



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 11, 2020
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Jacksonville District, Sabana Seca Partners LLC, Toa Baja Solar Farm, Puerto Rico; SAJ-2020-01549
C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: Puerto Rico, County/parish/borough: Municipality of Toa Baja, City: N/A, Center coordinates of site (lat/long in degree decimal format): Lat. 18.43361° N, Long. -66.19860° E. Universal Transverse Mercator: Name of nearest waterbody: Cocal River, Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Atlantic Ocean, Name of watershed or Hydrologic Unit Code (HUC): 210100050714, [X] Check if map/diagram of review area and/or potential jurisdictional areas is/are 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): [X] Office (Desk) Determination. Date: May 5, 2020 [ ] Field Determination. Date(s):

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. [Required]
[ ] Waters subject to the ebb and flow of the tide.
[ ] Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

- a. Indicate presence of waters of U.S. in review area (check all that apply): 1
[ ] TNWs, including territorial seas
[ ] Wetlands adjacent to TNWs
[ ] Relatively permanent waters2 (RPWs) that flow directly or indirectly into TNWs
[ ] Non-RPWs that flow directly or indirectly into TNWs
[ ] Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
[X] Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
[ ] Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
[ ] Impoundments of jurisdictional waters
[ ] Isolated (interstate or intrastate) waters, including isolated wetlands

- b. Identify (estimate) size of waters of the U.S. in the review area:
Non-wetland waters: linear feet: width (ft) and/or acres.
Wetlands: 2.1 acres.

- c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
Elevation of established OHWM (if known):

- 2. Non-regulated waters/wetlands (check if applicable): 3
[X] Potentially jurisdictional waters and/or wetlands were assessed within the 279.1 acre review area and determined to be not jurisdictional. Explain: Aside from the 2.1 acre jurisdictional wetland, there are eight non-jurisdictional wetlands totaling 4.9 acres and 14 non-jurisdictional drainage ditches totaling 2,895.4 linear meters. Some of the ditches are concrete and some are earthen. The ditches were constructed in uplands to manage storm water during rain events.

1 Boxes checked below shall be supported by completing the appropriate sections in Section III below.
2 For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3 Supporting documentation is presented in Section III.F.

The site has been altered through different land uses. In the 1940s, it was part of the "Stephenson Place" where pineapple and grapefruit were cultivated. More recently, it was part of the former Sabana Seca Navy Base. There is a dirt road on the western edge of the site that bisects the site from the large wetland complex located to the west. The wetlands totaling 4.9 acres and ditches on the property do not have a surface water connection to navigable waters of the U.S. or tributaries of waters of the U.S. These waters are not hydrologically connected to other wetlands or waters of the U.S. and no hydric soil indicators were found between them or other jurisdictional wetlands. These waterbodies are not used by interstate or foreign travelers for recreational purposes, have no habitat or resources of special significance which would attract interstate or foreign travelers, do not support fish or shellfish which could be taken or sold in interstate or foreign commerce, and are not used for industrial, agricultural, or silvicultural activities involving interstate or foreign commerce. There are no discernable surface drainages connecting the eight wetlands totalling 4.9 acres or the 2,895.4 linear meters of ditches to a water of the U.S.

### **SECTION III: CWA ANALYSIS**

#### **A. TNWs AND WETLANDS ADJACENT TO TNWs**

**The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.**

**1. TNW**

Identify TNW: .

Summarize rationale supporting determination: .

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": .

#### **B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

**This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.**

**The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.**

**A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.**

**If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.**

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: 32.9 square miles

Drainage area: square miles

Average annual rainfall: 64.45 inches

Average annual snowfall: 0 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

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<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Tributary flows through 2 tributaries before entering TNW.

Project waters are 5-10 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 2-5 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: N/A.

Identify flow route to TNW<sup>5</sup>: Water in the 2.1 acre on-site jurisdictional wetland flows seasonally to an off-site wetland complex located to the west through a 30-inch diameter pipe that crosses under a dirt road. Water in the off-site wetlands flows seasonally via overland sheetflow. The sheetflow drains into a seasonal stream with defined bed and banks. The stream is a tributary to the Cocal River. The Cocal River drains into the Atlantic Ocean 6 river miles from the on-site 2.1 acre wetland.

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain: The upper segments, closer to the wetland were man-made.

The drainages are natural aquatic features that have been manipulated and straightened over time due to agriculture, infrastructure, and development.

Tributary properties with respect to top of bank (estimate):

Average width: feet

Average depth: feet

Average side slopes: **Pick List**

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: **Relatively straight**

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Seasonal flow**

Estimate average number of flow events in review area/year: **20 (or greater)**

Describe flow regime: Intermittent.

Other information on duration and volume:

Surface flow is: **Discrete and confined** Characteristics: There is a bed and bank and waters flow seasonally.

Subsurface flow: **Unknown** Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank  the presence of litter and debris  
 changes in the character of soil  destruction of terrestrial vegetation  
 shelving  the presence of wrack line  
 vegetation matted down, bent, or absent  sediment sorting  
 leaf litter disturbed or washed away  scour  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain:

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup> A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup> Ibid.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- |  |  |
|--|--|
| <input type="checkbox"/> High Tide Line indicated by:              | <input type="checkbox"/> Mean High Water Mark indicated by:            |
| <input type="checkbox"/> oil or scum line along shore objects      | <input type="checkbox"/> survey to available datum;                    |
| <input type="checkbox"/> fine shell or debris deposits (foreshore) | <input type="checkbox"/> physical markings;                            |
| <input type="checkbox"/> physical markings/characteristics         | <input type="checkbox"/> vegetation lines/changes in vegetation types. |
| <input type="checkbox"/> tidal gauges                              |  |
| <input type="checkbox"/> other (list):                             |  |

**(iii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Unknown.

Identify specific pollutants, if known: Unknown.

**(iv) Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics: Obligate, facultative wet, and facultative emergent vegetation exists along the unnamed tributary to the Cocal River. This area serves as important foraging habitat for federally listed and non-listed species.
- Habitat for:
- Federally Listed species. Explain findings: The Cocal River flows into the Atlantic Ocean. The offshore waters provide habitat for West Indian manatees, hawksbill sea turtles and leatherback sea turtles.
- Fish/spawn areas. Explain findings: There are both native and non-native species that inhabit waters of the U.S. between the wetland and the Atlantic Ocean.
- Other environmentally-sensitive species. Explain findings: This area contains habitat for many wildlife species endemic to Puerto Rico.
- Aquatic/wildlife diversity. Explain findings: The RPWs support an aquatic ecosystem containing plants, fish, invertebrates, amphibians, wading birds, raptors, and other avian species, and reptiles.

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

**(i) Physical Characteristics:**

**(a) General Wetland Characteristics:**

Properties:

Wetland size: 2.1 acre

Wetland type: Palustrine. Class: Emergent. Emergent wetlands are characterized by erect, rooted, herbaceous hydrophytes. These wetlands are usually dominated by perennial plants. Subclass: Persistent. The wetland is dominated by species that normally remain standing at least until the beginning of the next growing season. Class: In the upper part of the wetland, it is temporarily flooded. In the lower part of the wetland, it is semi-permanently flooded; the surface water persists throughout the growing season in most years.

Wetland quality. Explain: The wetland has been degraded by past land uses and infrastructure including agriculture, military uses, and the Navy's installation of the road on the western edge of the wetland. However, it is hydrologically connected to a large contiguous wetland that provides important water retention, water filtration, and biological functions.

Project wetlands cross or serve as state boundaries. Explain: No.

**(b) General Flow Relationship with Non-TNW:**

Flow is: **Ephemeral**. Explain: Flow occurs during large storm events during the wet season and occasionally outside of the wet season.

Surface flow is: **Overland sheetflow**

Characteristics: The 2.1 acre wetland contains an upper section with more slope than the lower area. In the upper section the slope ranges from southeast to northwest of 7.25 to 4.25 meters above mean sea level and a slight drainage ditch morphology. The upper section discharges into the lower part of the wetland, which slightly slopes from southeast to northwest of 4.25 to 2.0 meters above mean sea level. This wetland discharges to another wetland outside the study area through a 30-inch diameter pipe.

Subsurface flow: **Unknown** Explain findings:

- Dye (or other) test performed:

**(c) Wetland Adjacency Determination with Non-TNW:**

- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain: The 2.1-acre onsite wetland flows under a road through a culvert to the adjacent wetland complex that abuts a RPW.

- Ecological connection. Explain: The flora and fauna within the study area, through the significant nexus conveyance provide foraging and habitat for a variety of wildlife species including amphibians, birds, and invertebrates.
- Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are river miles from TNW: 6 river miles.  
 Project waters are aerial (straight) miles from TNW: 2.2 aerial miles.  
 Flow is from: Wetland to RPW to Navigable Water.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: Unknown.  
 Identify specific pollutants, if known: Unknown.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: Herbaceous vegetation 100%.
- Habitat for:
  - Federally Listed species. Explain findings: The adjacent wetland complex into which the 2.1 acre on-site wetland flows is designated, in accordance with the Endangered Species Act, as Critical Habitat for the llanero coqui (*Eleutherodactylus juanariveroi*). According to the U.S. Fish and Wildlife Service (IPac website), other listed species that may occur in this area include the Puerto Rican Boa (*Epicrates inornatus*) and the following flowering plants: *Saphnopsis helleriana*, *Banara vanderbiltii*, and *Ottoschulzia rhodoxylon*.
  - Fish/spawn areas. Explain findings: .
  - Other environmentally-sensitive species. Explain findings: This area contains habitat for 19 migratory birds (USFWS, IPaC).
  - Aquatic/wildlife diversity. Explain findings: Aquatic vertebrates and invertebrates are an important component in the herbaceous habitat.

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: The 2.1 acre on-site wetland as well as the adjacent 635-acre palustrine, emergent wetland. The wetlands are persistent and semipermanently flooded. Approximately 637 acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>
Adjacent Wetland	635	Y
Onsite wetland	2.1	N

Summarize overall biological, chemical and physical functions being performed: The 637 acres of wetlands serve as habitat for listed and non-listed species. The wetlands provide water quality treatment for storm water runoff, trap sediments, attenuate storm water to control flooding, and provide groundwater filtration and recharge.

C. **SIGNIFICANT NEXUS DETERMINATION**

**A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.**

**Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:**

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?

- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

The onsite wetland has the ability to significantly affect the chemical, physical, and biological integrity of the downstream TNW.

**Physical:** The 2.1 acre on-site wetland is connected to wetlands located to the west via a 30-inch diameter pipe under a dirt road. Water from these wetlands flows overland into a RPW that abuts the off-site wetlands. Both the NWI map and aerial photography show continuous wetlands between the 2.1 acre on-site wetland and the RPW that feeds into the Cocal River and then into the Atlantic Ocean. These on-site and off-site wetlands, along with the RPW, contribute fresh water in-flow into the TNW. The wetlands store flood water and recharge ground water, directly influencing fresh water flow rates into the RPW and downstream into the TNW. Stormwater retention in the wetlands helps minimize the risk of flooding to the housing communities located adjacent to the RPWs.

**Chemical:** The RPW and wetlands have the capacity to affect the chemical contributions to the TNW. Pollutant and nutrient loading into the TNW is directly affected by the quality of discharge from the RPW and wetland areas. The on-site 2.1 acre wetland, in combination with the similarly situated wetlands to the west, provides water quality treatment for stormwater runoff from adjacent lands and infrastructure. The wetlands trap sediments and nutrients creating pollution control. They help to remove contaminants from surface water that will flow into the river and recharge groundwater supplies.

**Biological:** The onsite and offsite wetlands intercept runoff from the surrounding uplands. This water helps to concentrate and route detritus from the uplands, as well as that produced within the wetland, to the waters and TNW further down the landscape. Specifically, large quantities of decomposing biomass are conveyed to the RPWs and TNW, thereby providing important primary productivity toward the biological maintenance of the food web supported by the TNW. These wetlands are of importance in the watershed as many of the historic wetlands were altered for agriculture, military, residential, transportation, and other purposes. The wetlands, along with the tributary system, provide important wildlife habitat, including breeding, nesting, and foraging habitat for insects, reptiles, amphibians, and mammals. As noted in the section above, the critical habitat of the llanero coqui, an endangered species, is located in the wetlands between the site and the RPW. These waters also provide important habitat for numerous native bird species that rely both on fresh water and salt water habitat.

Based on the biological, chemical, and physical functions described above, this office has concluded that a Significant Nexus exists between this on-site wetland, similarly situated adjacent wetlands, the RPWs, and the TNW.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):**

- 1. TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- TNWs:  
linear feet      width (ft), Or,      acres.
- Wetlands adjacent to TNWs:      acres.

- 2. RPWs that flow directly or indirectly into TNWs.**

- Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters:      linear feet      width (ft).
  - Other non-wetland waters:      acres.
- Identify type(s) of waters: .

3. **Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: **2.1** acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters: .

<sup>8</sup>See Footnote # 3.

<sup>9</sup> To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup> Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Wetlands:      acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in “*SWANCC*,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).
- Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: The waters did not provide any type of hydrologic connection to another water of the U.S. which flows to a Navigable water of the U.S.
- Other: (explain, if not covered above):      .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams):      linear feet      width (ft).
- Lakes/ponds:      acres.
- Other non-wetland waters:      acres. List type of aquatic resource:      .
- Wetlands:      acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams):      linear feet,      width (ft).
- Lakes/ponds:      acres.
- Other non-wetland waters: 2,895.4 linear meters. List type of aquatic resource: Drainage ditch.      .
- Wetlands: 4.9 acres.

**SECTION IV: 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: Sabana Seca Partners, LLC provided the following documents: *Jurisdictional Wetland and U.S. Waters Determination Study, Toa Baja Solar Farm, Sabana Seca Ward, Municipality of Toa Baja* prepared by Coll Rivera Environmental dated January 2020 and Letter dated April 28, 2020 from Coll Rivera Environmental with additional information regarding connection of on-site wetland to the Atlantic Ocean.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. Located in the report listed above.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:      .
- Corps navigable waters’ study:      .
- U.S. Geological Survey Hydrologic Atlas:      .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s).
- USDA Natural Resources Conservation Service Soil Survey.
- National wetlands inventory map(s).
- State/Local wetland inventory map(s):      .
- FEMA/FIRM maps:      .
- 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth Pro  
or  Other (Name & Date): Multiple photos included in report prepared by Coll Rivera Environmental.
- Previous determination(s). File no. and date of response letter:      .
- Applicable/supporting case law:      .
- Applicable/supporting scientific literature:      .
- Other information (please specify): U.S. Fish and Wildlife Service, IPaC website, May 2020.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

FIGURE 1: SITE LOCATION MAP (1:20,000)

Sabana Seca Partners, LLC, Toa Baja Solar Farm, Toa Baja, Puerto Rico, January 29, 2020, SAJ-2020-1549

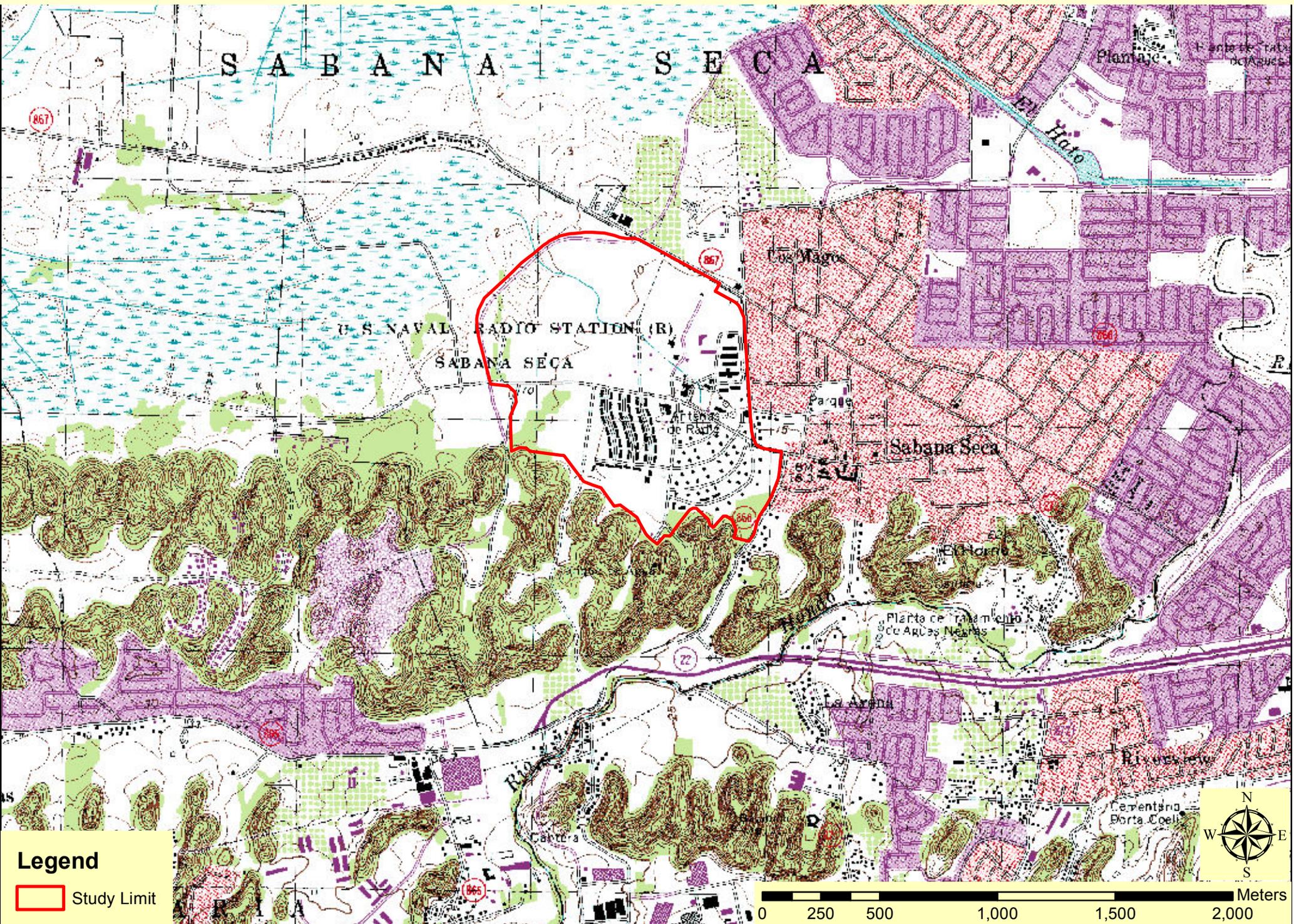
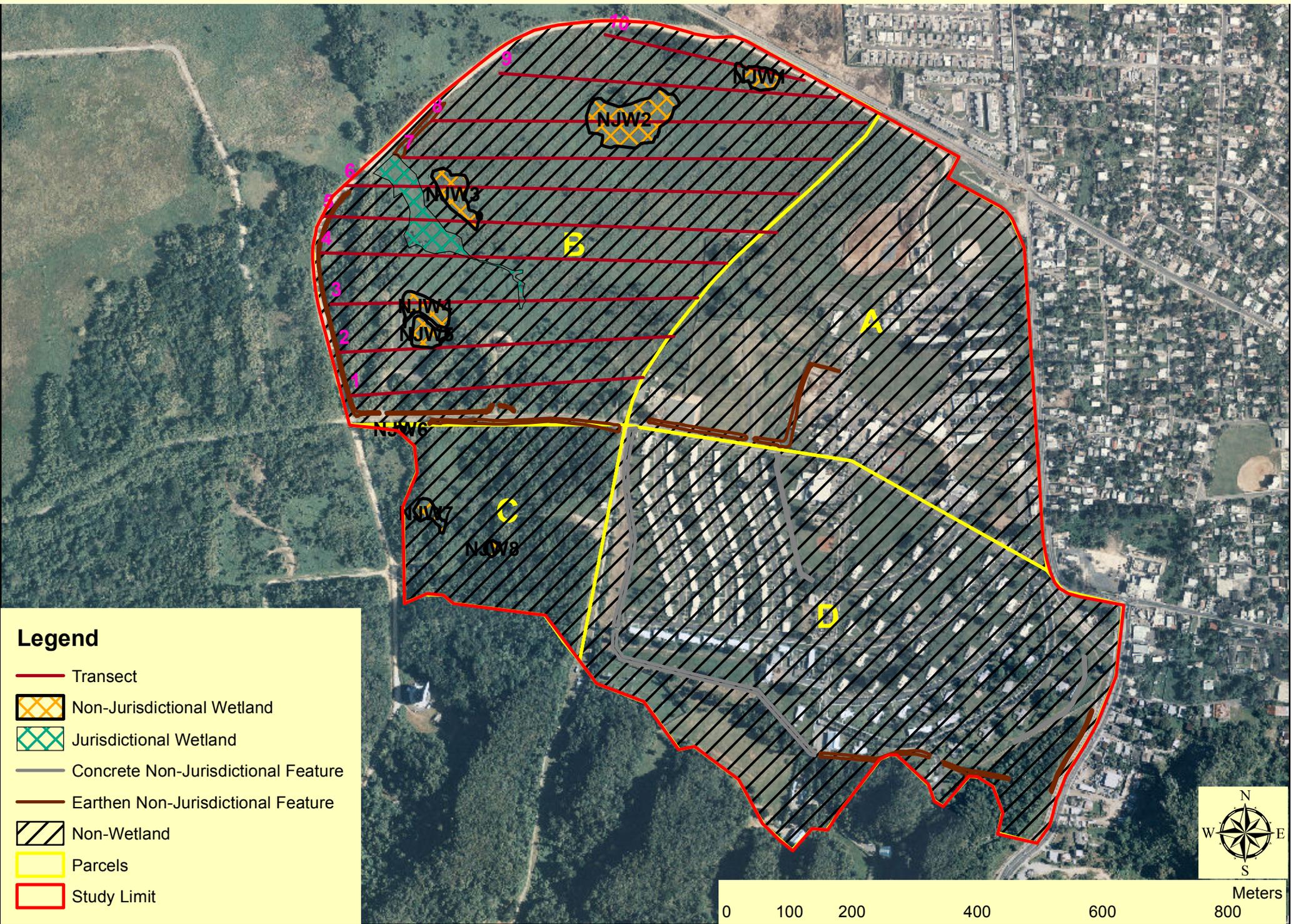


FIGURE 2: JURISDICTIONAL WETLANDS DETERMINATION MAP (1:7,500)

Sabana Seca Partners, LLC, Toa Baja Solar Farm, Toa Baja, Puerto Rico, January 29, 2020, SAJ-2020-1549



# FIGURE 3: JURISDICTIONAL WETLANDS DETERMINATION MAP PARCEL B

Sabana Seca Partners, LLC, Toa Baja Solar Farm, Toa Baja, Puerto Rico, January 29, 2020, SAJ-2020-1549

