



**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): 3/2/2021
 ORM Number: LRL-2020-00090-mlk
 Associated JDs: PJD dated May 5, 2020
 Review Area Location¹: State/Territory: KY City: Louisville County/Parish/Borough: Jefferson
 Center Coordinates of Review Area: Latitude 38.281056 N Longitude -85.62683 W

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	247	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
			The APT determined that conditions were wetter than normal during the dry season at the time of the agents visit on September 10, 2020. This tributary exhibited flow more than in response to precipitation as noted by the absence of precipitation at least 5 days prior to the agents site visit. This intermittent tributary appeared to have a typical amount of flowing water. The retention pond directly upstream of this tributary also increases the duration of base flow within the stream which contributes to the exhibited intermittent flow regime. Additionally, the

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.



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

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
			stream has an order and morphology typical of intermittent streams in the region.

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.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	0.498 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year.	Wetland 1 flows to Wetland 2 and then through two offsite culverts, through another offsite wetland, to a retention pond that is directly abutting an intermittent tributary (Intermittent 1). See Sections B and C for further description and APT results.
Wetland 2	0.011 acre(s)	(a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year.	Wetland 2 flows through two offsite culverts, through another offsite wetland, to a retention pond that is directly abutting an intermittent tributary (Intermittent 1). See Sections B and C for further description and APT results.

D. Excluded Waters or Features



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

Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Ephemeral 1	57	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.
			Ephemeral 1 only contains surface water flowing or pooling in direct response to precipitation. Ephemeral 1 is approximately 3 feet wide with one to two-foot banks and silt substrate and flows into Wetland 1. During the Agent’s delineation site visit on December 4, 2019, the channel contained few pools of water which was a direct response to the precipitation event which occurred on December 1 and 2 totaling 1.64 inches. The APT determined that it was wetter than normal during the wet season at the time of the agents delineation site visit. In addition, Corps personnel visited the site on February 26, 2020 and observed little water within the channel. Prior to the Corps site visit, it had rained approximately 0.75 inches the day before on February 26, 2020. Based on the site photos, Corps site visit and the streams direct response to precipitation and the APT assessment, this feature 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.

Information submitted by, or on behalf of, the applicant/consultant: [Request for Jurisdictional Determination dated January 21, 2020.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

Photographs: [Aerial and Other: Title\(s\) and/or date\(s\).](#)

Corps site visit(s) conducted on: [Date\(s\).](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [LRL-2020-00090 dated May 5, 2020.](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\).](#)

USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)

USGS topographic maps: [1:24K; ANCHORAGE](#)

Other data sources used to aid in this determination:

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	Weather Underground Precipitation Data (WUHPD) accessed on December 29, 2020.; Louisville/Jefferson County Information Consortium (LOJIC Online) accessed on August 25, 2020.

B. Typical year assessment(s): The Antecedent Precipitation Tool (APT) was utilized for the day of the Corps site visit (February 26, 2020), the Agent’s delineation visit (December 4, 2019) and a subsequent site visit by the Agent (September 10, 2020). Review of the APT determined that the Corps site visit was during typical year conditions during the wet season. The APT determined that conditions at the time of the Agent’s delineation site visit were wetter than normal during the wet season. Lastly, the APT determined that conditions during the subsequent site visit by the agent, conditions were wetter than normal during the dry season.

C. Additional comments to support AJD: WUHPD was reviewed for precipitation totals leading up to the day of the Agent’s delineation and the Corps site visit. According to the WUHPD, the Louisville International Airport Weather Station, located approximately 8.50 miles from the project site, recorded 1.64 inches of rain prior to the Agent’s delineation visit (December 4, 2019), 0.75 inches of rain prior to the Corps site visit (February 26, 2020) and no rain fall prior to the agents second site visit (September 10, 2020).

In order to determine the jurisdictional status of the site in question, the waters offsite had to be reviewed. The agent visited the offsite waters on September 10, 2020. The agent determined that Wetlands 1 and 2 flow through a culvert under Herr Lane to another wetland area which flows downstream directly to a retention basin. The retention basin is connected directly to an intermittent tributary which flows through another culvert under HWY 22 and continues downstream through a series of open water channels and culverts until it confluences with Goose Creek, which is a direct tributary to the Ohio River (a Traditionally Navigable Water). Based on the agents subsequest site visit on September 10, 2020 and the Corps site visit, there isn’t a break in Wetland 1 and 2 to the downstream waters. Wetlands 1 and 2 flow through a culvert under Herr Lane directly into another wetland which is directly connected to the exsiting retention basin. The tributary downstream (Intermittent 1) of the offsite retention pond had pooled and flowing water at the time of the agents subsequent site visit. The APT determined that conditions were wetter than normal during the dry season. However, due to the lack of rain at least 5 days prior to the agents subdequent site visit, this intermittent tributary appeared to have a typical amount of flowing water. In addition, the retention pond directly upstream is artificially increasing the duration of the flow into the stream which would contribute to a more regular flow and typical conditions of that stream channel; thus the stream would have intermittent flow and would be an a)(2) Intermittent tributary that contributes surface water flow directly or indirectly to an (a)(1) water in a typical year. In addition, the stream has an order and morphology typical of intermittent streams in the region. Thus, because of the jurisdiction of intermittent stream, and the connection of Wetland 1 and 2 to the tribtuary, Wetland 1 and 2 would be jurisdictional by the following: an (a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water, in a typical year.



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