



**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): 7/6/2020  
 ORM Number: LRL-2020-178-mad  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: KY City: Lexington County/Parish/Borough: Fayette  
 Center Coordinates of Review Area: Latitude 38.012301 Longitude -84.387026

**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
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	1,270 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent stream 1 receives flow from Pond 1, resulting in flow greater than in response to precipitation within the stream. Based on the morphology of the stream, watershed size, and stream order, intermittent 2 does not exhibit characteristic typical of a perennial stream in this region. Intermittent 1 flows directly into an offsite pond, which connects downstream through an unnamed tributary to North Elkhorn Creek, which connects to Elkhorn Creek, then to the Kentucky River, a Section 10 (a) (1) water.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.  
<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 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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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
Intermittent Stream 2	730	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	Intermittent Stream 2 originates from a rock seep in the southern portion of the site and flows north into Pond 1, an (a) (3) water. Intermittent 2 exhibits flows more than in direct response to precipitation, as observed by the ground water connection. The morphology of the stream is consistent with intermittent streams in this area.

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	0.389	acre(s)	(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 is an impoundment of Intermittent Stream 1 which was constructed sometime between 1965 and 1971 as document by aerial photography. The pond has a direct hydrological connection to Intermittent stream 1, an (a) (3) tributary.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size		(a)(4) Criteria	Rationale for (a)(4) Determination
Wetland 1	0.061	acre(s)	(a)(4) Wetland abuts an (a)(1)-(a)(3) water.	Wetland 1 abuts Pond 1, which is an (a) (3) water.

**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 Stream 1	125	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This feature is a first order stream which was observed to have exhibited only small pools of water or areas of minimal flow even after a rain event during both the assessment and Corps' site visit even in a wetter than normal period as measured by the Antecedent Precipitation Tool. The features has a morphology characteristic of ephemeral stream in the region.
Ephemeral Stream 2	225	linear feet	(b)(3) Ephemeral feature, including an ephemeral	This feature was observed to have exhibited only small pools of water or areas of minimal flow even after a rain event during both the assessment and Corps' site visit even in a wetter

<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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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			stream, swale, gully, rill, or pool.	than normal period as measured by the Antecedent Precipitation Tool. The features has a morphology characteristic of ephemeral stream in the region, and was only observed to have a hydrological connection downstream from unconsolidated flow over a farm road immediately following precipitation.
Ephemeral Stream 3	30	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This feature is a first order stream which was observed to have exhibited only small pools of water or areas of minimal flow even after a rain event during both the assessment and Corps' site visit even in a wetter than normal period as measured by the Antecedent Precipitation Tool. The features has a morphology characteristic of ephemeral stream in the region, and was only observed to have a hydrological connection downstream from unconsolidated flow over a farm road immediately following precipitation.
Ephemeral Stream 4	40	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This feature is a first order stream which was observed to have exhibited only small pools of water or areas of minimal flow even after a rain event during both the assessment and Corps' site visit even in a wetter than normal period as measured by the Antecedent Precipitation Tool. The features has a morphology characteristic of ephemeral stream in the region.
Ephemeral Stream 5	35	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	This feature is a first order stream which was observed to have exhibited only small pools of water or areas of minimal flow even after a rain event during both the assessment and Corps' site visit even in a wetter than normal period as measured by the Antecedent Precipitation Tool. The features has a morphology characteristic of ephemeral stream in the region.
Wetland 2	0.032	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 2 abuts ephemeral 2, a (b) (3) excluded feature. Both the applicant's assessment and Corps' site visit were during wetter than normal periods as measured by the Antecedent Precipitation Tool with recent precipitation. There were no signs of any potential for contribution of flooding to or from Pond 1, the closest jurisdiction feature. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv), and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.
Wetland 3	0.062	acre(s)	(b)(1) Non-adjacent wetland.	Both the applicant's site assessment and Corps' site visit were during a wetter than normal period



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
			as measured by the Antecedent Precipitation Tool. The wetland was only observed to have a hydrological connection downstream to ephemeral 1 from unconsolidated flow over a farm road immediately following precipitation. The wetland does not meet the definition of adjacent wetlands per 33 CFR 328.3 (c)(1)(i)(ii)(iii) or (iv), and is therefore excluded per 33 CFR 328.3 (b)(1) as a non-adjacent wetland.

**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: [“Preconstruction Notification for Nationwide Permit 29 and Application for Individual Water Quality Certification Blackford Property Phase 4” dated February 24, 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 4/19/2018; 9/22/2014;9/12/2010;7/26/2006;3/3/1994, historicaerials.com/viewer-1965, 1971, Redwing Ecological Service Site Photos-September 5, 2017.](#)

Corps site visit(s) conducted on: [March 6, 2020Pond](#)

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: [Aerial - kyraaster.ky.gov \(2016\);Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture Web Soil Survey- websoilsurvey.nrcs.usda.gov \(2016\)](#)

USFWS NWI maps: [USFWS NWI Mapper-www.fws.gov/wetlands/Data/Mapper.html](#)

USGS topographic maps: [USGS 1:24K Lexington East, KY \(2013\)](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** [The Antecedent Precipitation Tool was utilized for the Corps’ site visit on March 6, 2020 and the September 5, 2017 date of the site photographs provided by the applicant. The data shows that both dates were in “wetter than normal” conditions than the 30 year normal range of climatic conditions. This factor was weighted in consideration of observed hydrological conditions.](#)



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