



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): March 23, 2021

ORM Number: LRL-2020-00706

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Richmond County/Parish/Borough: Madison County

Center Coordinates of Review Area: Latitude 37.67461 Longitude -84.306124

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
Stream 1 INT	7013 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	The intermittent tributary contributes surface water flow continuously during certain times of the year and more than in direct response to precipitation to an (a)(1) water in a typical year.

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

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.



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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
Stream 4 EPH	1198 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	The ephemeral channel only contains surface water flowing or pooling in direct response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the 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: *Submitted preconstruction notification (December 7, 2020) and the Wetland and Stream Survey Report by Palmer Engineering (August 2017).*

This information is sufficient for purposes of this AJD.

Rationale: N/A

Data sheets prepared by the Corps: N/A

Photographs: *Aerial and other – Site visit photos by USACE (September 15, 2020), Submitted preconstruction notification (December 7, 2020), Google maps w/terrain overlay, and the Wetland and Stream Survey Report by Palmer Engineering (August 2017).*

Corps Site visit(s) conducted on September 15, 2020

Previous Jurisdictional Determinations (AJDs or PJDs): N/A

Antecedent Precipitation Tool: N/A

USDA NRCS Soil Survey: N/A

USFWS NWI maps: 1:9, 028, 37.667 | -84.312

USGS topographic maps: 1:24K; Richmond South

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.

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- B. Typical year assessment(s):** Typical year assessment was conducted utilizing desktop tools, the submitted preconstruction notification, the Wetland and Stream Survey Report by Palmer Engineering (August 2017), and a site visit conducted by Corps personnel on September 15, 2020 to verify the recommended aquatic resource determinations by Palmer Engineering, Inc. (2017), on behalf of the applicant (Buc-ee's Kentucky LLC). Based on the aforementioned supporting documentation, the conditions as described in *Part II: Findings* under *Section C Clean Water Act Section 404 and Section D Excluded Waters or Features* were determined to be typical.
- C. Additional comments to support AJD:** During the site visit conducted on September 15, 2020 Corps personnel identified ground water sources contributing to seasonal and intermittent flow indicating hydrological input in addition to surface flow resulting from precipitation events. Ground sources included hillside seeps and a discernable expression point of a natural spring originating in a springhouse adjacent to the intermittent tributary.

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