



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): November 13, 2020

ORM Number: LRL-2019-00095

Associated JDs: N/A

Review Area Location¹:

State/Territory: Kentucky City: Louisville County/Parish/Borough: Jefferson County

Center Coordinates of Review Area: Latitude 38.289337 Longitude -85.494876

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 1 NWPR	370 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 1 is two to three feet wide with bank heights of one to three feet and substrate consisting of silt, gravel, and cobble. During the site visit in November 2014, July 2018, February 2019 (with the USACE), and March 2019, the stream exhibited moderate to heavy flow with depths of one to three inches.
Int 2 NWPR	495 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 2 is six feet wide with bank heights of one to three feet and substrate consisting of silt, gravel, cobble, and bedrock. During the site visits in November 2014 and July 2018, the stream exhibited moderate to

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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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			heavy flow with depths of one to three inches.
Int 3 NWPR	820 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 3 is two to four feet wide with bank heights of one to three feet and substrate consisting of silt, gravel, cobble, and bedrock. During the site visits in November 2014 and July 2018, the stream exhibited trickle flow with mostly pooled water. This stream was originally delineated as ephemeral, but during the USACE site visit on February 19, 2019, it was determined to be intermittent. This stream was re-assessed by Redwing on March 1, 2019 and August 11, 2019 and was determined to have intermittent flow.
Int 4 NWPR	410 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 4 is two to three feet wide with bank heights of one to three feet and substrate consisting of silt, gravel, and cobble. During the site visits in November 2014 and July 2018, the stream exhibited moderate to heavy flow with depths of one to three inches.
Int 5 NWPR	105 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 5, located in the southwestern portion of the site, originates from a depressional wetland and flows west into Ephemeral Stream 4, which dissipates on the surface floodplain of Perennial Stream 1. Intermittent Stream 5 ranges from one to three feet wide with less than six inches banks and silt substrate. Intermittent Stream 5 was reviewed on August 11, 2020 and observations included flowing water at one inch with water dissipating at Ephemeral Stream 4.
Int 6 NWPR	345 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Intermittent Stream 6 is four to five feet wide with bank heights of one to three feet and substrate consisting of silt, gravel, and cobble. During the site visits in November 2014 and July 2018, the stream exhibited moderate to heavy flow with depths of one to three inches.
Perennial 1 NWPR	3000 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Perennial Stream 1 ranges from six to seven feet wide with one to eight-foot bank heights and silt, sand, gravel, and cobble substrate. During the site visits in November 2014, July 2018, February 2019 (with the USACE), March 2019, and August 2020, the stream exhibited flowing water with depths of six inches to two feet.
Perennial 2 NWPR	390 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Perennial Stream 2 ranges from three to six feet wide with one to three-foot bank heights and silt, sand, gravel, and cobble substrate. During the site visit on February 2019 (with the USACE) and March 2019, the stream exhibited flowing water with depths of two to six inches.

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

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Adjacent wetlands ((a)(4) waters):

(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wet 2 NWPR	0.011 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Adjacent to intermittent stream that drains to an ephemeral stream adjacent to Perennial Stream 1.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Eph 1 NWPR	225 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	During the USACE site visit on February 19, 2019, the USACE asked that the drainage be reviewed since it was not depicted on Redwing's current water/wetland map. Eph 1 was reviewed by Redwing on March 1, 2019 and August 11, 2020. Both of these dates were determined to be wetter than normal based on the Antecedent Precipitation tool. In March 2019, pooled water was observed and in August 2020, the stream was completely dry. Redwing determined the stream only contains surface water flowing or pooling in direct response to precipitation. Eph 1 is a (b)(3) water and is therefore excluded from the rule.
Eph 2 NWPR	410 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 2 was dry during the field assessments in November 2014 and July 2018. During the USACE site visit on February 19, 2019, the USACE agreed with ephemeral stream flow as the stream was dry. Eph 2 was reviewed on August 11, 2020 and was still dry. Both the February 2019 and August 2020 field dates were determined to be wetter than normal based on the Antecedent Precipitation tool. Eph 2 stream only contains surface water flowing or pooling in direct response to precipitation. Eph 2 is a (b)(3) water and is therefore excluded from the rule.
Eph 3 NWPR	240 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 3 is the surface portion of Int 3 that goes underground and re-appears after a head cut. During the USACE site visit on February 19, 2019, the USACE agreed with ephemeral stream flow as the stream was dry and water from Int 3 could be seen dissipating and then reappearing after the head cut below Eph 3. Eph 3 was reviewed on August 11, 2020 and was still dry. Both the February 2019 and August 2020 field dates were determined to be wetter than normal based on the Antecedent Precipitation tool. Eph 3 stream only contains surface water flowing or pooling in direct response to precipitation. Eph 3 is a (b)(3) water and is therefore excluded from the rule.
Eph 4 NWPR	145 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully,	During the site visits in November 2014 and July 2018, Eph 4 was dry. During the USACE site

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			visit on February 19, 2019, the USACE agreed with ephemeral stream flow as the stream had minimal water. Eph 4 was reviewed on August 11, 2020 and was dry. Both the February 2019 and August 2020 field dates were determined to be wetter than normal based on the Antecedent Precipitation tool. Eph 4 stream only contains surface water flowing or pooling in direct response to precipitation. Eph 4 is a (b)(3) water and is therefore excluded from the rule.
Eph 5 NWPR	175 feet	b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 5 was dry during the field assessments in November 2014 and July 2018. The July 2018 field data was determined to be normal conditions based on the Antecedent Precipitation tool. Eph 5 only contains surface water flowing or pooling in direct response to precipitation. Eph 5 is a (b)(3) water and is therefore excluded from the rule.
Eph 6 NWPR	80 feet	b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 6 was dry during the field assessments in November 2014 and July 2018. During the USACE site visit on February 19, 2019, the USACE agreed with ephemeral stream flow as the stream was dry. The February 2019 field date was determined to be wetter than normal based on the Antecedent Precipitation tool. Eph 6 stream only contains surface water flowing or pooling in direct response to precipitation. Eph 6 is a (b)(3) water and is therefore excluded from the rule.
Eph 7 NWPR	50 feet	b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 7 was dry during the field assessments in November 2014 and July 2018. The July 2018 field data was determined to be normal conditions based on the Antecedent Precipitation tool. Eph 7 only contains surface water flowing or pooling in direct response to precipitation. Eph 7 is a (b)(3) water and is therefore excluded from the rule.
Wet 1 NWPR	0.015 acres	(b)(1) Non-adjacent wetland	Adjacent to ephemeral stream only; not adjacent to jurisdictional tributary or water; Wet 2 is a (b)(1) water and is therefore excluded from the rule.

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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: *PCN for NWP 29 submitted January 2019 for the entire site; Revised PCN for NWP 29 submitted June 2019 for Phase IA; PCN for NWP 29 submitted August 2020, for Phase 2.*
This information is sufficient for purposes of this AJD.

Rationale: *N/A*

Data sheets prepared by the Corps:

Photographs: Aerial and Other: World Imagery - Esri GIS (2019) and site photographs November 14, 2014, July 3, 2018, February 19, 2019, March 1, 2019, and August 11, 2020.

Corps Site visit(s) conducted on *February 19, 2019 (NW portion of property excluded in visit).*

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: *SSURGO, Jefferson Co, KY (2008).*

USFWS NWI maps:

USGS topographic maps: *1:24K Crestwood, Kentucky.*

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	N/A.

B. Typical year assessment(s): Typical year assessment was conducted utilizing desktop tools, the submitted PCN by Redwing Ecological Services, Inc., and previous coordination conducted during phase 1 of the authorized residential development dated July 31, 2019. 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: *N/A*

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