



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): 11-FEB-2021

ORM Number: LRL-2021-00036-MAD

Associated JDs: N/A

Review Area Location¹:

State/Territory: Kentucky City: County/Parish/Borough: Oldham

Center Coordinates of Review Area: Latitude: 38.337201° Longitude: -85.573117°

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 | 2595 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 three to eight feet wide with one to twelve foot bank heights and substrate consisting of silt, gravel, cobble, boulder, and bedrock. During the field assessment, Intermittent Stream 1 contained flowing water at six inches. The stream exhibited morphology typical of intermittent stream in the region including continuous bed and bank, presence of substrate sorting, width and depth of ordinary high water mark, and the amount of flowing water observed during the site visit. The stream flows directly into Perennial 1, an (a) (2) water. |
| Intermittent 2 | 170 feet | (a)(2) Intermittent tributary | Intermittent Stream 2 is two to three feet wide with one |

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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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| | | contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | to two foot bank heights and substrate consisting of silt, gravel, and bedrock. During the field assessment, Intermittent Stream 2 contained flowing water at one to three inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 1, an (a) (2) water. |
| Intermittent 3 | 50 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 two to five feet wide with one foot bank heights and substrate consisting of silt and cobble. The stream starts at a rock/stone wall seep. During the field assessment, Intermittent Stream 3 contained a damp stream bed with a small pool of water less than one inch. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 2, an (a) (2) water. |
| Intermittent 4 | 20 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 one to two feet wide with bank heights of less than a half foot and substrate consisting of silt with cobble. Intermittent Stream 4 originates at a spring house. During the field assessment, Intermittent Stream 4 contained flowing water at one to two inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 1, an (a) (2) water. |
| Intermittent 5 | 30 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Intermittent Stream 5 is one to four feet wide with bank heights of less than a half foot and substrate consisting of mostly silt. Intermittent Stream 5 originates at a rock seep. During the field assessment, Intermittent Stream 5 contained flowing water at one to two inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 1, an (a) (2) water. |
| Intermittent 6 | 40 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Intermittent Stream 6 is three feet wide with one foot bank heights and substrate consisting of silt and cobble. During the field assessment, Intermittent Stream 6 contained flowing water at one to three inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 1, an (a) (2) water. |
| Intermittent 7 | 1550 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Intermittent Stream 7 is one to eight feet wide with one to three foot bank heights and substrate consisting of silt, gravel, cobble, and bedrock. During the field assessment, Intermittent Stream 7 contained flowing water at one to four inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Perennial 1, an (a) (2) water. |
| Intermittent 8 | 35 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Intermittent Stream 8 is two feet wide with bank heights of less than a half foot and substrate consisting of silt. During the field assessment, Intermittent Stream 8 contained flowing water at one to two inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows directly into Intermittent 7, an (a) (2) water. |

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| Intermittent 9 | 820 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Intermittent Stream 9 is two to four feet wide with bank heights of less than a half foot and substrate consisting of silt and gravel. During the field assessment, Intermittent Stream 9 contained flowing water at one to four inches. The stream exhibited morphology typical of intermittent stream in the region. The stream flows west offsite and directly into Harrod's Creek, an (a) (2) water. |
| Perennial 1 | 565 feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Perennial Stream 1 ranges from eight to ten feet wide with one to three foot bank heights and gravel, cobble, and bedrock substrate, and has a morphology typical of upper perennial streams in the region. During the field assessment, Perennial Stream 1 contained flowing water at six inches. Perennial Stream 1 originates at the confluence of Intermittent 1 and Intermittent 7, and flows into Harrods Creek, and then onto the Ohio River, an (a) (1) water. |

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 | 0.032 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland 1 is an emergent wetland that directly abuts Intermittent Stream 1, an (a) (2) water. |
| Wetland 2 | 0.018 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland 2 is an emergent wetland that directly abuts Intermittent Stream 1 an (a) (2) water |
| Wetland 3 | 0.03 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland 3 is an emergent wetland that directly abuts to Intermittent Stream 9, an (a) (2) water. |
| Wetland 4 | 0.069 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland 4 is an emergent wetland that directly abuts Intermittent Stream 9, an (a) (2) water. |
| Wetland 5 | 0.353 acres | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland 5 is an emergent wetland that directly abuts to Intermittent Stream 9, an (a) (2) water. |

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
|----------------|----------------|--|--|
| Ephemeral 1 | 205 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral 1 is a first order stream, has a morphology typical of ephemeral stream in the region, and only contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. These stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry. |
| Ephemeral 2 | 130 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, | Ephemeral 2 is a first order stream, has a morphology typical of ephemeral stream in the region, and only |

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| | | rill, or pool | contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. The stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry. |
| Ephemeral 3 | 65 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral 3 is a first order stream, has a morphology typical of ephemeral stream in the region, and only contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. The stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry except for a small portion of pooled water. |
| Ephemeral 4 | 90 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral 4 is a first order stream, has a morphology typical of ephemeral stream in the region, and only contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. The stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry. |
| Ephemeral 5 | 140 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral 5 is a first order stream, has a morphology typical of ephemeral stream in the region, and only contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. The stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry. |
| Ephemeral 6 | 40 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral 6 is a first order stream, has a morphology typical of ephemeral stream in the region, and only contains surface water flowing or pooling in direct response to precipitation. The stream exhibits widths ranging from one to five feet and bank heights ranging from less than six inches to three feet. The stream exhibit silt bottoms with minimal gravel and cobble substrate. During the field assessment, the stream was dry. |
| Ephemeral 7 | 110 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 7 is a man-made, concrete outlet of Open Water Pond 1 that has a concrete and riprap channel bottom. The stream only contains surface water flowing or pooling in direct response to precipitation that causes Open Water 1 to overflow into the man-made spillway. |
| Open Water 1 | 1.957 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not | Open Water Pond 1 is a man-made pond dug in uplands between 2016 and 2017. The outlet is Ephemeral Stream 7, a (b)(3) excluded feature, that only flows in direct response to heavy precipitation |

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| | | an impoundment of a jurisdictional water that meets (c)(6) | causing the pond to overflow into the spillway. |
|--|--|--|---|

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 for Norton Commons Hamlet dated December 23, 2020 submitted by Redwing Ecological Services, Inc.*
This information (*is/is not/is and is not*) sufficient for purposes of this AJD.
Rationale: *N/A or describe rationale for insufficiency (including partial insufficiency).*
- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: (*aerial and other*) *Photographs dated 12/9-10/2020 included with the JD Request; Google Earth aeriels dated (6/6/2020, 2/25/2018, 11/16/2013, 12/30/2007, 6/19/2004, 3/14/1998, 3/28/1993, 12/30/1985)*
- Corps Site visit(s) conducted on: *Date(s).*
- 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: *Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at <http://websoilsurvey.sc.egov.usda.gov/>. Accessed 02/10/2021*
- USFWS NWI maps: *National Wetlands Inventory website. U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. Available online at <http://www.fws.gov/wetlands/>. Accessed 02/10/2021*
- USGS topographic maps: *24K Anchorage, 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. |
| USACE Sources | N/A. |
| State/Local/Tribal Sources | N/A. |
| Other Sources | N/A. |

B. Typical year assessment(s): The Antecedent Precipitation Tool was utilized for the December 10, 2020 site assessment. The data shows that the assessment was during normal conditions during the wet season. The site assessment was during typical year conditions.

C. Additional comments to support AJD: N/A

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