



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): October 6, 2020

ORM Number: LRL-2019-76-sea

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Prospect County/Parish/Borough: Jefferson County

Center Coordinates of Review Area: Latitude 38.357318 Longitude -85.624927

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 |
|-------------|-------------|-----------------|------------------------------------|
| N/A | N/A | N/A | N/A |

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 |
|-------------|-------------|---|--|
| NWPR WET 6 | 0.369 acres | (a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a | NWPR WET 6 is located on the western side of the property on a lower terrace within the 100 year |

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.



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| | | | |
|------------|-------------|--|---|
| | | typical year | floodplain of the Ohio River. NWPR WET 6 is inundated by the Ohio River (an (a)(1) water) during a typical year and is therefore jurisdictional. |
| NWPR WET 7 | 0.282 acres | (a)(4) Wetland inundated by flooding from an (a)(1)-(a)(3) water in a typical year | NWPR WET 7 is located on the western side of the property on a lower terrace within the 100 year floodplain of the Ohio River. NWPR WET 7 is inundated by the Ohio River (an (a)(1) water) during a typical year and is therefore jurisdictional. |

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

| Exclusion Name | Exclusion Size | Exclusion ⁵ | Rationale for Exclusion Determination |
|----------------|----------------|--|--|
| NWPR OW1 | 1.035 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 | NWPR OW 1 is adjacent to NWPR WET 4. NWPR OW 1 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. See description of NWPR WET 4 for additional information. |
| NWPR WET 4 | 0.932 acres | (b)(1) Non-adjacent wetland | NWPR WET 4 does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year. There is a culvert on the southern of the wetland near the property boundary that is assumed to connect to the storm sewer. However, the elevation of the culvert is too high to receive water from the wetland except potentially during large rain events and not in a typical year. |
| NWPR WET 5 | 0.084 acres | (b)(1) Non-adjacent wetland | NWPR WET 5 is adjacent to NWPR WET 8 and does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year. See description of NWPR WET 8 for additional information. |
| NWPR WET 8 | 0.073 acres | (b)(1) Non-adjacent wetland | NWPR WET 8 does not physically abut an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year. NWPR WET 8 is connected to an off-site stormwater pipe via a non-jurisdictional drainage ditch and is therefore not jurisdictional. |

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: Correspondence requesting reevaluation under the Navigable Water Protection Rule received September 11, 2020.

This information is sufficient for purposes of this AJD.

Data sheets prepared by the Corps: *Title(s) and/or date(s)*.

Photographs: Aerial: kygissserver, ky.gov ArcGIS services (2016), Site Visit Photographs

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September 10, 2020.

- Corps Site visit(s) conducted on: February 5, 2019.
- Previous Jurisdictional Determinations (AJDs or PJDs): LRL-2019-76 AJD dated February 19, 2019 and PJD dated February 13, 2019.
- 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 – Jeffersonville, IN and Anchorage, KY Quads

Other data sources used to aid in this determination:

| Data Source (select) | Name and/or date and other relevant information |
|----------------------------|--|
| USGS Sources | USGS 03293551 OHIO R US OF MCALPINE DAM @ RRB AT LOUISVILLE, KY 2010-2020 |
| USDA Sources | N/A. |
| NOAA Sources | N/A. |
| USACE Sources | N/A. |
| State/Local/Tribal Sources | N/A. |
| Other Sources | Weather Underground Historic Precipitation Data (WUHPD), FEMA National Flood Hazard Layer (2015) |

- B. Typical year assessment(s):** The Antecedent Precipitation Tool (APT) was utilized for the applicant stream assessment date of September 10, 2020. The data shows that the assessment was conducted and photos were taken during the dry season under wetter than normal conditions.
- C. Additional comments to support AJD:** WUHPD was reviewed for September 2020 to see the precipitation totals for the days leading up to the site visit. The Louisville International Airport Station, located approximately 13 miles away from the review area, recorded 2.32 inches of rain in the 7 days prior to the site visit however no rain was recorded in the 5 days prior to the site visit.

NWPR WET 6 and NWPR WET 7 are located within the 100 year floodplain of the Ohio River. An evaluation of the topographic map elevations and gage data from the McAlpine Lock and Dam upper pool for 2010-2020 was used to make the determination that these wetlands are inundated by the Ohio River (an (a)(1) water) during a typical year.

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