



**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): 5/21/2021
 ORM Number: LRL-2008-01119-mlk
 Associated JDs: N/A
 Review Area Location¹: State/Territory: KY City: Covington County/Parish/Borough: Kenton
 Center Coordinates of Review Area: Latitude 38.999639 Longitude -84.519833

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A or describe rationale.
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Int 4	130 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 4 contributes flow to Holds Creek, to Banklick Creek, to the Licking River, which is a tributary to the Ohio River (a Traditionally Navigable Water or an (a)(1) water). Int 4 is six to ten feet wide with bank heights of one to two feet and a substrate of silt, sand, gravel, cobble and boulders. During the Agent’s delineation site visit on April 22, 2020, the channel contained flowing water with shallow pools of water up to six inches in depth which indirectly contributes to an (a)(1) water.

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

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ 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.



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Int 5	1,335	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 5 contributes flow to Holds Creek, to Banklick Creek, to the Licking River, which is a tributary to the Ohio River (a Traditionally Navigable Water or an (a)(1) water). Int 5 has an average width of seven feet, bankfull depth of three inches, and a silt, sand, gravel, cobble, boulder substrate. During the Agent's site visit on April 22, 2020, the channel contained a few small pools of water which indirectly contributes to an (a)(1) water.
Int 6	1,015	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 6 contributes flow to Holds Creek, to Banklick Creek, to the Licking River, which is a tributary to the Ohio River (a Traditionally Navigable Water or an (a)(1) water). Int 6 has an average width of 12.5 feet, bankfull depth of three inches, and a silt, sand, gravel, cobble, boulder substrate. During the site visit, the channel was dry but did exhibit intermittent characteristics which indirectly contributes to an (a)(1) water.
Int 7	200	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Int 7 contributes flow to Holds Creek, to Banklick Creek, to the Licking River, which is a tributary to the Ohio River (a Traditionally Navigable Water or an (a)(1) water). Int 7 has an average width of 10, bankfull depth of three inches, and a silt, sand, gravel, cobble, boulder substrate. During the Agent's site visit on April 22, 2020, the channel was dry but did exhibit intermittent characteristics which indirectly contribute to an (a)(1) water.
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
N/A.	N/A.	N/A.	N/A.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Eph 18	425	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 18 has an average width of 2.5 feet, an average bankfull depth of three inches, and a substrate consisting of silt. The drainage area is 3.31 acres (0.005

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			sq. mi.). Eph 18 only contains surface water flowing or pooling in direct response to precipitation. Eph 18 is a (b)(3) water and is therefore excluded from the Rule.
Eph 19	590	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 19 has an average width of 2.5 feet, an average bankfull depth of three inches, and a substrate consisting of silt and cobble. The drainage area is 5.61 acres (0.009 sq. mi.). Eph 19 only contains surface water flowing or pooling in direct response to precipitation. Eph 19 is a (b)(3) water and is therefore excluded from the Rule.
Eph 20	265	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 20 has an average width of 2.5 feet, a bankfull depth of three inches, and a substrate consisting of silt. The drainage area is 1.76 acres (0.003 sq. mi.). Eph 20 only contains surface water flowing or pooling in direct response to precipitation. Eph 20 is a (b)(3) water and is therefore excluded from the Rule.
Eph 21	165	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 21 has an average width of 2 feet, a bankfull depth of three inches, and a substrate consisting of silt, cobble, and some boulder. The drainage area is 2.38 acres (0.004 sq. mi.). Eph 21 only contains surface water flowing or pooling in direct response to precipitation. EPH 21 is a (b)(3) water and is therefore excluded from the Rule.
Eph 22	390	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 22 has an average width of 3 feet, a bankfull depth of three inches, and a substrate consisting of silt. The drainage area is 7.34 acres (0.011sq. mi.). Eph 22 only contains surface water flowing or pooling in direct response to precipitation. Eph 22 is a (b)(3) water and is therefore excluded from the Rule.
Eph 23	35	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool. Eph 23 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt, cobble, and some boulder. The drainage area is 1.23 acres (0.002 sq. mi.). Eph 23 only contains surface water flowing or pooling in direct response to precipitation. Eph 23 is a (b)(3) water and is therefore excluded from the Rule.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Eph 24	15	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 24 has an average width of 3 feet, a bankfull depth of three inches, and a substrate consisting of silt, cobble, and some boulder. The drainage area is 4.14 acres (0.006 sq. mi.). Eph 24 only contains surface water flowing or pooling in direct response to precipitation. Eph 24 is a (b)(3) water and is therefore excluded from the Rule.
Eph 25	80	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 25 has an average width of 1.5 feet, an average bankfull depth of three inches, and a substrate consisting of silt and cobble. The drainage area is 0.70 acres (0.001 sq. mi.). Eph 25 only contains surface water flowing or pooling in direct response to precipitation. Eph 25 is a (b)(3) water and is therefore excluded from the Rule.
Eph 26	25	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 26 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt and cobble. The drainage area is 0.28 acres (0.0004 sq. mi.). Eph 26 only contains surface water flowing or pooling in direct response to precipitation. Eph 26 is a (b)(3) water and is therefore excluded from the Rule.
Eph 27	155	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Eph 27 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt, cobble, and some boulder. The drainage area is 0.57 acres (0.001 sq. mi.). Eph 27 only contains surface water flowing or pooling in direct response to precipitation. Eph 27 is a (b)(3) water and is therefore excluded from the Rule.
Eph 28	420	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 28 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt, gravel, and cobble. The drainage area is 2.22 acres (0.003 sq. mi.). Eph 28 only contains surface water flowing or pooling in direct response to precipitation. Eph 28 is a (b)(3) water and is therefore excluded from the Rule.
Eph 29	125	linear feet	(b)(3) Ephemeral feature, including an	Eph 29 has an average width of 1 foot, a bankfull depth of three inches, and a substrate consisting of silt and cobble.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
		ephemeral stream, swale, gully, rill, or pool	The drainage area is 0.28 acres (0.0004 sq. mi.). Eph 29 only contains surface water flowing or pooling in direct response to precipitation. Eph 29 is a (b)(3) water and is therefore excluded from the Rule.
Eph 30	100	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool Eph 30 has an average width of 1 foot, a bankfull depth of three inches, and a substrate consisting of silt and cobble. The drainage area is 0.20 acres (0.0003 sq. mi.). Eph 30 only contains surface water flowing or pooling in direct response to precipitation. Eph 30 is a (b)(3) water and is therefore excluded from the Rule.
Eph 31	55	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool Eph 31 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt, gravel, and cobble. The drainage area is 0.29 acres (0.0005 sq. mi.). Eph 31 only contains surface water flowing or pooling in direct response to precipitation. Eph 31 is a (b)(3) water and is therefore excluded from the Rule.
Eph 32	410	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool Eph 32 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt, gravel, and cobble. The drainage area is 0.2.03 acres (0.003 sq. mi.). Eph 32 only contains surface water flowing or pooling in direct response to precipitation. Eph 32 is a (b)(3) water and is therefore excluded from the Rule.
Eph 33	145	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool Eph 33 has an average width of 1.5 feet, a bankfull depth of three inches, and a substrate consisting of silt. The drainage area is 2.52 acres (0.004 sq. mi.). Eph 33 only contains surface water flowing or pooling in direct response to precipitation. Eph 33 is a (b)(3) water and is therefore excluded from the Rule.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.



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Information submitted by, or on behalf of, the applicant/consultant: [Request for Jurisdictional Determination for Cortona at Tuscany Project dated May 27, 2020 and additional information dated March 16, 2021 and April 26, 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- Photographs: [Aerial: kygisserver.ky.gov ArcGIS services \(2018\)](#)
- Corps site visit(s) conducted on: [Date\(s\).](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [LRL-2008-1119-let dated October 9, 2008](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [SSURGO, Kenton County 2014](#)
- USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)
- USGS topographic maps: [1:24,000 – Covington and Independence, Kentucky Quadrangles](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	Weather Underground, Cincinnati/Northern Kentucky International Airport, accessed on April 23, 2021. https://www.wunderground.com/history/monthly/us/ky/hebron/KCVG/date/2020-4

B. Typical year assessment(s): [According to Weather Underground, Cincinnati/Northern Kentucky International Airport Station, 0.01 inches of precipitation was recorded on 4/21/2020 \(the day before the delineation site visit by the agent\) and no precipitation was recorded on 4/19/2020 or 4/20/2020. Based on the APT, conditions were normal during the wet season, which supports the conditions of the ephemeral tributaries as described above.](#)

C. Additional comments to support AJD: [It is noted that Int 4, Int 5 below the confluence with Int 4, all of Int 6 downstream of the powerline easement, and all of Int 7 are within an existing mitigation area associated with previously permitted phases of the Tuscany Development. These streams are protected through valid restrictive covenants held by the applicant. In addition, these tributaries have been monitored for 5 years or more and have significant data to support the \(a\)\(2\) determinations.](#)