Regulatory Program

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers
This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): FEB 0 1 2019

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAN-2017-01267-EME (Hempstead Lake State Park-Governor's Office of Storm Recovery (GOSR)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:NY County/parish/borough: Nassau City: Rockville Center
Center coordinates of site (lat/long in degree decimal format): Lat. 40.68802, Long. -73.64036.
Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: ☐ attached ☒ in report/map titled "Hempstead Lake State Park Northeast and Northwest Pond Rehabilitation and Enhancement Project: Wetland Delineation", dated December 2018 and revised January 24, 2019, prepared by Cashin Associates, P.C..
☐ Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:
☐ Office (Desk) Determination Only. Date: .
☒ Office (Desk) and Field Determination. Office/Desk Dates: October 10, 2018 Field Date(s): December 4, 2018.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: "Hempstead Lake State Park Northeast and Northwest Pond Rehabilitation and Enhancement Project: Wetland Delineation" location map, key map, Maps 2-8, Map 1A (sheets 1-2), and Map 1B (sheets 1-10).
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: "Hempstead Lake State Park" sheets U1-U16, dated October 11, 13, 17, 20, 23, 26, 2017, November 21, 2017, and December 5,2018; sheets W1--25, dated October 11, 13, 18, 20, 23, 26, 2017, and December 5, 2018.
☐ Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon: .
Revised Title/Date: .
☐ Data sheets prepared by the Corps. Title/Date: .
☐ Corps navigable waters study. Title/Date: .
☐ CorpsMap ORM map layers. Title/Date: .
☐ USGS Hydrologic Atlas. Title/Date: .
☐ USGS, NHD, or WBD data/maps. Title/Date: .
☐ USGS 8, 10 and/or 12 digit HUC maps. HUC number: .
☒ USGS maps. Scale & quad name and date: Topographic Maps on-line.
☒ USDA NRCS Soil Survey. Citation: NRCS Custom Soil Resource Report for Nassau County, New York, Hempstead Lake State Park, dated October 24, 2017.
☒ USFWS National Wetlands Inventory maps. Citation: US Fish and Wildlife Service, National Wetlands Inventory Map (produced by the on-line NWI mapper).

☒ State/Local wetland inventory maps. Citation: New York State Department of Environmental Conservation Freshwater Wetlands produced by ESRI).
☐ FEMA/FIRM maps. Citation: .
☒ Photographs: ☒ Aerial. Citation: Google Earth Image date September 27, 2017. or ☒ Other. Citation: Color photographs of the study area, unknown date.
☐ LiDAR data/maps. Citation: .
☐ Previous JDs. File no. and date of JD letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:
☐ "*navigable waters of the U.S.*" within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.
- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "*waters of the U.S.*" within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**
☐ (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))
- **Complete Table 1 - Required**

☐ This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

☐ (a)(2): All interstate waters, including interstate wetlands.
- **Complete Table 2 - Required**

☐ (a)(3): The territorial seas.
- **Complete Table 3 - Required**

☒ (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
- **Complete Table 4 - Required**

☒ (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 5 - Required**

☒ (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
- **Complete Table 6 - Required**

☒ Bordering/Contiguous.
Neighboring:
☒ (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
☐ (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
☐ (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

☐ (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

☐ The review area is comprised entirely of dry land.

☐ Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**

☐ Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

☐ Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):

- **Complete Table 10 - Required**

☐ (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.

☐ (b)(2): Prior converted cropland.

☐ (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.

☐ (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.

☐ (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).

☐ (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.

☐ (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.

☐ (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.[1]

☐ (b)(4)(iv): Small ornamental waters created in dry land.[1]

☐ (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.

☐ (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.[1]

☐ (b)(4)(vii): Puddles.[1]

☐ (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.[1]

☐ (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.[1]

☐ (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water

[1] In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

distributary structures built for wastewater recycling.

☐ Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).

- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: The Northeast Pond has a surface hydrolog connection to the Northwest Pond. The Northwest Pond flows underneath a culvert in the southwest corner, underneath the Southern State Parkway, and into Hempstead Lake. Hempstead Lake flows through the dam/culvert underneath the gate house on the southern shore of the lake, and into South Pond (note: there is no connection with McDonald Pond, which is not included in the wetland delineation or this jurisdictional deterimation). South Pond discharges through a culvert on the south shore of the pond, has a surface connection with culverts underneath Peninsula and Lakeview Roads, and discharges into Smith Pond. Smith Pond discharges through a culvert on the south side of the pond, underneath the Sunrise Highway (Hwy 27), and discharges into Mill River. Mill River is subject, in part, to the ebb and flood of the tide. Mill River maintains a surface connection from the culvert underneath the Sunrise Highway and flows into Hempstead Bay (a traditonal navigable water).

Hempstead Bay, Mill River, and Smith Pond are not within the delineated area

This Jurisdicational Determination covers South Pond, Hempstead Lake, Northwest Pond, Northeast Pond, and their adjacent waters.

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
South Pond (WAA-8, 10)	South Pond appears to be an impoundment of Mill River, a tributary of Hempstead Bay, with a dam/culvert located on both the southern and northern shores of the Pond.
Hempstead Lake (WAA-5, 6, 7)	Hempstead Lake appears to be an impoundment of Mill River, above South Pond, with a dam on the southern shore of the Lake.

Table 5. (a)(5)Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
Shodack Brook (WAA-9)	Intermittent	South Pond/Mill River	No	Shodack Brook has a OWHM, and surface flow discharges into South Pond/Mill River, which discharges into Hempstead Bay.

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Northeast Pond	Hempstead Lake	Northeast Pond (WAA-1-OW1) has a clearly defined OHWM and includes a mosaic of open water, emergent wetlands, scrub shrub wetlands, and forested wetlands, which were delineated using the 87' Manual/Northeast Regional Supplement. Adjacent waters also include the following aquatic features within or abutting its OHWM: WAA-1-E1, WAA-1-E2, WAA-1-E3, WAA-2-E1, WAA-2-E2, WAA-2-F1, WAA-3-SS1, and WAA-3-SS2. Aquatic feature WAA-2-F2 is a 'neighboring' water of WAA-1-OW1, located behind a berm, with approximately 95% of the feature within 100-feet of the OHWM. Northeast Pond (WAA-1-OW1) appears to have historically been the same features as Hempstead Lake/Mill River, but segregated as a result of the construction of the Garden State Highway. Northeast Pond (WAA-1-OW1) has a surface connection in two locations with Northwest Pond (contiguous feature), which has a surface connection with Hempstead Lake.
Northwest Pond (NW Pond, continued)	Hempstead Lake	Northwest Pond (WAA-4-OW1) has a clearly defined OHWM and includes a mosaic of open water, emergent wetlands and scrub shrub wetlands, which were delineated using the 87' Manual/Northeast Regional Supplement. Adjacent waters also include the following aquatic features within or abutting its OHWM: WAA-4-E1, WAA-4-E2, WAA-4-E3, WAA-4-E4, WAA-4-E5, WAA-4-E6, WAA-4-SS1, WAA-4-SS2, WAA-4-SS3, and WAA-4-SS4. Northwest Pond (WAA-4-OW1) appears to have historically been the same features as Hempstead Lake/Mill River, but segregated as a result of the construction of the Garden State Highway. Northwest Pond (WAA-4-OW1) has a surface connection Hempstead Lake, through an arch culvert in the southwest corner.

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

Waters_Name	State	Cowarc	Meas Ty	Amoun	Units	Waters_Type	Latitude	Longitude	Local Waterway	Ohw	Ohwr
2017-01267-WAA-1-E1	NY	L2EM-L	AREA	0.53	ACRES	A6BWB	40.69049	-73.63484	Hempstead Lake		
2017-01267-WAA-1-E2	NY	L2EM-L	AREA	0.43	ACRES	A6BWB	40.69127	-73.6375	Hempstead Lake		
2017-01267-WAA-1-E3	NY	L2EM-L	AREA	0.03	ACRES	A6BWB	40.68915	-73.6379	Hempstead Lake		
2017-01267-WAA-1-OW1	NY	L2OW-I	AREA	20.9	ACRES	A6BOHWM	40.69119	-73.63679	Hempstead Lake		YES
2017-01267-WAA-2-E1	NY	L2EM-L	AREA	0.16	ACRES	A6BWB	40.69424	-73.63444	Hempstead Lake		
2017-01267-WAA-2-E2	NY	L2EM-L	AREA	0.09	ACRES	A6BWB	40.69397	-73.6337	Hempstead Lake		
2017-01267-WAA-2-F1	NY	L2-LACI	AREA	1.96	ACRES	A6BWB	40.69385	-73.63427	Hempstead Bay		
2017-01267-WAA-2-F2	NY	L2-LACI	AREA	0.05	ACRES	A6N1WB	40.69312	-73.63447	Hempstead Bay		
2017-01267-WAA-3-SS1	NY	L2-LACI	AREA	1.02	ACRES	A6BWB	40.69239	-73.63878	Hempstead Lake		
2017-01267-WAA-3-SS2	NY	L2-LACI	AREA	1.3	ACRES	A6BWB	40.69334	-73.636	Hempstead Lake		
2017-01267-WAA-4-E1	NY	L2EM-L	AREA	4.29	ACRES	A6BWB	40.68887	-73.64197	Hempstead Lake		
2017-01267-WAA-4-E2	NY	L2EM-L	AREA	10.34	ACRES	A6BWB	40.69036	-73.64027	Hempstead Lake		
2017-01267-WAA-4-E3	NY	L2EM-L	AREA	3.08	ACRES	A6BWB	40.6864	-73.64126	Hempstead Lake		
2017-01267-WAA-4-E4	NY	L2EM-L	AREA	0.3	ACRES	A6BWB	40.68653	-73.64167	Hempstead Lake		
2017-01267-WAA-4-E5	NY	L2EM-L	AREA	0.04	ACRES	A6BWB	40.68642	-73.64115	Hempstead Lake		
2017-01267-WAA-4-E6	NY	L2EM-L	AREA	0.04	ACRES	A6BWB	40.69136	-73.63844	Hempstead Lake		
2017-01267-WAA-4-OW1	NY	L2OW-I	AREA	9.45	ACRES	A6BOHWM	40.68761	-73.64112	Hempstead Lake		YES
2017-01267-WAA-4-SS1	NY	L2-LACI	AREA	0.67	ACRES	A6BWB	40.68973	-73.64174	Hempstead Lake		
2017-01267-WAA-4-SS2	NY	L2-LACI	AREA	0.73	ACRES	A6BWB	40.69013	-73.64148	Hempstead Lake		
2017-01267-WAA-4-SS3	NY	L2-LACI	AREA	0.95	ACRES	A6BWB	40.68877	-73.6397	Hempstead Lake		
2017-01267-WAA-4-SS4	NY	L2-LACI	AREA	0.16	ACRES	A6BWB	40.69121	-73.63851	Hempstead Lake		
2017-01267-WAA-5, 6, 7	NY	L1-LACI	AREA	125.9	ACRES	A4	40.67887	-73.64451	Mill River		
2017-01267-WAA-8, 10	NY	L1OW-I	AREA	24.33	ACRES	A4	40.66748	-73.65177	Mill River		
2017-01267-WAA-9	NY	R1SB-R	AREA	0.61	ACRES	A5	40.67043	-73.65173	Hempstead Lake	YES	YES