



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): 26-APR-2021
ORM Number: LRB-2020-01690
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)
Review Area Location¹: N/A
State/Territory: NY City: Chaffee County/Parish/Borough: Erie
Center Coordinates of Review Area: Latitude 42.5831 Longitude -78.5138

II. FINDINGS

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

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

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

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

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters)³

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A	N/A	N/A	N/A

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream 1	240 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Observations indicate that Stream 1 is a perennial a(2) tributary. Water was observed flowing within this stream channel during the April 7, 2021 site visit. The Antecedent Precipitation Tool (APT) (See Typical Year Assessment discussion in Section III.B) indicates that the site visit was conducted during a period of drier than

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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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			normal precipitation. In addition, the Sardinia USGS Quad map identifies this as an perennial stream. Furthermore, fish were observed within this stream channel. Based on the above it was determined that this stream is a perennial a(2) tributary.
Stream 2	550 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Observations indicate that Stream 2 is an intermittent a(2) tributary. Water was observed flowing within this stream channel during the April 7, 2021 site visit. The Antecedent Precipitation Tool (APT) (See Typical Year Assessment discussion in Section III.B) indicates that the site visit was conducted during a period of drier than normal precipitation. However, the Sardinia USGS Quad map does not identify this stream channel. Furthermore, during LaBella's delineation visit in September 2020 no water was observed within this stream channel. Since water was flowing at the time of the Corps' site visit, but not during LaBella's plus the stream is not identified on the USGS quad map it has been determined that it is an intermittent a(2) tributary.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):

(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A	N/A	N/A	N/A

Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	0.47 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Observations indicate that this wetland directly abuts an offsite a(2) water. During the April 7, 2021 site visit the wetland was observed connecting offsite to a culvert located immediately south of Hand Road.

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			Water was observed flowing from this wetland into the culvert. The culvert discharges immediately on the north of Hand Road. Water was observed flowing out of the culvert during the April 7, 2021 site visit. Wetland was observed connecting from Hand Road north from the culvert. According to the National Wetlands Inventory, forested wetland is mapped from about 50 feet north of Hand Road connecting to the north and east to Stream 1. Additionally, the historic soil survey map for Erie County identifies a stream channel starting from approximately 50 feet north of Hand Road, extending to Stream 1. Based upon the combination of onsite observations, the NWI, and Soil Survey it was determined that Wetland 1 directly abuts Stream 1.
Wetland 3	10.5 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Onsite observations indicate that this wetland directly abuts Stream 1.
Wetland 5	0.17 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Onsite observations indicate that this wetland directly abuts Stream 2.
Wetland 9	0.04 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Onsite observations indicate that this wetland directly abuts Stream 2.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland 2	0.31 acres	(b)(1) Non-adjacent wetland	This wetland does 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. This wetland was circumnavigated during the Corps' April 7, 2021 site visit. This wetland was

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			observed to be isolated, disconnected from any (a)(1-3) water. Additionally, no defined channels/tributaries/ditches were observed connecting this wetland to any (a)(1-3) water. Based on site observations, the nearest a(1-3) water would not flood this wetland at least once during a typical year. Also, no natural berms or the like were observed located between the nearest a(1-3) water and this wetland.
Wetland 6	0.27 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland 7	0.32 acres	(b)(1) Non-adjacent wetland	Same as above.
Wetland 8	0.06 acres	(b)(1) Non-adjacent wetland	Same as above.

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, Savage Road Solar, 10989 Savage Road, Chafee, New York 14030, LaBella Project No. 2202087.03, prepared for National Energy Development, prepared by LaBella Associates, D.P.C.*
This information (is) sufficient for purposes of this AJD.
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *(NA, aerial, other, aerial and other) Title(s) and/or date(s).*
- Corps Site visit(s) conducted on: *April 7, 2021*
- Previous Jurisdictional Determinations (AJDs or PJDs): *ORM Number(s) and date(s).*
- Antecedent Precipitation Tool: *provide detailed discussion in Section III.B.*
- USDA NRCS Soil Survey: *Erie County – Historic Soil Survey*
- USFWS NWI maps: *Title(s) and/or date(s).*
- USGS topographic maps: *Sardinia 7.5 min quad*

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.

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- 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 visits were conducted under dry, normal or wet conditions. The APT pulled precipitation data from the nearest seven weather stations – Rushford, Springville 5NE, Arcade, Glenwood 1.5 SE, Colden 2.4 ENE, Colden 1W, and Franklinville. The APT shows that normal precipitation is between the 30th (1.9") and 70th (3.6") percentiles. The APT indicates that 0-30 days prior to the site visit precipitation was 1.5" which is below the 30th percentile. Thirty to 60 days prior to the visit the APT indicates that precipitation was 1.6" which is also below the 30th percentile, and 60 to 90 days prior precipitation was 1.2" which is also below the 30th percentile. Therefore, one to three months prior to the site visit precipitation was considered below normal for that time of year.

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

- C. Additional comments to support AJD:** Stream 2 flows south and enters Stream 1 just offsite to the south. Stream 1 flows north into the East Branch of Cazenovia Creek, which continues north and connects with the West Branch Cazenovia Creek to form Cazenovia Creek, which then flows west into Lake Erie, an a(1) navigable water.

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