



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): 22-JUN-2021

ORM Number: LRL-2021-00304

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Covington County/Parish/Borough: Kenton County
Center Coordinates of Review Area: Latitude 38.998967 Longitude -84.526452

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 | 546 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 an (a)(2) with an intermittent flow regime, a bank full width of 4-12 feet wide, and a watershed area of 66 acres. |

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 |
|--------------|-------------|---|---|
| Open Water 6 | 0.132 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 | Open Water 6 is an (a)(3) water and was constructed within an (a)(2) water. The impoundment is directly connected to Intermittent Stream 1. |

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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.

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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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| | | | |
|--|--|--------------|--|
| | | 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))⁴:

| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
|---------------------|----------------|--|--|
| Ephemeral Stream 1 | 102 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 1 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 10 | 562 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 10 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2 feet, and a watershed area of approximately 6 acres. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 11 | 111 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 11 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 1 foot, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 12 | 180 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 12 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2.5 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 13 | 60 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 13 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 3.5 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 14 | 862 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 14 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 1 foot, and a watershed area of approximately 5 acres. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 15 | 156 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 15 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 2 | 175 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 2 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water |

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| | | | source during the March 2, 2021 site investigation. |
| Ephemeral Stream 3 | 286 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 3 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 0.5 feet, and a watershed area of approximately 6 acres. The channel had discontinuous Ordinary high water marks and receives drainage from Open Water 1. |
| Ephemeral Stream 4 | 116 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 4 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 5 | 410 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 5 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 4 feet, and a watershed area of approximately 3 acres. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 6 | 32 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 6 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2.5 feet, and a watershed area of <1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 7 | 16 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 7 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2.5 feet, and a watershed area of <1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 8 | 60 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 8 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 2.5 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Ephemeral Stream 9 | 57 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Ephemeral Stream 9 is not an (a)(1-4) water. The feature exhibited an ephemeral flow regime, a bank full width of 1.5 feet, and a watershed area of approximately 1 acre. The agent did not identify a ground water source during the March 2, 2021 site investigation. |
| Open Water 1 | 0.654 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 1 is not an (a)(1-4) water. The feature was constructed within the uplands or a non-jurisdictional feature (Ephemeral Stream 3). |
| Open Water 2 | 0.041 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 2 is not an (a)(1-4) water. The feature was constructed within the uplands or a non-jurisdictional feature (Ephemeral Stream 3). |
| Open Water 3 | 0.087 acres | (b)(8) Artificial lake/pond | Open Water 3 is not an (a)(1-4) water. The feature was |

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| | | constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6) | constructed within the uplands or a non-jurisdictional feature (Ephemeral Stream 5). |
| Open Water 4 | 0.084 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 4 is not an (a)(1-4) water. The feature was constructed within the uplands. |
| Open Water 5 | 0.016 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 5 is not an (a)(1-4) water. The feature was constructed within the uplands. |
| Open Water 7 | 0.02 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 7 is not an (a)(1-4) water. The feature was constructed within the uplands. |
| Open Water 8 | 0.01 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 8 is not an (a)(1-4) water. The feature was constructed within the uplands. |
| Open Water 9 | 0.02 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 an impoundment of a jurisdictional water that meets (c)(6) | Open Water 9 is not an (a)(1-4) water. The feature was constructed within the uplands. |
| Wetland 1 | 0.066 acres | (b)(1) Non-adjacent wetland | Wetland 1 is not an (a)(1-4) water. The feature is a fringe wetland associated with Open Water 1. The wetland does not have a direct jurisdictional connection to downstream waters. |
| Wetland 2 | 0.006 acres | (b)(1) Non-adjacent wetland | Wetland 2 is not an (a)(1-4) water. The feature drains via an ephemeral channel (Ephemeral Stream 12) and does not have a direct jurisdictional connection to downstream waters. |

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.

X Information submitted by, or on behalf of, the applicant/consultant: *Request for Jurisdictional Determination: Eubanks Property. Submitted by RES. Dated March 31, 2021.*
This information (is) sufficient for purposes of this AJD.

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Rationale: *N/A.*

- Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- Photographs: *aerial and other) Google Earth, 2021; Maps submitted by applicant/agent.*
- 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: *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. |
| USACE Sources | N/A. |
| State/Local/Tribal Sources | N/A. |
| Other Sources | N/A. |

- B. Typical year assessment(s):** The PDSI Index indicates “Moderate Wetness” at the project location. The Web WIMP H2O Balance indicates the determination was conducted during a wet season. The Antecedent Precipitation Tool determined that during the 30 days prior to the date of the site inspection by RES (agent) on March 2, 2021, normal conditions existed at the project site.
- C. Additional comments to support AJD:**

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