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): 4/12/2021
ORM Number: LRB 2021-00095
Associated JDs: 2021-00093, 2021-00097
Review Area Location[1]: State/Territory: New York City: Otto County/Parish/Borough: Cattaraugus
Center Coordinates of Review Area: Latitude 42.3751 Longitude -78.8632

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	1860	linear 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 Stream 1 is an intermittent a(2) tributary. Water was observed flowing within this stream at the time of the April 7, 2021 site visit. According to the Antecedent Precipitation Tool (see Typical Year Assessment in Section III B), the site visit was conducted during a period of below normal precipitation. In addition, Stream 1 is depicted on the USGS quads (Collins Center and Cattaraugus) as an intermittent stream. Based on the above, it was determined that Stream 1 is an intermittent tributary.

[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.

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
N/A.	N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
Ditch 5	945	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).	Site observations indicate that this is an anthropogenically created ditch. It is a straight-line feature cut through an agricultural field for the purpose of facilitating drainage. A review of USGS quads and NWI mapping indicates that there are no stream channels in the location of the feature that would potentially lead to the conclusion that this feature is a captured stream. Moreover, the channel was vegetation-lined and there was no water present. This is evidence of low flow and anthropogenic creation. Based on the above, it has been determined that this feature is an excluded b(5) water.
Ditch 6	790	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).	Same as above.
Wetland 4	0.12	acre(s)	(b)(1) Non-adjacent wetland.	Onsite observations indicate that this wetland is a non-adjacent b(1) water. 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 site visit. It was observed to be isolated, disconnected from any (a)(1-3) water. There were no observed defined channel/tributary/ditch

[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.

Excluded waters ((b)(1) – (b)(12)):[4]				
Exclusion Name	Exclusion Size		Exclusion[5]	Rationale for Exclusion Determination
				that connecting this wetland to any (a)(1-3) water. Based on site observations the nearest a(1-3) water (Stream 1) would not flood the wetland area at least once during a typical year. The nearest evidence of typical year flow (i.e. debris, leaf wracking) is located approximately 10 feet from Stream 1. This wetland is located further than 10 feet from Stream 1. Also, there are no natural nor constructed berms or the like located between Stream 1 this wetland. Based on the above it has been determined that this wetland is a b(1) excluded water.
Wetland 5	0.03	acre(s)	(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, Dake Hill Road Solar (C), 8521 Dake Hill Road, Otto, New York 14719, Labella Project No. 2202032.07, January 2021.

This information is sufficient for purposes of this AJD.

Rationale: N/A.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☐ Photographs: Select. 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: Title(s) and/or date(s).

☒ USFWS NWI maps: Cattaraugus County

☒ USGS topographic maps: Collins Center and Cattaraugus 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.

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' April 7, 2021 site visit, and whether the site visit was conducted under dry,

normal or wet conditions. The APT pulled precipitation data from the nearest four weather stations – Dunkirk Chautauqua AP, Fredonia, Dunkirk, and Silver Creek. The APT shows that normal precipitation at the location of the site is between the 30th (1.2") and 70th (2.4") 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 site visit the APT indicates that precipitation was 0.2" which is also below the 30th percentile, and 60 to 90 days prior precipitation was 1.5" which is between the 30th and 70th percentiles. Therefore, one to two months prior to the site visit rainfall was considered to be below normal for that time of year. Two to three months prior to the visit precipitation was considered to be 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:** Stream 1 flows north and then west approximately 2 miles and empties into the South Branch of Cattaraugus Creek, an a(2) perennial tributary, which flows into Cattaraugus Creek, an a(1) navigable waterway.