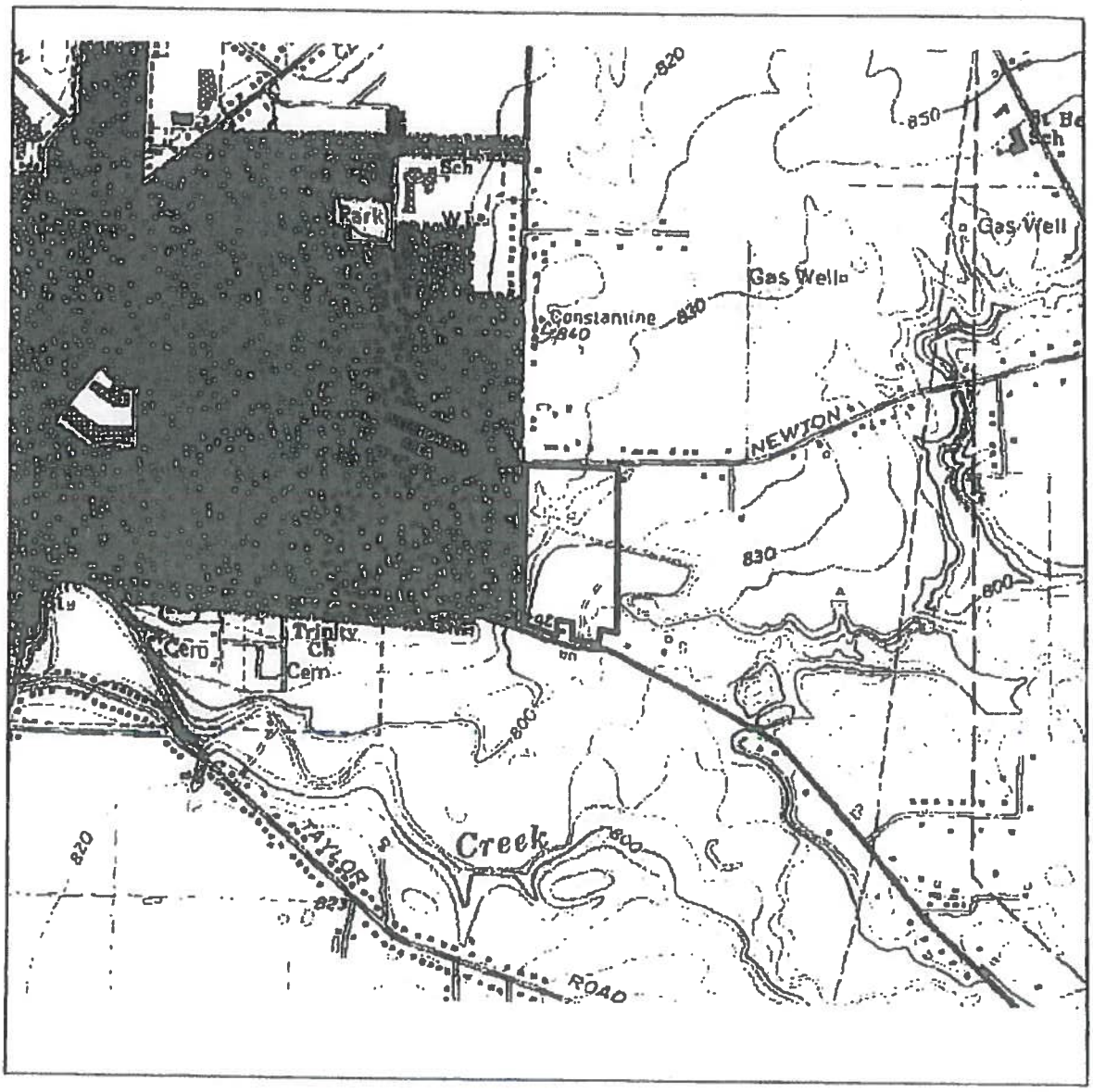
4. are not impoundments of water otherwise defined as WOUS under the definition;

5. are not tributaries of waters identified in paragraphs (a)(1)-(4) of this section;

6. are not territorial seas;

7. are not wetland adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section;

8. are not prior converted cropland.




EARTH DIMENSIONS, INC.
* Soil & Hydrogeologic Investigations * Wetland Delineations
1091 Jamison Road, Elma NY 14059
(716) 655-1717 * Fax (716) 655-2915 www.earthdimensions.com

Figure 1: USGS 7.5 Minute Topographical Map
Hamburg Quadrangle/ 2002 DeLorme

SEC Newton & McKinley
Town of Hamburg, Erie County, New York

AP Architects
D/A Processing No. 2011-01366
Erie County, New York
Quad: Hamburg
Sheet 1 of 4

W2H11

SEC Newton & McKinley

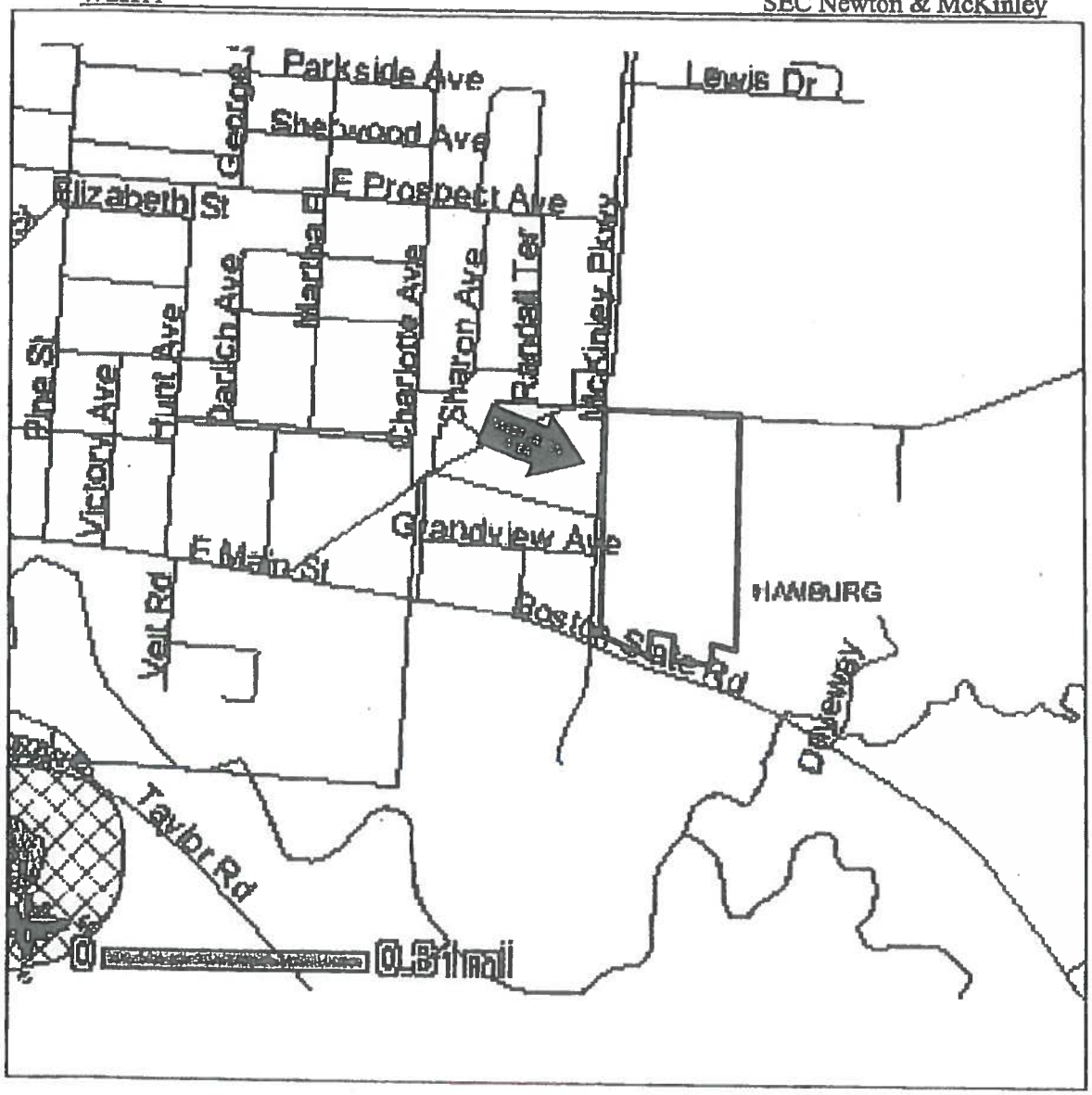



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Figure 4: NYSDEC Environmental Resource Mapper
http://www.dec.ny.gov/imsmaps/ERM/Viewer.htm
Site visited 8/17/11

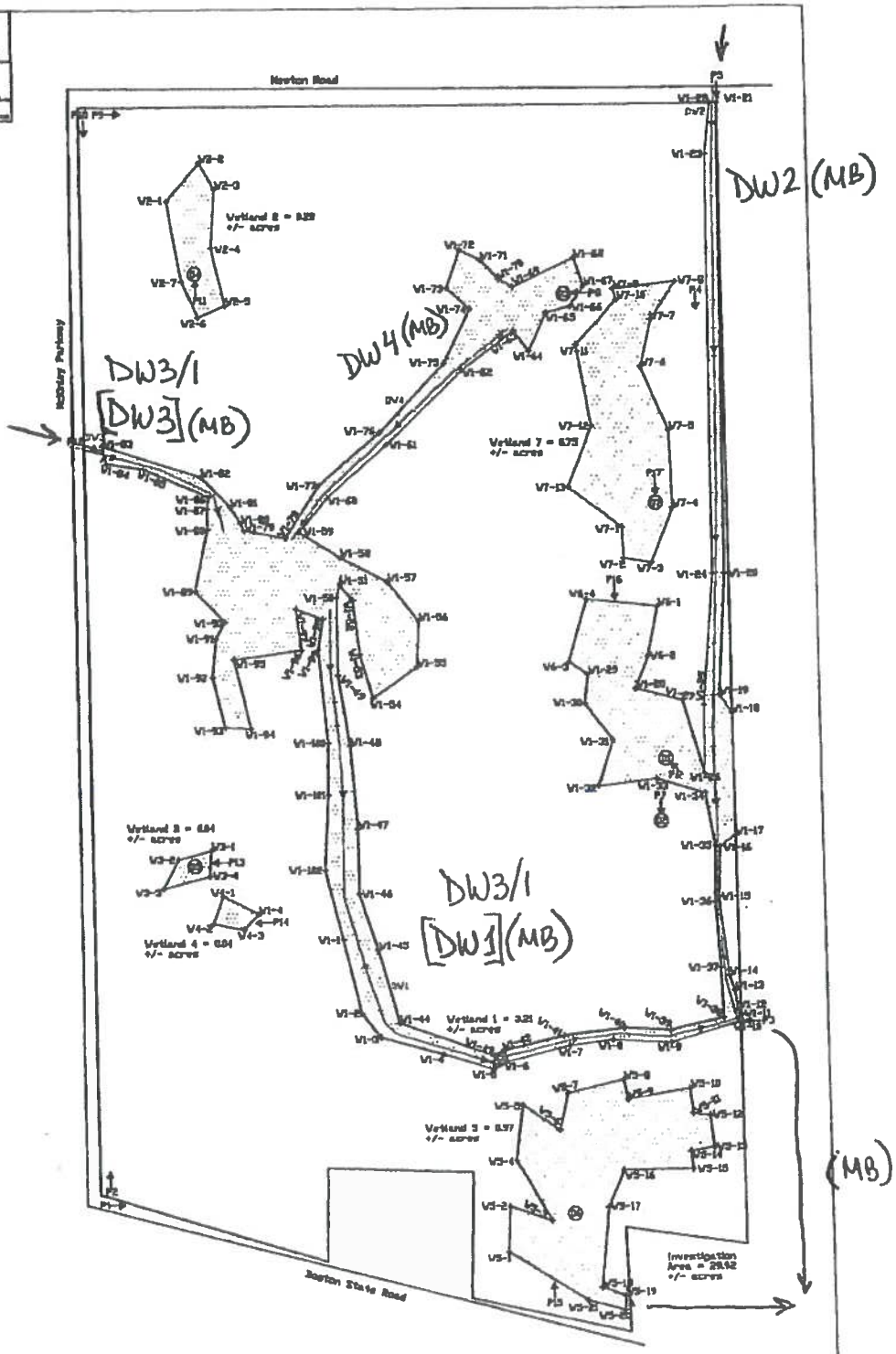
SEC Newton & McKinley
Town of Hamburg, Erie County, New York

AP Architects
D/A Processing No. 2011-01366
Erie County, New York
Quad: Hamburg
Sheet 2 of 4

**Figure 6: Wetland Delineation Map**

Town of Hamburg — Erie County, New York

EDI ENVIRONMENTAL DIMENSIONS, INC.

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Erie County, New York
Quad: Hamburg
Sheet 3 of 4

SEC Newton & McKinley

**LEGEND**

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

| Wetland Designation | Approximate Center Coordinates (Lat/Long) | | Boundary Flags | Total Acreage Delineated | Wetland Type | Jurisdictional Determination |
|---|---|---|---|---|---|---|
| Wetland 1 | 42.71573 | | W1-1 through W1-103 | 3.21a | Shallow Emergent Marsh (PEM) | Jurisdictional |
| Wetland 2 | 42.71799 | | W2-1 through W2-7 | 0.29a | Shallow Emergent Marsh/Shrub-scrub (PEM/PSS) | Isolated |
| Wetland 3 | 42.71575 | | W3-1 through W3-4 | 0.84a | Palustrine Marsh (PEM) | Isolated |
| Wetland 4 | 42.71574 | | W4-1 through W4-4 | 0.84a | Shrub-scrub (PSS) | Isolated |
| Wetland 5 | 42.71457 | | W5-1 through W5-21 | 0.97a | Shallow Emergent Marsh (PEM) | Jurisdictional |
| Wetland 6 | 42.71635 | | W6-1 through W6-4 | 0.17a | Shallow Emergent Marsh (PEM) | Isolated |
| Wetland 7 | 42.71733 | | W7-1 through W7-13 | 0.73a | Shallow Emergent Marsh/Forested Swamp (PEM/PFO) | Isolated |
| Drain 1 | 42.71572 | | | 1,013.1 feet | Intermittent | Jurisdictional |
| Drain 2 | 42.71849 | | | 734.6 feet | Intermittent | Jurisdictional |
| Drain 3 | 42.71716 | | | 713.1 feet | Intermittent | Jurisdictional |
| Drain 4 | 42.71743 | | | 494.1 feet | Intermittent | Jurisdictional |
| Total Wetland Acreage | | | | 6.17a | | |

Jurisdictional (MB)

Scale: 100 feet

Map Date: August 17 2011/ TJS for EDI
Revised:

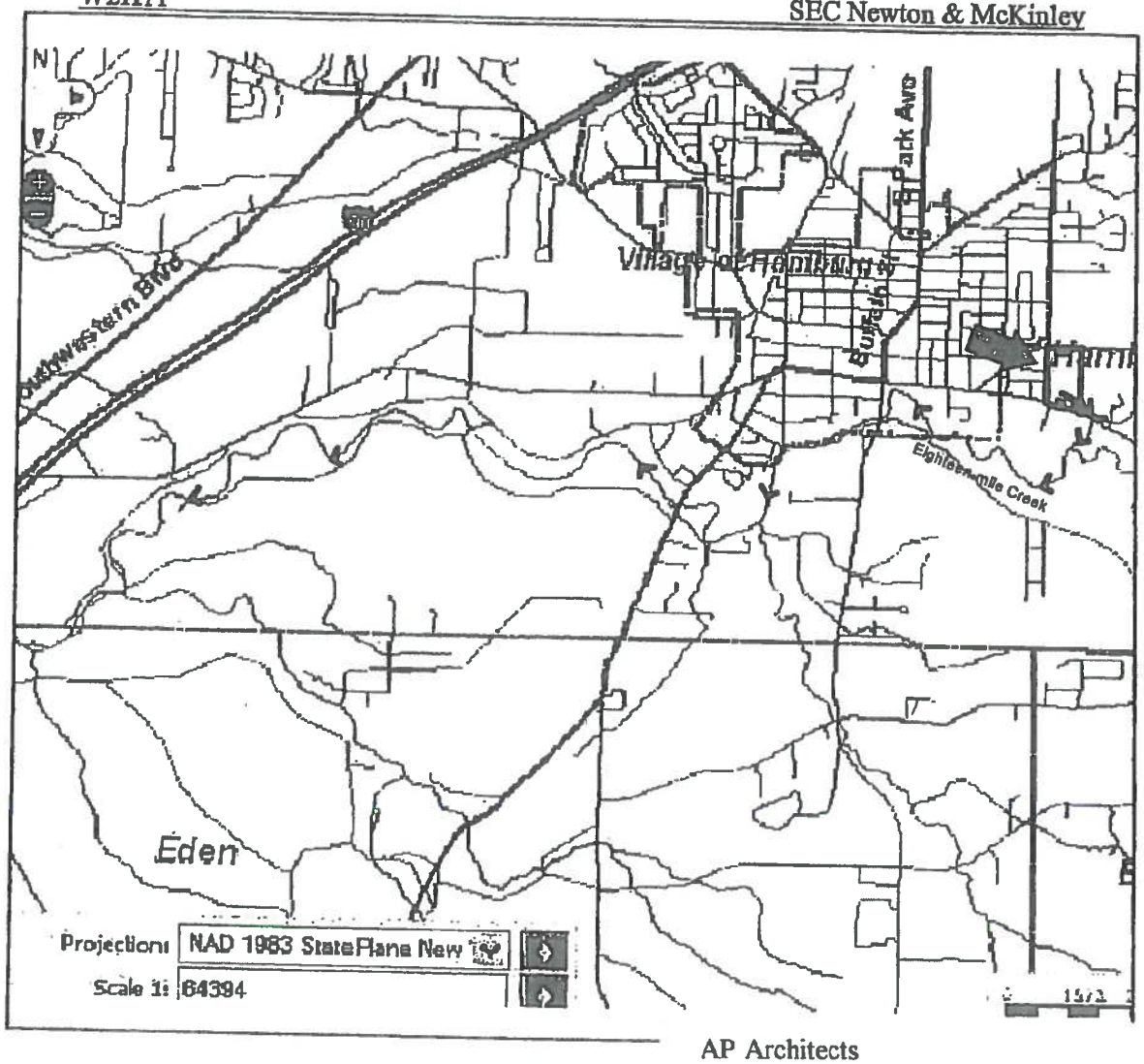
Base Map Provided By: Garmin GPSmap 60CSx 4-9 foot accuracy

File Name: Wetland Delineation Map.dwg

EDI Project Code: W2H11

W2H11

SEC Newton & McKinley

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Erie County, New York
Quad: Hamburg
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Figure 7: Drainage Map
http://gis1.erie.gov/GC/ErieCountyNY/default.htm
Site visited 3/32/11

SEC Newton & McKinley
Town of Hamburg, Erie County, New York

# Exhibit 8 – Article XXI of the Town of Hamburg Zoning Code (titled "PRD Planned Residential Development District")

*Town of Hamburg, NY*
*Saturday, February 8, 2014*

# Chapter 280. ZONING

## Article XXI. PRD Planned Residential Development District

### § 280-140. Intent.

In accordance with the Recommendations and Goals and Objectives in the Town of Hamburg 2010 Comprehensive Plan (1997 Master Plan update), this district is intended to provide and encourage the development of a variety of housing types and, in so doing, preserve areas/lands that are important to the Town. This is a floating zone; that is, the Town has not assigned this zoning to any particular property, and until a sketch plan or concept plan presented by an applicant has been approved by the Planning Board, and the final concept plan and the rezoning approved by the Town Board, all the requirements of the existing zoning regulations apply. After the application to rezone has been approved, the sketch plan or concept plan will regulate land uses, layout and bulk requirements for the parcel. If future plans are presented that are not in conformance with the approved plan, plans cannot be approved unless the zoning is amended through the Town Board process. To further explain the intent of this District, the following is provided:

A. It is the intent of the Town that the PRD Zone be used in those areas prescribed in the 2010 Comprehensive Plan (1997 Master Plan update).
B. In general, the zone would be used to protect important lands identified in the Open Space/Recreation Plan or locally significant attributes of neighborhoods. It is the intent that this zoning district would be used for properties with 40% or more of the land designated as described previously, as determined by the Planning Board.
C. This section encourages innovation and creativity in design to open spaces and preserve rural character. Typically, these developments incorporate cluster design plans (to preserve and\or buffer land with unique natural

characteristics) and do not involve (or minimize) existing road frontage development.

D. It is also the intent of this section to allow mixed residential uses that are not land intensive. It is not the intent of this section to increase the density allowed under the present zoning in the area (except as allowed under § **280-142A**).

E. The Town has example guidelines to depict the proper use of this zoning district.

## § 280-141. Permitted uses and accessory uses and structures.

Uses and structures permitted in the PRD district are as follows:

A. Principal uses and structures:

(1) Single-family dwellings.

(2) Two-family dwellings.

(3) Condominiums and townhouses.

B. Accessory uses and structures:

(1) The following accessory uses and structures are permitted solely for the use of residents of the development and their guests. Such accessory uses shall be subject to the approval of the Planning Board.

(a) Accessory uses and structures permitted and as regulated in the R-1, R-2 and R-3 Districts.

## § 280-142. Bulk requirements.

A. Density.

(1) Gross density of the development shall be determined based on compliance with all other lot size, setback and green space/open space requirements.

**[Amended 1-14-2013 by L.L. No. 1-2013]**

(2) In calculating gross density, unbuildable lands such as wetlands, floodplains, etc., shall first be subtracted out of the total land area. A density bonus of up to 10% can be given by the Planning Board and Town Board for innovative designs creating additional open space and aesthetic improvements.

B. Lot area:

(1) The minimum designated area for a PRD shall not be less than 10 acres. It is the intent of this zoning district to preserve approximately 40% or more of the property as open space (with regard to natural resources).

**[Amended 1-14-2013 by L.L. No. 1-2013]**

(2) To provide for innovations in design, the lots within the PRD shall meet any of the lot requirements of the R-A, R-E, R-1, R-2 or R-3 Zones, or the cluster development regulations.

C. Required yards. There shall be no minimum required yards, subject to approved concept and development plans for the entire PRD and consistent with any adjoining zoning.

D. Maximum height of buildings:

(1) The maximum height of the principal building shall be 35 feet.

(2) Accessory building: one story, not to exceed 18 feet.

## § 280-143. Other design requirements.

A. Road access (curb cuts) shall be limited to approximately one per every 500 feet in frontage. Those properties having less than 500 feet in frontage will have one curb cut unless a second is required for a secondary means of egress.

B. The pattern of development (concept layout) shall preserve to the maximum extent possible existing trees, topography, historic features, unique vegetation and the geologic and hydrologic features of the site.

C. Open space lands reserved under the PRD Zone shall be governed by the following:

(1) Any open space to be reserved for preservation (i.e., conservation areas, passive recreation areas) shall be preserved in perpetuity by one of the following: dedication of land to the Town, Land Conservancy or other Town-approved agency or group, conservation easements or restrictive covenants enforceable by the Town, or by other means approvable to the Town that will achieve the permanent preservation of these lands.

(2) Nothing herein shall prevent the Planning Board from requiring that 10% of the entire subdivision be set aside for parks and recreation purposes and dedicated to the Town of Hamburg for such purposes, nor from requiring, in lieu thereof, the payment of a recreational fee per dwelling unit, as established by the Town Board, in addition to the private land assembled in common as the result of the clustering process referred to in Article **XL**.

(3) Provisions satisfactory to the Town Board shall be made to assure the proper maintenance of all nonpublic areas and facilities for the common use of occupants of any cluster housing development,

including townhouses, but not in individual ownership of such occupants, without expense to the general taxpayers of the Town of Hamburg. The instrument incorporating such provisions shall be approved by the Town Attorney as to form and legal sufficiency before any approval action is taken by the Town Board.

# Exhibit 9 – Article XL of the Town of Hamburg Zoning Code (titled "Supplemental Cluster Housing and Townhouse Regulations")

*Town of Hamburg, NY*
*Friday, January 31, 2014*

# Chapter 280. ZONING

## Article XL. Supplemental Cluster Housing and Townhouse Regulations

### § 280-282. Regulations governing cluster housing.

**[Amended 1-26-1998 by L.L. No. 1-1998; amended 8-4-2003 by L.L. No. 4-2003]**

Unless otherwise provided in this chapter, the following regulations shall apply to all cluster housing:

A. Permitted districts. Cluster housing shall only be considered within the R-E, R-1, R-2, R-3, PRD and PUD Districts and within the R-A Districts in areas noted in the Town of Hamburg 2010 Comprehensive Plan (1997 Master Plan update). Only after a concept plan (and a plan illustrating a subdivision layout that is not clustered) is presented to the Planning Board and found to meet the goals and purpose of cluster development will the use of cluster development be permitted. The Planning Board must pass a resolution authorizing the use of cluster development stating the reasons for such use. In considering the usage of cluster development, the Planning Board shall consider the purpose of these regulations, the Town's Comprehensive Plan (and open space / recreation plan), any applicable zoning overlay districts, and the Town's design guidelines for cluster development (including a cluster development reference manual).

**[Amended 12-12-2005 by L.L. No. 5-2005]**

B. Minimum development area. Cluster housing shall apply to a major subdivision of not less than five acres in area.

C. Services by public utilities. All cluster housing, including townhouse development, shall be served by public systems for water supply and sanitary sewerage.

D. Minimum lot size. The required minimum lot area for single-family detached dwellings in the R-E through R-3, PRD and PUD Districts may be reduced to no less than 5,000 square feet (10,000 square feet for the R-A and R-E District), provided that any and all such area reduced shall be restricted on the subdivision plat for park and/or recreational purposes of an active and/or passive nature. Lot width requirements can be reduced to 50 feet, if a building layout is shown that accommodates the proposed structure with required setbacks.

**[Amended 12-12-2005 by L.L. No. 5-2005]**

E. Minimum habitable floor area. The required minimum habitable floor area for single-family dwellings may be reduced from 900 square feet for a one-story dwelling unit and 1,200

square feet for a dwelling unit greater than one story to 750 square feet for a one-story dwelling unit and 1,000 square feet for a dwelling unit greater than one story.

F. Minimum yards. For cluster housing for single-family detached dwellings where the required minimum lot area has been reduced pursuant to § **280-282E** above, the following yard requirements shall be minimum:

(1) Front yard: 20 feet. To accomplish reduced front yard requirements, the applicant must illustrate how utilities and off-street parking will be accomplished. Front load garages will not, in general, be acceptable.

(2) Side yards: two required. The minimum width of any side yard shall be five feet. The total width of both side yards shall be a minimum of 10 feet.

(3) Rear yard: not less than 25% of the lot depth; provided, however, that no rear yard shall have a depth of less than 20 feet.

G. Minimum distance between dwelling units: 15 feet. This separation distance can be reduced to 12 feet with the additional fire safety provision of a sprinkler system.

**[Added 12-12-2005 by L.L. No. 5-2005** *Editor's Note: This local law also redesignated former Subsections G through I as Subsections **H** through **J**, respectively.* **; amended 2-23-2009 by L.L. No. 3-2009]**

H. Maximum height of buildings and accessory structures: 2 1/2 stories, not to exceed 35 feet.

I. Maximum density/number of dwelling units permitted. The maximum permitted number of dwelling units and/or building lots shall be determined by dividing the land area of the subject property by the normal minimum required lot area for dwellings for said district. In circumstances where the building plan falls within two or more zoning districts with differing density requirements, the Planning Board may approve in any one such district a cluster development representing the cumulative density as derived from summing of all units allowed in all such districts. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:

(1) Lands utilized by public utilities or structures or recorded easements or rights-of-way shall be subtracted from the total gross area.

(2) Waterbodies, land used for detention ponds, marsh areas, designated wetlands (and their required designated adjacent areas), alluvial, poorly drained, very poorly drained and unstable soils and floodplains shall be subtracted from the total gross area.

(3) Any other areas deemed unfavorable (unusable/unbuildable) by the Planning Board because of topographic, geologic or hydrological characteristics and slopes in excess of 15% shall be subtracted from the total gross area.

(4) For the purpose of providing land for public streets, after deductions have been made in accordance with Subsection **I(1)**, **(2)**, and (3) above, 10% of the remaining area shall be subtracted from the total gross area.

(5) The adjusted total gross area of the parcel, as determined in Subsection **I(1)**, **(2)**, **(3)** and **(4)** above, shall then be used to compute the maximum number of dwelling units and/or building lots permitted.

(6) In R-A, R-E and R-1 Zoning Districts, the Planning Board shall require that at least 50% of the land area obtained after the deductions in accordance with Subsection **I(1)**, **(2)**, **(3)**, and (4) of this section shall be maintained as open space. [This does not include the areas subtracted out as nonusable: Subsection **I(1)**, **(2)**, and (3) above]. In all other districts in which residential subdivisions are permitted, the relevant percentage shall be 40% [not including nonusable areas: Subsection **I(1)**, **(2)** and (3)]. The developer

will propose the area to be maintained as open space, subject to the approval of the Planning Board. This land required for open space shall serve a purpose such as preserving important features, providing passive recreational opportunities, preserving views, etc. It is not the intent of these lands to be small unutilized areas at the rear of lots.

**[Amended 12-12-2005 by L.L. No. 5-2005]**

(7) The above preserved lands are to meet the cluster development regulations and are not intended to meet the Park and Recreation requirements of the Subdivision Code. (The requirements of § **230-21** still need to be met.)

J. The usage of cluster development will also require the applicant to present architectural features of the proposed structures. Consideration shall be given to accommodating these units on smaller lots and the appearance of these buildings from the road. Reference should be made to the Town's architectural guidelines for issues such as the appearance of the front of the house: Garages shall not be the predominant feature and snout houses (garages jutting out excessively from the unit) will be discouraged.