

August 6, 2021

Ms. Tanowa Troupe, Secretary  
Ohio Power Siting Board  
Docketing Division  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, Ohio 43215-3797

**Re: Case No. 21-36-EL-BGN - In the Matter of the Application of Marion County Solar Project, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Marion County, Ohio.**

**Second Supplemental Response to First Data Request from Staff of the Ohio Power Siting Board**

Dear Ms. Troupe:

Attached please find Marion County Solar Project, LLC's ("Applicant") Second Supplemental Response to the First Data Request from the staff of the Ohio Power Siting Board ("OPSB Staff"). The Applicant provided this response to OPSB Staff on August 6, 2021.

We are available, at your convenience, to answer any questions you may have.

Respectfully submitted,

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

William Vorys (0093479)

Matthew C. McDonnell (0090164)

Dickinson Wright PLLC

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***Attorneys for Marion County Solar Project, LLC***

Cc: Theresa White  
Randall Schumacher  
Jon Pawley

Ms. Tanowa Troupe  
Marion County Solar Project, LLC  
Case No. 21-36-EL-BGN

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### CERTIFICATE OF SERVICE

The Ohio Power Siting Board's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 6<sup>th</sup> day of August, 2021.

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

Counsel:

[thomas.lindgren@ohioattorneygeneral.gov](mailto:thomas.lindgren@ohioattorneygeneral.gov)

[chelsea.fletcher@ohioattorneygeneral.gov](mailto:chelsea.fletcher@ohioattorneygeneral.gov)

Administrative Law Judge:

[daniel.fullin@puco.ohio.gov](mailto:daniel.fullin@puco.ohio.gov)

4824-5363-0965 v1 [88534-4]

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Marion County     )  
Solar Project, LLC for a Certificate of Environmental     )  
Compatibility and Public Need to Construct a Solar-     )     Case No: 21-36-EL-BGN  
Powered Electric Generation Facility in Marion     )  
County, Ohio.     )

**MARION COUNTY SOLAR PROJECT, LLC 'S**  
**SECOND SUPPLEMENTAL RESPONSE TO THE FIRST DATA REQUEST**  
**FROM THE STAFF OF THE OHIO POWER SITING BOARD**

On March 5, 2021, Marion County Solar Project, LLC (“Applicant”), filed an application (“Application”) with the Ohio Power Siting Board (“OPSB”) proposing to construct a solar-powered electric generation facility in Marion County, Ohio.

On April 6, 2021, the Staff of the OPSB (“OPSB Staff”) provided the Applicant with OPSB Staff’s First Data Request. Now comes the Applicant providing the following second supplemental response to Question 10 of the First Data Request from the OPSB Staff.

- 10.     Setbacks seem to be interspersed through the Application. Please summarize and tabulate all setbacks that Marion County Solar Project, LLC incorporated into the preliminary layout (including but not limited to non-participating property line, non-participating residential structure, road right-of-way, transmission line easements, wetlands, streams).**

**Response:** Please find attached the Approved Jurisdictional Determination (“AJD”) issued by the United States Army Corps of Engineers (“USACE”) for the Marion County Solar Project. The AJD determines the boundaries that will be used to implement the wetland/stream setbacks.

Respectfully submitted,

/s/ Christine M.T. Pirik

Christine M.T. Pirik (0029759)

William Vorys (0093479)

Matthew C. McDonnell (0090164)

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

(614) 591-5461

*Attorneys for Marion County Solar Project, LLC*



**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO  
ATTENTION OF

April 30, 2021

Regulatory Division  
North Branch  
LRH-2021-168-SCR-Little Scioto River

**APPROVED JURISDICTIONAL DETERMINATION**

Lauren Devine  
Marion County Solar Project, LLC  
422 Admiral Boulevard  
Kansas City, Missouri 64106

Dear Ms. Devine:

I refer to your February 22, 2021 report titled *Wetland and Waterbody Delineation Report* (February 22, 2021 report), prepared and submitted on your behalf by Stantec Consulting Services, Inc. (Stantec). The subject site is 970 acres located within Marion Township, in Marion County, Ohio (40.626071°N, 83.150937°W). On-site waters flow into the Scioto River, a navigable water of the United States (U.S.). This jurisdictional determination (JD) request has been assigned the following file number: LRH-2021-168-SCR-Little Scioto River. Please reference this file number on all future correspondence related to this JD request.

The United States Army Corps of Engineers' (Corps) authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328, including the amendment to 33 CFR 328.3 (85 Federal Register 22250), and 33 CFR 329. Section 404 of the Clean Water Act (Section 404) requires a Department of the Army (DA) permit be obtained prior to the discharge of dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires a DA permit be obtained for any work in, on, over or under navigable water.

The Navigable Waters Protection Rule, which became effective on June 22, 2020, was followed in this verification of Section 404 jurisdiction for the features located within the approved JD boundary. Based upon a review of the submitted report and additional information available to us, this office has determined approximately 3.62 acres of four (4) wetland (Wetland 1, Wetland 2, Wetland 3, and Wetland 4), and 10,442 linear feet of three (3) streams (Stream 1, Stream 2, and Stream 3) were delineated within the AJD boundary. It has been determined that Stream 1 and Stream 2 are (a)(2) perennial tributaries that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. It has been determined that Stream 3 is an (a)(2) intermittent tributary that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. Wetlands 1-3 directly abut Stream 1, an (a)(2) water. Streams 1-3, and Wetlands 1-3 are waters of the United States subject to regulation under Section 404. If your proposed project is

unable to avoid the discharge of dredged and/or fill material into waters of the United States, you must obtain an authorization from this office.

It has been determined approximately 2.62 acres of one (1) wetland (Wetland 4) was delineated within the approved JD boundary. This feature is not waters of the United States per 33 CFR 328.3 (b)(1) and is not subject to regulation under Section 404. However, you should contact the Ohio Environmental Protection Agency, Division of Surface Water, at (614) 664-2001 to determine state permit requirements.

This jurisdictional verification is valid for a period of five (5) years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date. This letter contains an AJD for the subject site within the AJD boundary. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Appeal Review Officer  
United States Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10-714  
Cincinnati, Ohio 45202-3222  
Phone: (513) 684-2699  
Fax: (513) 684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **June 29, 2021**. **It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.** It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

This determination has been conducted to identify the limits of the Corps' Section 404 jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

A copy of this letter will be provided to the Ohio Environmental Protection Agency at Lazarus Government Building, Post Office Box 1049 Columbus, Ohio 43216-3669.

If you have any questions concerning the above, please contact Kyle Moore at (513) 825-3444, by mail at the above address, or by email at [kyle.m.moore@usace.army.mil](mailto:kyle.m.moore@usace.army.mil).

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie A. Moore". The signature is fluid and cursive, with the first name "Laurie" and last name "Moore" clearly distinguishable.

Laurie A. Moore  
Regulatory Project Manager  
North Branch

Enclosures  
cc: via email  
Ms. Michelle Kerns  
Stantec Consulting Services, Inc.  
[Michelle.kerns@stantec.com](mailto:Michelle.kerns@stantec.com)

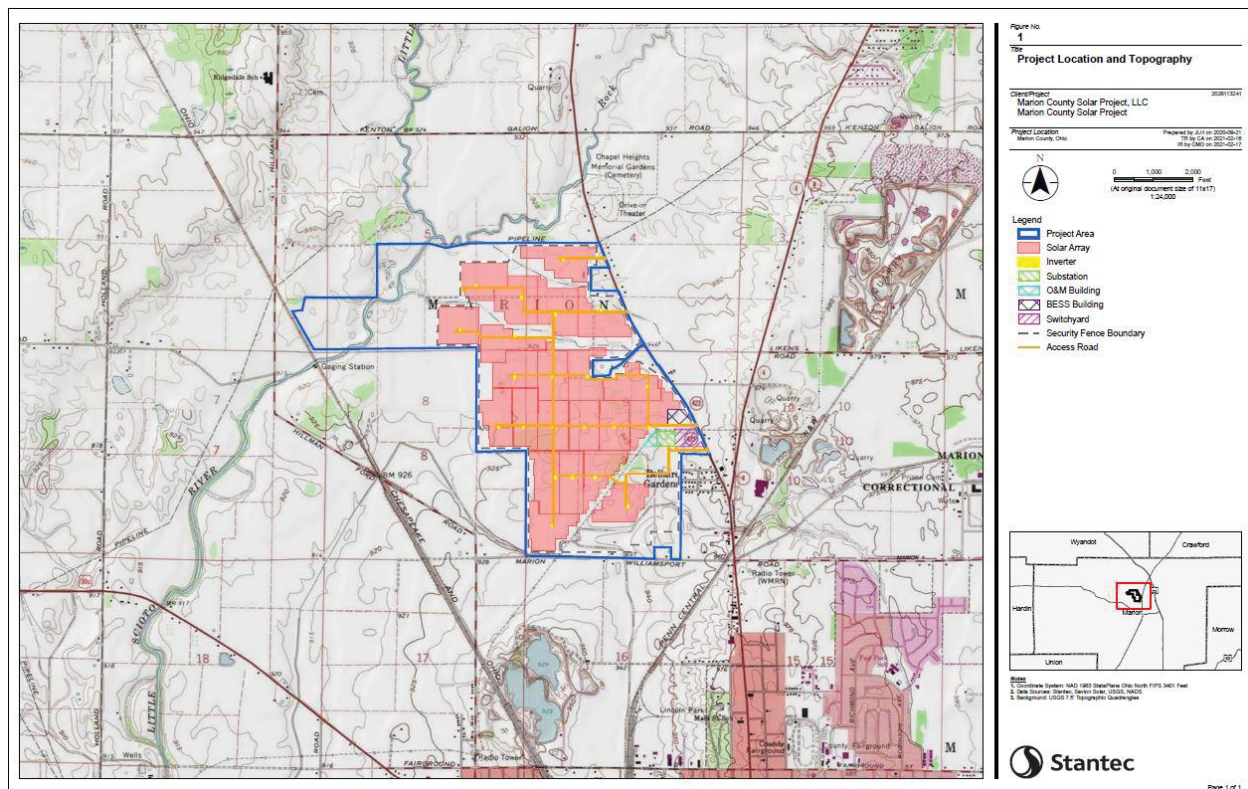


## MEMORANDUM FOR RECORD

SUBJECT: Jurisdictional Determination (JD) for LRH-2021-168-SCR-Little Scioto River

**1. Project Description:** Stantec Consulting Services, Inc. (Stantec), has submitted the report titled *Wetland and Waterbody Delineation Report* (report) dated 22 February 2021 and prepared on behalf of Marion County Solar Project, LLC. The subject site is located north of the City of Marion, Marion Township, Marion County, Ohio, at approximately 40.626071 latitude and -83.150937 longitude. The applicant has requested an approved JD for the aquatic resources located on the approximate 970-acre study area. Waters on-site drain into the Scioto River, a navigable water of the United States. The JD request is not associated with a pending application and is for informational purposes only.

Figure 1. Marion County Solar Project JD Review Area – LRH-2021-168-SCR



**2. Site Characteristics:** The JD review area currently consists of approximately 970 acres of agricultural land. The Site is located in an area that consists of agricultural fields. The JD review area is located within the Scioto River watershed, Hydrologic Unit Code (HUC)-05060001. The Site is shown on the Morral and Marion West, Ohio 7½-minute quadrangle maps. Three (3) streams and four (4) wetlands were identified on the Site. The streams generally flow to the

southwest across the Site. The Site is located in two (2) watersheds; the City of Marion – Little Scioto River watershed, and the Rock Fork watershed. Both watersheds flow into the Scioto River. The following features are located within the approximate 970-acre site.

| <b>Table 1. Jurisdictional and non-jurisdictional features associated with the Marion County Solar Project Approved JD, LRH-2021-168-SCR</b> |   |            |                       |  |                             |
|--|---|------------|-----------------------|--|-----------------------------|
| <b>Aquatic Resources</b>   | <b>Latitude &amp; Longitude<br/>(°N) (°W)</b> |            | <b>Cowardin Class</b> | <b>Linear feet and/or Acres in review area</b> | <b>Regulatory Authority</b> |
| Stream 1   | 40.632826                                     | -83.162017 | Perennial             | 4,072 lf                                       | Section 404 under (a)(2)    |
| Stream 2   | 40.616860                                     | -83.143026 | Perennial             | 4,975 lf                                       | Section 404 under (a)(2)    |
| Stream 3   | 40.615611                                     | -83.142462 | Intermittent          | 1,395 lf                                       | Section 404 under (a)(2)    |
| Wetland 1  | 40.635171                                     | -83.149788 | Emergent              | 0.76 ac  | Section 404 under (a)(4)    |
| Wetland 2  | 40.629728                                     | -83.165697 | Emergent              | 0.24 ac  | Section 404 under (a)(4)    |
| Wetland 3  | 40.631353                                     | -83.165457 | Emergent              | 0.008 ac                                       | Section 404 under (a)(4)    |
| Wetland 4  | 40.634849                                     | -83.163334 | Emergent/Scrub Shrub  | 2.62 ac  | None; Excluded under (b)(1) |

3. **Approved Jurisdictional Determination Form:** One (1) approved JD form has been prepared for the 970-acre site (**Enclosure 2**). The Antecedent Precipitation Tool (APT) was used to help in the determination of typical year situation and the graph can be seen in **Enclosure 3**.

4. **Conclusion:** The approximate 970-acre site contains six (6) jurisdictional features and one (1) non-jurisdictional feature. Stream 1, and Stream 2 are 33 CFR 328.3(a)(2) perennial tributaries that contribute surface water flow directly or indirectly to an (a)(1) water in a typical year. Stream 3 is a 33 CFR 328.3(a)(2) intermittent tributary that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. Wetlands 1-3 directly abut Stream 1, an (a)(2) water. Therefore, Wetlands 1-3 are an 33 CFR 328.3(a)(4) adjacent wetlands. Wetland 4 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier. Wetland 4 is not a jurisdictional water of the United States per 33 CFR 328.3(b)(1).



KYLE M. MOORE  
Regulatory Project Manager  
North Branch

Encls  
Encl 1 – Delineation Report



Encl 2 – AJD form

Encl 3 - APT



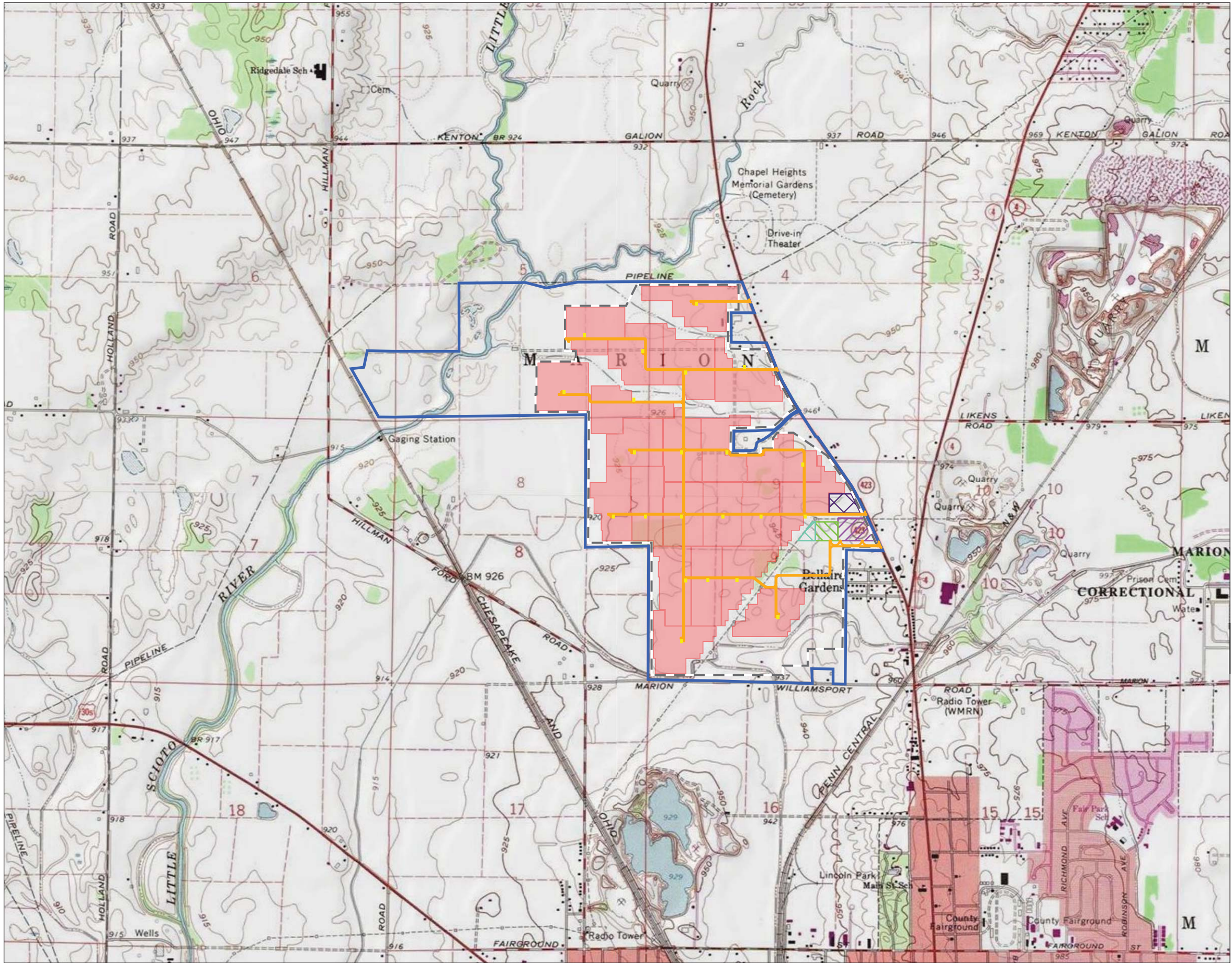
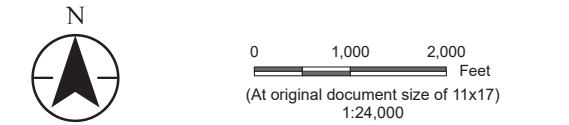


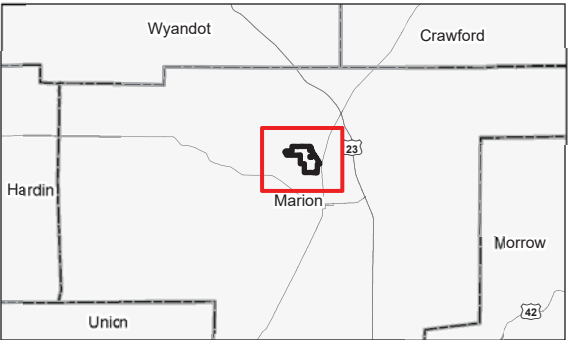
Figure No. 1  
Title Project Location and Topography

Client/Project Marion County Solar Project, LLC  
Marion County Solar Project

Project Location Marion County, Ohio  
Prepared by JLH on 2020-09-21  
TR by CA on 2021-02-16  
IR by CMD on 2021-02-17



- Legend
- Project Area
  - Solar Array
  - Inverter
  - Substation
  - O&M Building
  - BESS Building
  - Switchyard
  - Security Fence Boundary
  - Access Road



Notes  
1. Coordinate System: NAD 1983 StatePlane Ohio North FIPS 3401 Feet  
2. Data Sources: Stantec, Savion Solar, USGS, NADS  
3. Background: USGS 7.5' Topographic Quadrangles





## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

|   |  |                           |                   |
|---|--|---------------------------|-------------------|
| Applicant: Marion County Solar Project, LLC |  | File Number: 2021-168-SCR | Date: 4-30-2021   |
| Attached is:                                |  |                           | See Section below |
|   | INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission) | A                         |                   |
|   | PROFFERED PERMIT (Standard Permit or Letter of permission)         | B                         |                   |
|   | PERMIT DENIAL  | C                         |                   |
| X   | APPROVED JURISDICTIONAL DETERMINATION                              | D                         |                   |
|   | PRELIMINARY JURISDICTIONAL DETERMINATION                           | E                         |                   |

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Mike Hatten, Chief, Regulatory Division, 304-399-5610  
Teresa Spagna, Chief, North Regulatory Branch 304-399-6910  
Susan Porter, Chief, South Regulatory Branch, 304 399-5325  
Lee Robinette, Chief, Energy Resource Branch, 304-399-5930  
Address: U.S. Army Corps of Engineers  
Regulatory Branch  
502 8<sup>th</sup> Street  
Huntington, WV 25701

If you only have questions regarding the appeal process you may also contact:

U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10-714  
Cincinnati, OH 45202-3222  
Phone: (513) 684-2699  
Fax: (513) 684-2460

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:



**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): 4/30/2021

ORM Number: LRH-2021-168-SCR-Little Scioto River

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: Ohio City: Marion Township County/Parish/Borough: Marion County

Center Coordinates of Review Area: Latitude 40.626071 Longitude -83.150937

**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   |  |
| Stream 1                     | 4072        | linear feet     | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | Stream 1 (Little Scioto River), is a perennial, indirect tributary to the Scioto River, an (a)(1) water, at a location outside of the review area. Stream 1 contributes perennial surface water flow directly to the Scioto River, an (a)(1) water, in a typical year (reference Section III B below). |
| Stream 2                     | 4975        | linear feet     | (a)(2) Perennial tributary   | Stream 2 is a perennial, indirect tributary to the Scioto River, an (a)(1) water, at a location outside of   |

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<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 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.



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

| Tributaries ((a)(2) waters): |             |             |   |  |
|------------------------------|-------------|-------------|---|--|
| (a)(2) Name                  | (a)(2) Size |             | (a)(2) Criteria   | Rationale for (a)(2) Determination   |
|                              |             |             | contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.                               | the review area. Stream 2 contributes perennial surface water flow indirectly to the Scioto River, an (a)(1) water, in a typical year (reference Section III B below).   |
| Stream 3                     | 1395        | linear feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. | Stream 3 is an intermittent, indirect tributary to the Scioto River, an (a)(1) water, at a location outside of the review area. Stream 3 contributes intermittent surface water flow indirectly to the Scioto River, an (a)(1) water, in a typical year (reference Section III B below). |

| 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  |
| Wetland 1                          | 0.76        | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Wetland 1 directly abuts Stream 1, an (a)(2) water. Reference Stream 1 above. |
| Wetland 2                          | 0.24        | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Wetland 2 directly abuts Stream 1, an (a)(2) water. Reference Stream 1 above. |
| Wetland 3                          | 0.008       | acre(s) | (a)(4) Wetland abuts an (a)(1)-(a)(3) water. | Wetland 3 directly abuts Stream 1, an (a)(2) water. Reference Stream 1 above. |

**D. Excluded Waters or Features**

| Excluded waters ((b)(1) – (b)(12)): <sup>4</sup> |                |         |                              |   |
|--|----------------|---------|------------------------------|---|
| Exclusion Name                                   | Exclusion Size |         | Exclusion <sup>5</sup>       | Rationale for Exclusion Determination   |
| Wetland 4  | 2.62           | acre(s) | (b)(1) Non-adjacent wetland. | Wetland 4 does not abut an (a)(1), (a)(2), or (a)(3) water, is not inundated by flooding from an (a)(1), (a)(2), or (a)(3) water in a typical year, and is not physically separated from an (a)(1), (a)(2), or (a)(3) water by a natural or artificial barrier. |

**III. SUPPORTING INFORMATION**

<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.





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

**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: [The applicant submitted the Wetland and Waterbody Delineation Report associated with Marion County Solar Project dated February 22, 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [The information provided by or on behalf of the applicant accurately reflects the District's conclusions on the AJD.](#)

- ☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- ☒ Photographs: [Aerial and Other: In report referenced above.](#)
- ☐ 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: [Figure No. 2 in report referenced above.](#)
- ☒ USFWS NWI maps: [Figure No. 3 in report referenced above.](#)
- ☒ USGS topographic maps: [Ohio 1:24K – Morral and Marion West Maps](#)

**Other data sources used to aid in this determination:**

| Data Source (select)                       | Name and/or date and other relevant information      |
|--|--|
| <a href="#">USGS Sources</a>               | <a href="#">N/A.</a>                                 |
| <a href="#">USDA Sources</a>               | <a href="#">N/A.</a>                                 |
| <a href="#">NOAA Sources</a>               | <a href="#">N/A.</a>                                 |
| <a href="#">USACE Sources</a>              | <a href="#">N/A.</a>                                 |
| <a href="#">State/Local/Tribal Sources</a> | <a href="#">N/A.</a>                                 |
| <a href="#">Other Sources</a>              | <a href="#">ORM – FEMA 100-year floodplain layer</a> |

**B. Typical year assessment(s):** [A typical year occurs over a rolling thirty year period and includes the analysis of precipitation and other climatic variables to establish a normal period range \(seasonally or annually\) for a specific geographic region where the aquatic resource occurs. One point-in-time data sources, one for 8 September 2020, with a corresponding APT report, were included in the evaluation for the streams listed in Section II C \(Streams 1-3\). According to the APT report of 9 December 2020, wetter than normal conditions were observed during the dry season with a PSDI Value of 0.96 \(incipient wetness\) and an ARC score of 17. The antecedent precipitation condition is considered “wetter than normal” for that point in time. Streams 1-3 exhibited flow within the stream channel which corresponds with the APT report conditions. Streams 1 and 2 contribute perennial flow downstream indirectly to the Scioto River, an \(a\)\(1\) water in a typical year. Stream 3 contributes intermittent flow downstream indirectly to the Scioto River, an \(a\)\(1\) water in a typical year. Therefore, Streams 1-3 are a \(a\)\(2\) waters.](#)

**C. Additional comments to support AJD:** [Portions of the proposed project area are located inside of the 100 year floodplain.](#)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 21-0036-EL-BGN**

Summary: Response - Second Supplemental Response to First Data Request from Staff of the Ohio Power Siting Board electronically filed by Christine M.T. Pirik on behalf of Marion County Solar Project, LLC