



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): November 6, 2020
 ORM Number: LRL-2017-00685
 Associated JDs: Rapanos PJD USACE ID# LRL-2017-685 Elkhorn Springs Residential Development.
 Review Area Location¹:
 State/Territory: KY City: Lexington County/Parish/Borough: Fayette County
 Center Coordinates of Review Area: Latitude 38.089142 Longitude -84.468467

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	210 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	Contributes water to an (a)(1) indirectly. Int 1 has an average width of four feet, bank heights of one to three feet, and contains silt, gravel, and cobble substrate. During the field visit in May 2017, the stream contained flowing water at depths of two to six inches. Water within the channel during the USACE site visit on July 18, 2017 was primarily ponded. Intermittent Stream 1 is considered jurisdictional due to its connection to downstream jurisdictional waters off-site.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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.

³ 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.

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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

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 NWPR	0.049 acres	(a)(4) Wetland abuts an (a)(1)-(a)(3) water	Wet 1 directly abuts Int 1 and is considered an (a)(4) water.
Wetland 3 NWPR	0.01 acres	(a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year	Wetland 1 is adjacent to Int 1 and is inundated by flooding from Int 1 in a typical year. Wet 3 is an (a)(4) 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	470 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 1 enters the site from a culvert along the southwestern boundary, which collects storm water drainage from an off-site housing development. The stream flows north for 470 linear feet before developing intermittent flow, at which point it changes to Int 1. The stream has an average width of three feet, bank heights of 6 to 18 inches, and contains silt, gravel, and cobble substrate. During the field visit in May 2017, the stream contained flowing water at depths of one to four inches; however, little to no flowing water was observed during the USACE site visit on July 18, 2017, despite heavy rain the night before. Eph 1 only contains surface water flowing or pooling in direct response to precipitation. Eph 1 is a (b)(3) water and is therefore excluded from the rule.
Ephemeral 2	205 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Eph 2 begins in the central portion of the site and flows southeast for 205 feet before entering Int 1. The stream ranges between six inches and two feet wide, has one to three-inch bank heights, and contains silt substrate. During the field visit in May 2017, the stream was dry in the upstream portion and contained flowing water at depths up to one inch in the downstream portion. Eph 2 only contains surface water flowing or pooling in direct response to precipitation. Eph 2 is a (b)(3) water and is therefore excluded from the rule.
Wetland 2 NWPR	0.129 acres	(b)(1) Non-adjacent wetland	Adjacent to ephemeral stream only; not adjacent to jurisdictional tributary or water; Wet 2 is a (b)(1) water and is therefore excluded from the rule.

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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.

³ 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.

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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

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 for NWP 29 for Sirk and Company submitted August 16, 2017; PCN for NWP 29 for LDG submitted August 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: *World Imagery -Esri (2017) and site photographs on May 19, 2017.*

Corps Site visit(s) conducted on *July 18, 2017.*

Previous Jurisdictional Determinations (AJDs or PJDs): *Elkhorn Springs, LRL-2017-685.*

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

USDA NRCS Soil Survey: *SSURGO, Fayette Co, KY (2016).*

USFWS NWI maps: <https://www.fws.gov/wetlands/Data/Mapper.html>. November 5, 2020.

USGS topographic maps: *1:24K Lexington East, KY quad.*

-

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): Assessments were based on a site visit conducted in 2017 in addition to the submitted PCN for the current 2020 application. Identification of aquatic resources within the proposed project boundaries are consistent with the previous determinations as addressed in an issued PJD as a result of a 2017 site visit. In the current application, aquatic resources identified as ephemeral were determined to be non-jurisdictional under the Navigable Waters Protection Rule. Intermittent 1 retained characteristics of an intermittent tributary between 2017 and the 2020 application further supporting the flow regime determination and connections to downstream jurisdictional waters indicating the presence of hydrology and secondary inputs in a typical year. The aquatic resource identified as wetland 2 is determined to be jurisdictional due to abutting the identified intermittent tributary. As a result, the reviewed conditions of wetland 2 would be typical. The aquatic resource identified as wetland 3 was determined to be jurisdictional due to inundation from the aforementioned intermittent tributary. Wetland 3's position within the landscape indicates frequent

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide and 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.

³ 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.

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.



U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE

inundation by the intermittent tributary and area sheet flow to be the primary contributors to the retention of wetland characteristics. The wetland is situated at the lower portion of the property prior to flowing offsite between intermittent 1 and surface flow drainage from Interstate 75 located to the north of the proposed property.

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

¹ Map(s)/Figure(s) are attached to the AJD provided to the requestor.

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.

³ 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.

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.