



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): April 9, 2021

ORM Number: LRL-2020-00795

Associated JDs: N/A

Review Area Location<sup>1</sup>:

State/Territory: KY City: County/Parish/Borough: Mercer County

Center Coordinates of Review Area: Latitude 37.810176 Longitude -84.864116

**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  |
|-------------|-------------|--|---|
| SS-T01-001  | 432 feet    | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year    | SS-T01-001 is an unnamed perennial tributary to Salt River that contributes surface flow directly or indirectly to an (a)(1) water in a typical year.   |
| SS-T01-002  | 939.5 feet  | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-002 is an intermittent tributary that 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. |
| SS-T01-003  | 114.6 feet  | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-003 is an intermittent tributary that 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. |

<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 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.

<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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| SS-T01-010  | 122.4 feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-010 is an unnamed perennial tributary to Salt River that contributes surface flow directly or indirectly to an (a)(1) water in a typical year.  |
| SS-T01-013  | 792.5 feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-013 is an unnamed perennial tributary to Salt River that contributes surface flow directly or indirectly to an (a)(1) water in a typical year.  |
| SS-T01-013A | 141.6 feet | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-013A is an unnamed perennial tributary to Salt River that contributes surface flow directly or indirectly 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   |
|-------------|-------------|--|--|
| WB-T01-007  | 0.32 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 typical year | WB-T01-007 is connected to stream SS-T01-013. SS-T01-013 flows into the Salt River resulting in an indirect connection to a TNW, the Ohio River. |

**Adjacent wetlands ((a)(4) waters):**

| (a)(4) Name | (a)(4) Size | (a)(4) Criteria  | Rationale for (a)(4) Determination  |
|-------------|-------------|--|---|
| W-T01-005   | 0.12 acres  | (a)(4) Wetland abuts an (a)(1)-(a)(3) water  | Along banks of stream SS-T01-001. Between stream and fields with sharp topography break. Inflow from overland sheet flow and groundwater. Outflow to groundwater recharge and stream. |
| W-T01-012   | 0.04 acres  | (a)(4) Wetland abuts an (a)(1)-(a)(3) water  | Wetland is abutting an open water aquatic resource directly connected to a perennial tributary.   |
| W-T01-013   | 0.06 acres  | (a)(4) Wetland separated from an (a)(1)-(a)(3) water only by an artificial structure allowing a direct hydrologic surface connection between the wetland and the (a)(1)-(a)(3) water in a typical year | Wetland along stream that flows into pond (WB-T01-007). Pond then drains to west via stream SS-T01-013.   |

**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   |
|----------------|----------------|---|---|
| DD-T01-001     | 125.2 feet     | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-001 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-003     | 748.5 feet     | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-003 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |

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<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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| DD-T01-004 | 59.1 feet   | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-004 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-005 | 151 feet    | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-005 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-006 | 1449.4 feet | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-006 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-007 | 346.6 feet  | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-007 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-008 | 120.2 feet  | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-008 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-009 | 169.1 feet  | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-009 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-010 | 145.1 feet  | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-010 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-011 | 91.3 feet   | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-011 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-012 | 73 feet     | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-012 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| DD-T01-013 | 563.2 feet  | (b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1) | DD-T01-013 has been identified as a draining feature that does not exhibit discernable characteristics associated with a jurisdictional water of the U.S. |
| SS-T01-004 | 667.1 feet  | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully,  | SS-T01-004 is an ephemeral tributary that only contains surface water flowing or pooling in direct  |

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|------------|------------|--|---|
|            |            | rill, or pool  | response to precipitation. The identified ephemeral channel is a (b)(3) water and is therefore excluded from the rule.  |
| SS-T01-005 | 306.9 feet | (b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year | SS-T01-005 is an intermittent tributary located at the expression point of a groundwater spring. Channel dissipates into the surrounding field and does not connect to jurisdictional waters isolating it in the landscape. |
| SS-T01-006 | 335.7 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-006 is an ephemeral tributary that 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.   |
| SS-T01-007 | 441.7 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-007 is an ephemeral tributary that 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.   |
| SS-T01-008 | 304.1 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-008 is an ephemeral tributary that 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.   |
| SS-T01-009 | 181.3 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-009 is an ephemeral tributary that 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.   |
| SS-T01-011 | 178.3 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-011 is an ephemeral tributary that 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.   |
| SS-T01-012 | 121.2 feet | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool   | SS-T01-012 is an ephemeral tributary that 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.   |
| W-T01-001  | 0.02 acres | (b)(1) Non-adjacent wetland  | W-T01-001 displays drainage through the wetland but does not connect to any surface waters. Hydrology consist of inflow from overland sheet flow and outflow to drainage and groundwater recharge.                          |
| W-T01-002  | 0.16 acres | (b)(1) Non-adjacent wetland  | W-T01-002 is isolated in a depression between fields. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.   |
| W-T01-003  | 0.14 acres | (b)(1) Non-adjacent wetland  | W-T01-003 is isolated in a depression between fields. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.   |
| W-T01-004  | 0.04 acres | (b)(1) Non-adjacent wetland  | W-T01-004 is isolated in a depression between fields. Hydrology consist of inflow from overland sheet flow  |

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|            |            |  | and outflow to groundwater recharge.   |
| W-T01-006  | 0.01 acres | (b)(1) Non-adjacent wetland  | W-T01-006 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| W-T01-007  | 0.02 acres | (b)(1) Non-adjacent wetland  | W-T01-007 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| W-T01-008  | 0.05 acres | (b)(1) Non-adjacent wetland  | W-T01-008 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| W-T01-009  | 0.03 acres | (b)(1) Non-adjacent wetland  | W-T01-009 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| W-T01-010  | 0.01 acres | (b)(1) Non-adjacent wetland  | W-T01-010 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| W-T01-011  | 0.05 acres | (b)(1) Non-adjacent wetland  | W-T01-011 is isolated with no connection to jurisdictional waters of the U.S. Hydrology consist of inflow from overland sheet flow and outflow to groundwater recharge.                  |
| WB-T01-002 | 0.01 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 | WB-T01-002 has been identified as an open water feature that is fed by direct precipitation and overland sheet flow with no hydrological connection to jurisdictional waters of the U.S. |
| WB-T01-003 | 0.6 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 | WB-T01-003 has been identified as an open water feature that is fed by direct precipitation and overland sheet flow with no hydrological connection to jurisdictional waters of the U.S. |
| WB-T01-004 | 0.19 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  | WB-T01-004 has been identified as an open water feature that is fed by direct precipitation and overland sheet flow with no hydrological connection to jurisdictional waters of the U.S. |

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|            |            | flooding from an (a)(1)-(a)(3) water in a typical year   |  |
| WB-T01-005 | 0.03 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 | WB-T01-005 has been identified as an open water feature that is fed by direct precipitation and overland sheet flow with no hydrological connection to jurisdictional waters of the U.S. |
| WB-T01-006 | 0.09 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 | WB-T01-006 has been identified as an open water feature that is fed by direct precipitation and overland sheet flow with no hydrological connection to jurisdictional waters of the U.S. |

**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: *Request for Approved Jurisdictional Determination for the Mercer County Solar Project, Mercer County, Kentucky (2020), Wetland and Waterbody Delineation Report for the Mercer County Solar Project Mercer County, Kentucky (2020), and Delineation Features (Wetland Survey) (2021).*  
This information is sufficient for purposes of this AJD.

Rationale: *N/A*

Data sheets prepared by the Corps:

Photographs: *Aerial and other: Photographs and figures submitted by agent titled Attachment A Figures and Attachment B Site Photographs, USACE Regulatory Viewer with NHD layer, Google Earth PRO (2020), and Google Maps with terrain overlay.*

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: Soil report submitted as supporting documentation in *Wetland and Waterbody Delineation Report for the Mercer County Solar Project Mercer County, Kentucky (2020).*

USFWS NWI maps:

USGS topographic maps: *1:24K Quad Name - Harrodsburg*

**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.  |

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REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE

|               |      |
|---------------|------|
| Other Sources | N/A. |
|---------------|------|

- B. Typical year assessment(s):** Typical year assessment was conducted utilizing desktop tools and the submitted request for jurisdictional determination with supporting documentation. 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:** A meeting was conducted, via phone, between Corps personnel and the designated agent on November 3, 2020 to discuss AJD review specifics and to clarify submitted information. On March 31, 2021 a teleconference was conducted between Corps personnel, the designated agent, the applicant, and the field site delineator to discuss criteria used by the delineator to make recommended flow regime and other aquatic resource determinations. The agreed upon criteria was discussed in detail then compared to submitted documentation for consistence and accuracy.

<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 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.

<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.