



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): 23-APR-2021  
ORM Number: LRB-2020-01699  
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)  
Review Area Location<sup>1</sup>: N/A  
State/Territory: NY City: Fredonia County/Parish/Borough: Chautauqua County  
Center Coordinates of Review Area: Latitude 42.441361 Longitude -79.292234

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(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
S001	1576 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 S001 is a perennial a(2) tributary. Water was observed flowing within this stream channel during the April 6, 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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<sup>3</sup> 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 independent 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.

<sup>4</sup> 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.

<sup>5</sup> 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 Dunkirk USGS Quad map identifies this as an perennial stream. Furthermore, macro invertebrates were observed within this stream channel. Based on the above it was determined that this stream is a perennial a(2) tributary.
S003	1060 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Onsite observations indicate that S003 is an intermittent a(2) tributary. Water was observed flowing within this stream channel during the April 6, 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 Dunkirk USGS Quad map does not identify this stream channel. Since water was flowing at the time of the site visit, but 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
W001	0.4 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Onsite observations indicate that this wetland directly abuts Stream 001.
W008	1.26 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Onsite observations indicate that this wetland directly abuts Stream 003.

**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12))<sup>4</sup>:

Exclusion	Exclusion	Exclusion <sup>5</sup>	Rationale for Exclusion Determination

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Name	Size		
S002 intermittent	702.2 feet	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year	Water was observed flowing within this stream channel at the time of the site visit. However, there was no observed flow from this stream channel to any a(1) water. During the site visit the stream was walked in its entirety and no observed surface water connection was observed connecting it to an a(1-3) water. It was determined that this stream has subsurface flow to the nearest a(1-3) tributary. The stream flows for approximately 702 feet. At that point, surface water disappears as does a defined bed and bank. From that point, heading to the west the area turns into emergent wetland. There is a culvert located at Swamp Road to the west, but there is no evidence of flow through the culvert. Ground water alone (and it has been determined these streams are not subterranean streams) is excluded from Section 404 jurisdiction. Therefore, based on the above this stream has been determined to be an excluded b(1) water.
S002 ephemeral	153.8 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	This was observed to be an ephemeral stream channel. This was based on a combination of the following - channel size, lack of flow, watershed size, and absence of groundwater. The channel was approximately between 1-2 feet in width, which can be evidence of infrequent flow. There was no observed flow nor standing pools (see Typical Year Assessment below)). Additionally, it was determined that the entire watershed size for each of these streams is approximately 1-2 acres in size;

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			<p>so, unless groundwater is present there is an insufficient amount of precipitation to make the stream intermittent or perennial. While onsite, Corps staff walked the length of the stream channel looking for evidence of groundwater influence - there were no observed seeps or springs in this stretch. At a downstream portion it was observed that groundwater was present, as pools and flow were observed (Intermittent stretch discussed above). It was determined that the ephemeral stretch was fed exclusively from precipitation runoff from the farm field immediately to the east. In addition, vegetation (i.e. skunk cabbage, royal fern) that are most commonly observed in areas of groundwater influence were not observed onsite nor were oxidized rhizospheres observed on vegetation present within the channels. Therefore, it was determined there is no groundwater influence and hydrology is strictly from precipitation. USGS Quads were reviewed to determine presence/absence of onsite stream channels. The USGS quad does not identify a stream channel onsite corresponding to the location of this stream. Therefore, it was determined that this stretch of stream channel is an excluded ephemeral stream.</p>
W003	0.21 acres	(b)(1) Non-adjacent wetland	<p>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 6, 2021 site visit. This wetland was</p>

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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.
W004	1.76 acres	(b)(1) Non-adjacent wetland	Same as above.
W005	0.53 acres	(b)(1) Non-adjacent wetland	Same as above.
W006	0.18 acres	(b)(1) Non-adjacent wetland	Same as above.
W007	0.17 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: *Request for Approved Jurisdictional Determination, RAK1 Solar Site, Fredonia, New York, December 2020, Prepared for Saturn Solar, prepared by SWCA Environmental Consultants*  
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 6, 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: *Title(s) and/or date(s)*.
- USFWS NWI maps: *Title(s) and/or date(s)*.
- USGS topographic maps: *Dunkirk 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 five weather stations – Dunkirk Chautauqua AP, Fredonia, Fredonia 0.8 WNW, Dunkirk, and Silver Creek. The APT shows that normal precipitation is between the 30th (1.1") and 70th (2.7") percentiles. The APT indicates that 0-30 days prior to the site visit precipitation was 0.3" which is below the 30th percentile. Thirty to 60 days prior to the visit the APT indicates that precipitation was 0.2" which is also below the 30th percentile, and 60 to 90 days prior precipitation was 1.4" which is between the 30th and 70th percentiles. Therefore, one to two months prior to the site visit precipitation was considered below normal for that time of year, and two to three months prior precipitation was normal.

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:** S003 flows north for approximately one mile before entering S001, which flows approximately 5 miles to the north northwest into Lake Erie, an a(1) navigable water.

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