



**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): 7/15/2020

ORM Number: LRL-2020-500-jwr

Associated JDs: N/A

Review Area Location¹: State/Territory: Kentucky City: Lexington County/Parish/Borough: Fayette

Center Coordinates of Review Area: Latitude 38.029 Longitude -84.415

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
- 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
Brighton Tributary	3,807	linear feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.
Unnamed Intermittent	551	linear feet	(a)(2) Intermittent tributary contributes

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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			surface water flow directly or indirectly to an (a)(1) water in a typical year.	presence of flowing water, a well-defined bed and bank, and meanders that indicate frequent flow.
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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	
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	
Freshwater Pond	0.75 acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	The pond is positioned 1027 linear feet north east of the nearest jurisdictional water. Based on observations on-site, July 8, 2020, the ponds only potential surface connection to jurisdictional waters is through a surface flow route demonstrating marginal characteristic associated with ephemeral tributaries.	
Ephemeral 1	523 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The channel consist of a shallow bed and bank and an OHWM observable due to the change in vegetation around the tributary. However, there was measurable rainfall in the days leading up to the site visit and the channel was dry indicating no input other than surface flow from precipitation events.	
Ephemeral 2	1027 linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	The channel begins at the west side of the above mentioned freshwater pond and appears to contain flow during precipitation events and flooding resulting in freshwater overflow. The channel loses any defining characteristic as it continues west toward Brighton tributary. There was measurable rainfall in the days leading up to the site visit and the channel was dry indicating	

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
			no input other than surface flow from flooding or precipitation events.

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: [Aerial Map; July 9, 2020](#)
This information [is](#) sufficient for purposes of this AJD.
Rationale: [N/A](#)
- Data sheets prepared by the Corps: [N/A](#)
- Photographs: [Aerial and Other: Google Earth Pro, Observation Report photos submitted by applicant June 24, 2020. Photos taken at site visit by Corps representative on July 8, 2020.](#)
- Corps site visit(s) conducted on: [July 8, 2020.](#)
- 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: [NWI Map July 7, 2020.](#)
- USGS topographic maps: [1:24K Quad Name: Lexington East](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Stream stats	Water Watch; Stream flow conditions – Historical stream flow data.
USDA Sources	N/A.
Other NOAA data (specify)	Climate Data Online; climate normal 1981 - 2010
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): [The APT was utilized for the site visit conducted on July 8, 2020. The data show normal climatic conditions for that time, which indicates the hydrologic conditions observed are considered “typical” for the time of year. In addition, stream flow data for the week of July 8, 2020 was compared to historical data using the USGS waterwatch tool. Stream flow conditions for Elkhorn Creek were in the 70th percentile indicating normal flow conditions during the time of the site visit.](#)

C. Additional comments to support AJD: [N/A](#)