



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): January 19, 2021

ORM Number: LRL-2019-00512

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: County/Parish/Borough: Jefferson County

Center Coordinates of Review Area: Latitude 38.223665 Longitude -85.712354

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
Intermittent 1 NWPR	345 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The tributary contains groundwater inputs in addition to surface drainage and serves as part of the cemetery's stormwater infrastructure. The tributary exits the property and drains directly into South Fork Beargrass Creek, a named perennial 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

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 independent 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.

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.



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

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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral 1 NWPR	107 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral tributary only conveys flow from Wetland 1 as a result of precipitation events and surface flow.
Ephemeral 2 NWPR	32 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral tributary only conveys flow from Wetland 2 as a result of precipitation events and surface flow
Wetland 1 NWPR	0.246 acres	(b)(1) Non-adjacent wetland	The wetlands only source of hydrological input is surface flow and direct precipitation and is not adjacent to an A1-A4 water.
Wetland 2 NWPR	0.008 acres	(b)(1) Non-adjacent wetland	The wetlands only source of hydrological input is surface flow and direct precipitation and is not adjacent to an A1-A4 water.

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.

Information submitted by, or on behalf of, the applicant/consultant: *Joint Preconstruction Notification for Nationwide Permit 39 and Application for Water Quality Certification submitted by Redwing Ecological Service, INC., dated May 9, 2019.*

This information is sufficient for purposes of this AJD.

Rationale: N/A

Data sheets prepared by the Corps: N/A

Photographs: *(aerial and other) Photographs submitted by Redwing Ecological Services, Inc., in the Preconstruction Notification. Desktop tools by USACE included; Google maps with terrain overlay and USACE Regulatory Viewer with 24K Topo footprint, FEMA National Flood Hazard, NHD, 3DEP elevation hill shade, and 3DEP elevation DEM layers.*

Corps Site visit(s) conducted on: N/A

Previous Jurisdictional Determinations (AJDs or PJDs): N/A

Antecedent Precipitation Tool: provide detailed discussion in Section III.B.

USDA NRCS Soil Survey: Title(s) and/or date(s).

USFWS NWI maps: <https://www.fws.gov/wetlands/Data/Mapper.html>

USGS topographic maps: 1:24K Quad Name Louisville East.

Other data sources used to aid in this determination:

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 independent 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.

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.



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

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	N/A.

- B. Typical year assessment(s):** Typical year assessment was conducted utilizing desktop and the submitted preconstruction notification. Based on the aforementioned supporting documentation, the conditions as described in *Part II: Findings* under *Section C Clean Water Act Section 404* and *Section D Excluded Waters or Features* were determined to be typical
- C. Additional comments to support AJD:** A desktop review of the proposed project site indicated the two identified wetlands sat high in the landscape as compared to the intermittent tributary. Photographs submitted by the applicant's agent provided a visual reference as to the depth of the tributary. FEME national flood hazard mapping showed the proposed project area in an area of minimal flood potential and a review of available topographic maps indicate a slightly sloping landscape. The only downstream connection to jurisdictional waters is via ephemeral tributaries that convey hydrology during precipitation events and area surface runoff. Given the above-mentioned factors and the Navigable Water Protection Rule (b)(3) jurisdictional exclusion of ephemeral tributaries, inundation of the identified wetlands would be unlikely and therefore considered non-jurisdictional.

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 independent 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.

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.