



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, PHILADELPHIA DISTRICT
100 SOUTH INDEPENDENCE MALL WEST
PHILADELPHIA PA 19106-3400

May 23, 2023

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination NAP-2023-00314-103
Blue Hen Solar Storage Site SX
Center coordinates (38.463606°, -75.58291°)

Jay Linke
Blue Hen Storage, LLC
130 Roberts Street
Asheville, North Carolina 28801

Dear Mr. Linke:

This Approved Jurisdictional Determination (AJD) is provided in response to your request on April 13, 2023 for a determination of Federal jurisdiction by this office. The site associated with your request is located between 9142 & 9320 Old Racetrack Road, Tax Parcel 532-20.00-14.00 in Delmar, Sussex County, Delaware.

The findings of this AJD are documented in the **enclosed** AJD Form. The findings are also depicted on the **enclosed** plan(s) identified as "FIGURE 2. USGS 7.5-MINUTE TOPOGRAPHIC MAP OF DELMAR QUADRANGLE and FIGURE 5. SITE MAP OF WETLANDS AND OTHER WATER RESOURCES"; prepared by EnviroScience; dated December 2022; unrevised; 2 sheets.

A Department of the Army permit is required for work or structures in "navigable waters of the United States" pursuant to Section 10 the Rivers and Harbors Act (RHA) of 1899 and the discharge of dredged or fill material into "waters of the United States" pursuant to Section 404 of the Clean Water Act (CWA). Any proposal to perform these activities within areas of Federal jurisdiction requires prior approval by this office.

Food Security Act statement: The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

This AJD is valid for a period of five (5) years. This AJD is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify this AJD at any time should the existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete or inaccurate.

You may request an administrative appeal of this AJD if you **do not** accept this determination. **Enclosed** you will find a combined Notification of Appeal Process (NAP) and Request for Appeal (RFA) form. Should you wish to appeal this determination, you must submit a completed RFA form to the North Atlantic Division Office within 60 days of the date on the form. Additionally, for the appeal to be accepted, the Corps must determine that it is complete and that it meets the criteria for appeal under 33 CFR Part 331.5. The form should be submitted to Andrew Dangler, Regulatory Program Manager, at Andrew.C.Dangler@usace.army.mil. If you do not have the means to submit this form electronically, you may send it by mail to the Division office at:

US Army Corps of Engineers North Atlantic Division
Attn: Andrew Dangler (CENAD-PD-OR)
Fort Hamilton Military Community
301 John Warren Avenue, First Floor
Brooklyn, NY 11252-6700

If you have any questions regarding this matter, please contact James A. Colligan at 302-518-9480 or James.A.Colligan@usace.army.mil.

Sincerely,

Todd A. Hoernemann
Chief, Application Section I

Enclosures

cc:
Max Koran, EnviroScience
Wetlands and Waterways Section, DDNREC
Sussex County Conservation District
Wetlands Branch, USEPA Region III

DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM¹
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): May 23, 2023

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: NAP-2023-00314-103 Blue Hen Solar Storage

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Delaware County/parish/borough: Sussex County City: Delmar

Center coordinates of site (lat/long in degree decimal format): Lat. 38.463606 °, Long. -75.58291 °

Universal Transverse Mercator: 449145.693394, 4257416.052283

Name of nearest waterbody: Meadow Branch

Name of watershed or Hydrologic Unit Code (HUC): Broad Creek Watershed

- Check if map/diagram of review area is available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- Office (Desk) Determination. Date:
- Field Determination. Date(s): May 18, 2023

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are **no** “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are **no** “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

SECTION III: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: 2023-00314 Supporting Documents
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: 2023-00314 ADS dated 5-18-2023
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 2023-00314 Supporting Documents
- USDA Natural Resources Conservation Service Soil Survey. Citation: 2023-00314 Supporting Documents
- National wetlands inventory map(s). Cite name: 2023-00314 Supporting Documents
- State/Local wetland inventory map(s):
- FEMA/FIRM maps: 2023-00314 Supporting Documents
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 2023-00314 Supporting Documents
 - or Other (Name & Date): 2023-00314 Supporting Documents
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify):

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND: After the review of the submitted application from Blue Hen Solar LLC, a field visit was conducted to verify the findings. The submitted application, specifically SP-1, was taken in a flooded area of the site. The soils recorded had

¹ This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

layers that pointed towards deep tilling of the field. The data sheet was also conducted after a rain event two days prior, and during November. A field verification conducted in May 2023, showed no flooding in the same location. No hydrology indicators were observed in the field verification.