



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): 20-NOV-2020

ORM Number: LRL-2020-00714

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Independence County/Parish/Borough: Kenton County

Center Coordinates of Review Area: Latitude 38.948759 Longitude -84.599103

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 Stream 1	1700 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream-1 is a (a)(2) water and exhibits ground water influenced intermittent flow.
Intermittent Stream 3	1440 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream-3 is a (a)(2) water and exhibits ground water influenced intermittent flow.
Intermittent Stream 4	335 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Intermittent Stream-4 is a (a)(2) water and exhibits ground water influenced intermittent flow.

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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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Perennial Stream 1	1555 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Perennial Stream-1 is a (a)(2) water and exhibits perennial 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
Wetland 2	0.039 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wetland-2 is a (a)(4) water with a connection 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
Ephemeral Stream 1	110 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-1 is not a (a)(1-4) water. Ephemeral Stream-1 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 10	230 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-10 is not a (a)(1-4) water. Ephemeral Stream-10 has a precipitation influenced ephemeral flow regime and loses OHWMs prior to entering Intermittent Stream-1.
Ephemeral Stream 11	320 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-11 is not a (a)(1-4) water. Ephemeral Stream-11 has a precipitation influenced ephemeral flow regime and a discontinuous OHWM.
Ephemeral Stream 12	170 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-12 is not a (a)(1-4) water. Ephemeral Stream-12 has a precipitation influenced ephemeral flow regime and a discontinuous OHWM.
Ephemeral Stream 13	30 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-13 is not a (a)(1-4) water. Ephemeral Stream-13 has a precipitation influenced ephemeral flow regime and a discontinuous OHWM.
Ephemeral Stream 14	170 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-14 is not a (a)(1-4) water. Ephemeral Stream-14 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 15	180 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-15 is not a (a)(1-4) water. Ephemeral Stream-15 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 16	200 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-16 is not a (a)(1-4) water. Ephemeral Stream-16 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 17	25 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-17 is not a (a)(1-4) water. Ephemeral Stream-17 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 18	45 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-18 is not a (a)(1-4) water. Ephemeral Stream-18 has a precipitation influenced ephemeral flow regime.
Ephemeral	750 feet	(b)(3) Ephemeral feature, including	Ephemeral Stream-19 is not a (a)(1-4) water.

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Stream 19		an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-19 is the upper reach of Intermittent Stream-1 and has a precipitation influenced ephemeral flow regime. Ephemeral Stream-19 changes to Intermittent Stream-1 at a ground water seep.
Ephemeral Stream 2	20 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-2 is not a (a)(1-4) water. Ephemeral Stream-2 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 20	80 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-20 is not a (a)(1-4) water. Ephemeral Stream-20 receives precipitation influenced drainage from Open Water-3 and the surrounding area. Drainage from Ephemeral Stream-20 eventually reaches Ephemeral-16 via a swale lacking OHWMs.
Ephemeral Stream 3	35 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-3 is not a (a)(1-4) water. Ephemeral Stream-3 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 4	180 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-4 is not a (a)(1-4) water. Ephemeral Stream-4 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 5	265 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-5 is not a (a)(1-4) water. Ephemeral Stream-5 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 6	20 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-6 is not a (a)(1-4) water. Ephemeral Stream-6 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 7	65 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-7 is not a (a)(1-4) water. Ephemeral Stream-7 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 8	35 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-8 is not a (a)(1-4) water. Ephemeral Stream-8 has a precipitation influenced ephemeral flow regime.
Ephemeral Stream 9	820 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Ephemeral Stream-9 is not a (a)(1-4) water. Ephemeral Stream-9 has a precipitation influenced ephemeral flow regime.
Intermittent Stream 6	170 feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) sub-categories	Intermittent Stream-6 is not a (a)(1-4) water. Intermittent Stream-6 lacks OHWMs. Intermittent Stream-6 has a groundwater influenced PEM wetland at the head of the channel, but the wetland drainage does not develop continuous OHWMs within the channel.
Open Water 1	0.13 acres	(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	Open Water-1 is not a (a)(1-4) water. Open Water-1 does not have a direct surface connection to downstream waters.
Open Water 2	0.115 acres	(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	Open Water-2 is not a (a)(1-4) water. Open Water-2 does not have a direct surface connection to downstream waters.
Open Water 3	0.195 acres	(b)(1) Lake/pond or impoundment	Open Water-3 is not a (a)(1-4) water. Open Water-3

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		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	does not have a direct surface connection to downstream waters.
Open Water 4	0.205 acres	(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	Open Water-4 is not a (a)(1-4) water. Open Water-4 does not have a direct surface connection to downstream waters.
Wetland 1	0.028 acres	(b)(1) Non-adjacent wetland	Wetland-1 is not a (a)(1-4) water. Wetland-1 is a fringe wetland around Open water-1 and does not have a direct surface connection to downstream waters.
Wetland 3	0.022 acres	(b)(1) Non-adjacent wetland	Wetland-3 is not a (a)(1-4) water. Wetland-3 does not have a direct surface connection to downstream waters, was separated from Perennial Stream-1 by multiple berms/rises in topography, and would not be inundated by an (a)(1-3) water in a typical year.
Wetland 4	0.012 acres	(b)(1) Non-adjacent wetland	Wetland-4 is not a (a)(1-4) water. Wetland-4 receives flow from a ground water seep and drains into a drainage feature which lacks OHWMs.

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: *861 East Mt. Zion Road Property: Addendum to Preconstruction Notification for Nationwide Permit 39. Submitted by Redwing Ecological Services, Inc. Dated September 30, 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) Google Earth, 2020; Photos submitted by the applicant.*

Corps Site visit(s) conducted on: *September 18, 2020.*

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: *Title(s) and/or date(s).*

USFWS NWI maps: *Title(s) and/or date(s).*

USGS topographic maps: *1:24,000, Independence, KY*

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.

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USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** The PDSI Index indicates “Severe Wetness” at the project location. The Web WIMP H2O Balance indicates the determination was conducted during a dry season. The Antecedent Precipitation Tool determined that during the 30 days prior to the date of the site visit (September 18, 2020) wet conditions existed at the project site and for the previous 90 days the site was wetter than normal.
- C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.

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