



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): October 1, 2020  
ORM Number: LRL-2020-00513  
Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)  
Review Area Location<sup>1</sup>:  
State/Territory: KY City: County/Parish/Borough: Fayette County  
Center Coordinates of Review Area: Latitude 38.084131 Longitude -84.525436

**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)<sup>2</sup>**

§ 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)<sup>3</sup>

(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
Perennial Stream 1	2770 feet	(a)(1) Water is currently used, was used in the past, or may be susceptible to use in interstate or foreign commerce, including waters subject to the ebb and flow of the tide (CWA Section 404 only)	Hydrology is present throughout the year and is discernable in historical aerial imagery. A site visit was conducted by Corps personnel on August 26, 2020 confirming results from desktop tools. The tributary exits the proposed property to the west and transverses the landscape till reaching Towne Branch. Flow continues to Elkhorn Creek, a tributary of the Kentucky River.

Tributaries ((a)(2) waters):

(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Intermittent 1	480 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent stream was identified in the eastern portion of the site originating from a culvert beneath the railroad and flowing west for 480 linear feet. Based on historical aeriels, dating back to 1949, the tributary was constructed within a natural stream avoiding the

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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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			alteration of the natural hydrological pathway. A site visit was conducted on August 26, 2020 by Corps personnel, an expression point was identified at the base on the concrete lined tributary indicating a hydrological source other than surface flow due to precipitation events. During the site visit hydrology was present in the tributary while surrounding waters identified as ephemeral were dry indicating additional inputs. In addition, flow observed exiting beneath the concrete lining provided a clear hydrological pathway consistence with the natural stream.
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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
Pond 1	1.091 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Pond 1 contributes surface water flow directly to an (a)(1) water in a typical year.
Pond 2	1.294 acres	(a)(3) Lake/pond or impoundment of a jurisdictional water contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Pond 2 contributes surface water flow directly to an (a)(1) water in a typical year.

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))<sup>4</sup>:

Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Ephemeral 1	1035 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral 1 runs south to north along the eastern edge of the proposed property till reaching an intermittent tributary entering the property from the east. Based on a site visit conducted by Corps personnel on August 26, 2020, the tributary was dry without a noticeable ground water input indicating precipitation events are the primary hydrological input.
Ephemeral 2	320 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Based on a site visit conducted by Corps personnel on August 26, 2020, the tributary was dry without a noticeable ground water input indicating precipitation events are the primary hydrological input. Ephemeral 2 flows between intermittent 1 and perennial 1 under 2 bridges. Based on the site visit, flow from intermittent 1 is distributed into the channel where it is then absorbed into the landscape. Ephemeral 2 ends upstream where ground water inputs begin contributing to the hydrology of perennial 1. Ephemeral 2 displayed staining on the rip-rap lined channel indicated frequent flow. However,

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			no input other than surface flow indicators was observed within the identified reach of ephemeral 2.
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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 Spring Lake Development\_6-16-20, dated June 18, 2020 (withdrawn August 14, 2020).*

This information *is and is not* sufficient for purposes of this AJD.

Rationale: *The submitted PCN correctly identified waters on-site but identified flow regime incorrectly for some waters resulting in a necessary site visit by Corps personnel.*

Data sheets prepared by the Corps: *Title(s) and/or date(s).*

Photographs: *PCN Spring Lake Development\_6-16-20, dated June 18, 2020 (withdrawn August 14, 2020), Photos taken by Corps personnel during site visit conducted on August 26, 2020, Google Earth Pro, and Historical Aerials.*

Corps Site visit(s) conducted on: *August 26, 2020.*

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

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

USDA NRCS Soil Survey: *N/A*

USFWS NWI maps: <https://www.fws.gov/wetlands/Data/Mapper.html>. *(R4SBC)*

USGS topographic maps: *Earth Point Topo Map (Google Earth Pro) USGS 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	<a href="https://www.historicaerials.com/viewer">https://www.historicaerials.com/viewer</a> <a href="https://www.wunderground.com/history/weekly/KLEX/date/2020-8-26">https://www.wunderground.com/history/weekly/KLEX/date/2020-8-26</a>

**B. Typical year assessment(s):** Typical year assessment was conducted utilizing submitted documentation by the applicant's agent, desktop tools listed above, and an on-site visit by Corps personnel. Observation made on-site were consistent with historic aerial imagery. In in days leading up to the site visit by Corps personnel approximately 0.37 inches of precipitation was recorded in the Lexington, Fayette County, Kentucky area. Aquatic resources identified as ephemeral were dry during the site visit indicating surface flow following a precipitation event as the primary source of hydrology. Aquatic resources displaying hydrology were inspected further and determined to be jurisdictional. When on-site observations were compared to historical data, dating back to 1949, for the proposed property the conditions were determined to be typical.

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**C. Additional comments to support AJD: N/A**

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