



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): 16-JUL-2021

ORM Number: LRB-2020-01242

Associated JDs: N/A

Review Area Location¹:

State/Territory: NY City: Leicester County/Parish/Borough: Livingston County

Center Coordinates of Review Area: Latitude 42.736778 Longitude -77.915218

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

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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.

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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
001	12.31 acres	(b)(1) Non-adjacent wetland	Wetland 001 is a 12.31 acre PFO wetland, located in the northcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 001 is located over 1,400 feet west of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland appears to travel to the north, off-site, however does not continue within the forested area within the property. The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 001 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated form an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
002	0.07 acres	(b)(1) Non-adjacent wetland	Wetland 002 is a 0.07 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 002 is located over 1,200 feet southwest of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 002 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated form an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
003	0.02 acres	(b)(1) Non-adjacent wetland	Wetland 003 is a 0.02 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 003 is located over 1,200 feet southwest of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical

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			aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 003 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
004	0.02 acres	(b)(1) Non-adjacent wetland	Wetland 004 is a 0.02 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 004 is located over 1,200 feet southwest of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 004 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
005	0.1 acres	(b)(1) Non-adjacent wetland	Wetland 005 is a 0.1 acre PEM wetland, located in the central part of the property, with no connection to an a(1)-a(3) water. Wetland 005 is located over 800 feet west of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 005 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
006	0.04 acres	(b)(1) Non-adjacent wetland	Wetland 006 is a 0.04 acre PEM wetland, located in the central part of the property, with no connection to an a(1)-a(3) water. Wetland 006 is located over 800 feet west of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in

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			any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 006 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
007	0.16 acres	(b)(1) Non-adjacent wetland	Wetland 007 is a 0.16 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 007 is located over 1,100 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 007 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
008	0.16 acres	(b)(1) Non-adjacent wetland	Wetland 008 is a 0.16 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 008 is located over 1,200 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 008 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
009	0.02 acres	(b)(1) Non-adjacent wetland	Wetland 009 is a 0.02 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 009 is located over 1,200 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the

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			wetland has a nearly zero percent chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 009 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated form an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
010	0.86 acres	(b)(1) Non-adjacent wetland	Wetland 010 is a 0.86 acre PEM wetland, located in the southcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 010 is located over 1,000 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 010 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated form an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
011	0.85 acres	(b)(1) Non-adjacent wetland	Wetland 011 is a 0.85 acre PFO wetland, located in the central part of the property, with no connection to an a(1)-a(3) water. Wetland 011 is located over 700 feet southwest of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land and farm land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aeriels did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 011 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated form an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
012	0.07 acres	(b)(1) Non-adjacent wetland	Wetland 012 is a 0.07 acre PEM wetland, located in the northcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 012 is located over 2,000 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil

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			<p>classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 012 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.</p>
013	0.03 acres	(b)(1) Non-adjacent wetland	<p>Wetland 013 is a 0.03 acre PEM wetland, located in the northcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 013 is located over 2,500 feet north of an a(1)-a(3) water (Genesee River). The wetland is separated by undeveloped land and two roadways from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 013 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.</p>
016	0.21 acres	(b)(1) Non-adjacent wetland	<p>Wetland 016 is a 0.21 acre PEM wetland, located in the northcentral part of the property, within a pipeline right-of-way, with no connection to an a(1)-a(3) water. Wetland 016 is located over 1,000 feet west of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by undeveloped land from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 016 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.</p>
019	0.06 acres	(b)(1) Non-adjacent wetland	<p>Wetland 019 is a 0.06 acre PEM wetland, located in the northcentral part of the property, with no connection to an a(1)-a(3) water. Wetland 019 is located over 2,100 feet south of an a(1)-a(3) water (unnamed tributary to Beards Creek). The wetland is separated by</p>

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			undeveloped land and farm fields from the a(1)-a(3) water. Based upon the soil classification in the USDA Web Soil Survey, the wetland has a nearly zero percent chance of flooding in any year. Review of the historical aerials did not show any inundation throughout the year by an a(1)-a(3) water. All resources reviewed support the determination that Wetland 019 does not abut an a(1)-a(3) water, is not inundated by flooding by an a(1)-a(3) water at least once a typical year, is not separated from an a(1)-a(3) water by a natural berm or barrier and is not separated from an a(1)-a(3) water by a man made barrier which contains a feature that allows flow exchange in a typical year.
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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 delineation named "Wetland and stream delineation report Highbanks Solar Project" conducted by Environmental Design & Research, Landscape Architecture, Engineering, & Environmental Services, D.P.C. and submitted in September of 2020 with accurate and complete data sheets, and photographs.

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: Google Earth Pro (2021), ESRI, Eagleview (2002, 2010, 2011, 2014)

Corps Site visit(s) conducted on: *Date(s)*.

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: Web soil survey reviewed.

USFWS NWI maps: USFWS online map reviewed.

USGS topographic maps: Mount Morris, New York Quad, 24k:1.

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	ORM2.
State/Local/Tribal Sources	NYS DEC on-line Environmental Resource Map reviewed.
Other Sources	N/A.

B. Typical year assessment(s): N/A.

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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.

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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.



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

Although several point-in-time resources were evaluated for this review, they were not needed to determine whether inundation occurred from an a(1-3) water into onsite wetlands. Aerial photos were used to evaluate historic conditions. These determinations did not require a typical year assessment.

- C. Additional comments to support AJD:** N/A. Other waters on the property were assessed under a Preliminary Jurisdictional Determination.

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.

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