



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

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 1/7/2021

ORM Number: LRB-2020-01673

Associated JDs: N/A.

Review Area Location¹: State/Territory: New York City: Sanborn County/Parish/Borough: Niagara

Center Coordinates of Review Area: Latitude 43.1388 Longitude -78.8988

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size		§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size		(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 1	1150	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Onsite observations indicate that Stream 1 is a perennial a(2) tributary. Water was observed flowing within this stream channel during the November 25, 2020 site visit. The Antecedent Precipitation Tool (See Typical Year Assessment below) indicates that the site visit was conducted during a period of drier than normal precipitation. This further supports the conclusion that Stream 1 is perennial. In addition, the Ransomville NY 7.5 min USGS Quad identifies Stream 1 as perennial.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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N/A.	N/A.	N/A.	N/A.	
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Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
Wetlands 1 and 2	2.32 and 2.93	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Onsite observations indicate that Wetlands 1 and 2 directly abut Stream 1, a Clean Water Act Section 404 a(2) tributary.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Ditches 1 and 2	30 and 300	linear feet	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	Ditches 1 and 2 were observed to be linear features constructed between an historic stock pond and farm fields, respectively. Based on available evidence, it was concluded that these features were constructed in uplands. There was a clear break between Ditch 2 and any adjacent wetlands. Ditch 1 was constructed as an outlet to Wetland 3. It does not directly connect to Wetland 3, but is fed/connected by a culvert. Historic aerial imagery indicates these ditches were constructed in uplands. Furthermore, a review of historic aerials and USGS maps do not identify stream channels in the location of these two ditches. Thus, it was determined that Ditches 1 and 2 are not manipulated tributaries. Therefore, it was determined that Ditches 1 and 2 are b(5) excluded ditches.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁶				
Exclusion Name	Exclusion Size		Exclusion ⁷	Rationale for Exclusion Determination
Wetlands 4 and 5	0.25 and 0.04	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands 4 and 5 do not meet any of the four criteria that would make an (a)(4) adjacent water subject to jurisdiction under Section 404 of the Clean Water Act. Wetlands 4 and 5 were circumnavigated during the site visit. No defined channels/tributaries/ditches were observed flowing from Wetlands 4, and 5 to any (a)(1-3) water. Ditch 1 was observed flowing from Wetland 3. Please see above for discussion. Based on site observations the nearest a(1-3) water would not flood any of the wetland areas at least once during a typical year. The nearest evidence of typical year flow (i.e. debris, leaf wracking) is located approximately 5 feet from Stream 1's banks. Also, there are no natural berms or the like located between the a(1-3) water and wetland.
Wetlands 3	0.36	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Wetland 3 was constructed in uplands as a farm pond. It is not an impoundment of a jurisdictional water. Therefore, it is an excluded b(8) artificial pond constructed in uplands.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Wetland and Stream Delineation Report, 2660 Saunders Settlement, 2660 Saunders Settlement Road, Sanborn, New York 14132, prepared for Borrego Solar Systems, Inc., prepared by LaBella Associates, D.P.C., October 2020](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

⁶ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁷ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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- Data sheets prepared by the Corps: Title(s) and/or date(s).
- Photographs: Aerial and Other: Title(s) and/or date(s).
- Corps site visit(s) conducted on: November 25, 2020
- Previous Jurisdictional Determinations (AJDs or PJDs): Title(s) and/or date(s)
- Antecedent Precipitation Tool: provide detailed discussion in Section III.B.
- USDA NRCS Soil Survey: Title(s) and/or date(s).
- USFWS NWI maps: Title(s) and/or date(s).
- USGS topographic maps: Ransomville, NY 7.5 min

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): The subject parcel's latitude/longitude was entered into the Antecedent Precipitation Tool (APT) which was used to determine average precipitation, total precipitation over the 90 days preceding the Corps' site visit, and whether the site visit was conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest six weather stations – Niagara Falls Intl AP, Lewiston 3 SE, Niagara Falls Intl AP, Niagara Falls 5.7 E, Sanborn 4 NE, and N Tonawanda. The APT shows that normal precipitation at the location of the site is between the 30th (2.0") and 70th (4.0") percentiles. The APT indicates that 0-30 days prior to the visit precipitation was 2.1" which is between the 30th and 70th percentiles. Thirty to 60 days prior the APT indicates that precipitation was 2.9" which is between the 30th and 70th percentiles and 60 to 90 days prior precipitation was 1.1" which is below the 30th percentile. Therefore, one and two months prior to the site visit precipitation was normal, and three months prior to the date of the site visit precipitation was considered to be below normal for that time of year.

The APT, using a weighted approach, indicates that the site visit was conducted during a period of drier than normal precipitation.

C. Additional comments to support AJD: Streams 1 flows southwest for approximately 1.8 miles into Cayuga Creek, an a(2) perennial tributary, which flows southwest approximately 4.0 miles into the Niagara River, an a(1) navigable water.