



**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): 8/4/2021
 ORM Number: LRB-2020-01558 Cayuga-Sterling Solar (Boehm Solar Development)
 Associated JDs: Other aquatic features are processed as a preliminary jurisdictional determination (PJD) concurrently and under the same ORM number as this AJD.
 Review Area Location¹: State/Territory: New York City: Town of Sterling County/Parish/Borough: Cayuga
 Center Coordinates of Review Area: Latitude 43.462901 Longitude -76.471249

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

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

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 7	0.03	acre(s)	(b)(1) Non-adjacent wetland.	<p>This wetland is a narrow linear feature that formed when flow from Stream D-1 was blocked and created an overland flow situation and added to the run-off from the surrounding agricultural. The wetland reconnects with Stream D-1 and dissipates into the surrounding flat upland.</p> <p>The 2020 aerial photo suggest that hydrology from this feature connects to Wetland 5A; however, on-site observations during the site visit on May 4, 2021, do not support this.</p> <p>The NWI map does not show any mapped wetlands or streams on the parcel. The NYSDEC Freshwater Wetland Map shows a large wetland complex just north of the site with the 100-foot buffer associated with that complex extending onto the parcel.</p> <p>According to the Web Soil Survey, this wetland occurs within Ira gravelly loam, 3 to 8 percent slopes with a hydric rating of zero and Williamson silt loam, 6 to 12 percent slopes, also with a hydric rating of zero.</p> <p>The closest (a)(1)-(a)(3) water is the intermittent portion of Stream 1 (referred to as 1a which is processed under a PJD) and is approximately 1,475 feet to the east (as measured on the google earth map tool) across the rolling topography and forested areas.</p>
Stream 1	210	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	<p>Stream 1 originates off site and is a narrow braided, shallow ephemeral channel that outfalls to Pond 1 (PJD). The ground was saturated and vegetated, but there was no flow and no evidence of debris deposits that would suggest flow, even during times of substantial rain fall.</p> <p>According to the Web Soil Survey, this stream occurs within Ira gravelly loam, 3 to 8 percent slopes with a hydric rating of zero and Williamson silt loam, 6 to 12 percent slopes, also with a hydric rating of zero.</p>

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)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stream D-1	1,305	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).	<p>A natural stream channel once ran approximately parallel to Stream D-1 which is a man-made excavated ditch. The natural channel originated off site south of State Route 104A, went through a wooded area and through the site. Over the years (See aerial photos and APT discussion below), the natural channel was plowed and planted and eventually incorporated into the agricultural land. Hydrology from the upstream portion of the intact natural channel is now directed into the ditch. Because the Ditch now carries hydrology that was once carried by the natural channel, it was identified as Stream D-1.</p> <p>According to the Web Soil Survey, this feature occurs within Ira gravelly loam, 3 to 8 percent slopes with a hydric rating of zero and Williamson silt loam, 6 to 12 percent slopes, also with a hydric rating of zero.</p>

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: [LaBella](#)
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: [Aerial and Other: Google Earth aerial photos for 1994, 2006, 2020. Photos contained in the delineation report.](#)
- Corps site visit(s) conducted on: [May 4, 2021](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [PJD issued concurrently with this AJD](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [on-line Web Soil Survey](#)
- USFWS NWI maps: [Oswego East Quad. Dat information for the NWI maps is given in decades – in this case the map is dated in the 1970's](#)
- USGS topographic maps: [Taken from the ORM map](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	See III A. above
USDA Sources	See III A. above
NOAA Sources	N/A.



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Data Source (select)	Name and/or date and other relevant information
USACE Sources	See III A. above
State/Local/Tribal Sources	N/A.
Other Sources	See III A. above

B. Typical year assessment(s): The APT pulls precipitation data from NOAA's Daily Global Historical Climatology Network. The APT evaluates normal precipitation conditions based on the three 30-day periods preceding the observation date. For each period, a weighted condition value is assigned by determining whether the 30-day precipitation total falls within, above, or below the 70th and 30th percentiles for totals from the same date range over the preceding 30 years. The APT then makes a determination of "normal," "wetter than normal," or "drier than normal" based on the condition value sum. The APT also displays results generated via the Palmer Drought Severity Index and the University of Delaware WebWIMP.

APT calculations were run for specific Google Earth aerial photos as well as the delineation date (10/12/2020) and the site visit date (05/04/2021) to assist in determining if Wetland 007 and two ephemeral streams would be jurisdictional under the NWRP.

Google Earth Aerial results are as follows:

Date	PDSI Value	PDSI Class	Season	ARC Score	Antecedent Precip Condition
03/14/1994	1.67	Mild wetness	Wet Season	15	Wetter than Normal
06/16/2003	0.72	Incipient wetness	Dry Season	18	Wetter than Normal
05/23/2008	0.93	Incipient wetness	Wet Season	11	Normal Conditions
09/24/2013	1.84	Mild wetness	Wet Season	14	Normal Conditions
07/15/2015	1.7	Mild wetness	Dry Season	17	Wetter than Normal
03/14/2020	-0.25	Normal	Wet Season	8	Drier than Normal

The 1994 aerial in the Wet Season under Wetter then Normal Conditions shows:

*Man-made ditch/Stream D-1 adjacent to a natural channel/drainage. The signature appears to show water in the natural channel, but is inconclusive in Stream D-1.

*Stream 1 to Pond 1 (PJD) can be seen; however the aerial signature does not suggest that there is water in the channel.

What would transition to Wetland 7 as part of the natural channel is evident.

The 2003 aerial in the Dry Season under Wetter than Normal Conditions shows:

*A portion of the natural channel, but Stream D-1 is not clear and water is not evident.

*Stream 1 to Pond 1 is not evident.

*The area that would transition to Wetland 7 is not evident.



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The 2008 aerial in the Wet Season under Normal Conditions shows:

*Stream D-1 can be seen, but the presence of water in the channel is not conclusive. The natural channel/drainage is no longer evident.

*Stream 1 to Pond 1 is not evident.

*The area that would transition to Wetland 7 can be seen.

The 2013 aerial in the Wet Season under Normal Conditions:

*Stream D-1 is evident. It does not appear that there is water in the channel.

*Stream 1 to Pond 1 is not evident

* Wetland 7 can be seen.

The 2015 aerial in the Dry Season, Wetter than Normal Conditions shows:

*Stream D-1 is not as clearly defined due to the established vegetation in the channel.

*Stream 1 to Pond 1 is not evident.

* Wetland 7 is clear.

The March 2020 aerial in the Wet Season in Drier than Normal Conditions shows:

*Stream D-1 is clearly evident. It is not clear if the channel signature is water or vegetation. A flow pattern across the upland buffer area between the D-1 outlet and Wetland 5-a, which is part of the large DEC regulated wetland can be seen. On-site observations indicate that the hydrology diffuses overland.

*Stream 1 is not evident through the upland meadow surrounding Pond 1.

*The diverted flow path through Wetland 7 can be seen.

Delineation Date

10/12/2020 -0.92 Incipient drought Wet Season 9 Drier than Normal

Site Visit Date

05/4/2021 -2.66 Moderate drought Wet Season 9 Drier than Normal

Stream D-1: Only patches of standing water were observed from the off-site wooded portion of the natural channel to the end of the man-made channel adjacent to Wetland 5A (PJD). Vegetation and rocks had blocked the channel and diverted water to an overland flow in which Wetland 7 established.



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Stream 1: This is a headwater stream/drainage flowing through upland meadow that is captured in Pond 1 (PJD). The area was saturated, but there was no flow observed.

These findings are in keeping with what was recorded in the delineation report; with the exception of the identification of Wetland 7, which was not identified in October of 2020.

C. Additional comments to support AJD:

Based on the above information, Wetland 7 does not abut an (a)(1)-(a)(3) water, nor is the wetland inundated by flooding by an (a)(1)-(a)(3) water in a typical year, is not separated from an (a)(1)-(a)(3) water via a natural berm or barrier, and is not separated from an (a)(1) – (a)(3) water via an artificial structure/feature which allows water exchange at least once in a typical year.

Stream D-1 and Stream 1 have been determined to have an ephemeral flow regime, and therefore, are excluded under the NWRP.