



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): 30-MAR-2021

ORM Number: LRL-2021-00107

Associated JDs: N/A

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

State/Territory: KY City: Elsmere County/Parish/Borough: Kenton County

Center Coordinates of Review Area: Latitude 38.9932 Longitude -84.6008

**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  |
|-------------------|-------------|--|---|
| Bullock Pen Creek | 1387 feet   | (a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year    | Bullock Pen Creek is an (a)(2) water with a perennial flow regime.                                      |
| Stream 1-int      | 1155 feet   | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 1-int is an (a)(2) water with an intermittent flow regime and a bankfull width of 5-8 feet wide. |
| Stream 4-int      | 226 feet    | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 4-int is an (a)(2) water with an intermittent flow regime and a bankfull width of 4-6 feet wide. |

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<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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| Stream 4-Int-2 | 1026 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 4-Int-2 is an (a)(2) water with an intermittent flow regime and a bankfull width of 5-8 feet wide. |
| Stream 5-int   | 78 feet   | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 5-int is an (a)(2) water with an intermittent flow regime and a bankfull width of 4-6 feet wide.   |
| Stream 6-int   | 22 feet   | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 6-int is an (a)(2) water with an intermittent flow regime and a bankfull width of 0.5 feet wide.   |
| Stream 7       | 1193 feet | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 7 is an (a)(2) water with an intermittent flow regime and a bankfull width of 6-8 feet wide.       |
| Stream 8       | 111 feet  | (a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year | Stream 8 is an (a)(2) water with an intermittent flow regime and a bankfull width of 2-5 feet wide.       |

**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 D   | 0.07 acres  | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland D is an (a)(4) water and is connected to Wetland E via a culvert through an artificial berm. |
| Wetland E   | 0.05 acres  | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland E is an (a)(4) water and directly abuts intermittent Stream 7.                               |
| Wetland F   | 0.02 acres  | (a)(4) Wetland abuts an (a)(1)-(a)(3) water | Wetland F is an (a)(4) and directly abuts intermittent Stream 7.                                     |

**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   |
|---------------------|----------------|--|---|
| Erosional Feature 1 | 68 feet        | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Erosional Feature 1 is not an (a)(1-4) water. The feature had a discontinuous ordinary high water mark. The feature terminates in an upland area. The feature had pooled water but no flow at the time of the assessment.   |
| Erosional Feature 2 | 172 feet       | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Erosional Feature 2 is not an (a)(1-4) water. The feature had a discontinuous ordinary high water mark and was flowing at the time of the assessment. The feature terminates in an upland area. The flow disperses as sheet flow and flow does not redevelop in Swale-4 or Stream 4-Eph. There is an abandoned livestock water trough near the feature and the trough |

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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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|              |            |   | appears to be connected to a ground water source.   |
| Pond 1       | 0.12 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6). | Pond 1 was created in the uplands and does not exhibit a direct connection to a jurisdictional water of the U.S.  |
| Pond 2       | 0.38 acres | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6). | Pond 2 is an impoundment of a non-jurisdictional water (Stream 5-Eph) and is connected to an (a)(2) water via 252 linear feet of ephemeral channel and a PEM wetland.   |
| Pond 3       | 0.2 acres  | (b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6). | Pond 3 is an impoundment of a non-jurisdictional water (Stream 5-Eph) and is separated from Pond 2 via an artificial berm/barrier.  |
| Stream 1-eph | 158 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 1-Eph is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 1-3 feet wide, and an ephemeral flow regime. A ground water connection was not identified by the applicant/agent.   |
| Stream 2     | 102 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 2 is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 1-3 feet wide, and an ephemeral flow regime. A ground water connection was not identified by the applicant/agent.   |
| Stream 3     | 343 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 3 is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 4-6 feet wide, and an ephemeral flow regime. A ground water connection was not identified by the applicant/agent.   |
| Stream 4-eph | 26 feet    | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 4-Eph is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 1-3 feet wide, and an ephemeral flow regime. A ground water connection was not identified by the applicant/agent.   |
| Stream 5-eph | 252 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 5-Eph is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 1 foot wide, and an ephemeral flow regime. Stream 5-Eph was broken into two reaches by Wetland B. A ground water connection was not identified by the applicant/agent above or below Wetland B.           |
| Stream 6-eph | 425 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 6-Eph is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 0.5 foot wide, and an ephemeral flow regime. A ground water connection was not identified by the applicant/agent.   |
| Stream 9     | 216 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool  | Stream 9 is not an (a)(1-4) water. The feature exhibits OHWMs, a bank full width of 4-25 feet wide, and an ephemeral flow regime. The stream channel has eroded to a depth of 20 feet. Stream drains into an offsite pond and eventually becomes an ephemeral roadside ditch along Garvey Avenue. |
| Swale 1      | 145 feet   | (b)(3) Ephemeral feature, including   | Swale 1 is not an (a)(1-4) water. The feature lacks   |

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|           |            | an ephemeral stream, swale, gully, rill, or pool                                     | OHWMs and wetland characteristics..  |
| Swale 2   | 121 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Swale 2 is not an (a)(1-4) water. The feature lacks OHWMs and wetland characteristics.   |
| Swale 3   | 168 feet   | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Swale 3 is not an (a)(1-4) water. The feature lacks OHWMs and wetland characteristics.   |
| Swale 4   | 66 feet    | (b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool | Swale 4 is not an (a)(1-4) water. The feature lacks OHWMs and wetland characteristics.   |
| Wetland A | 0.05 acres | (b)(1) Non-adjacent wetland  | Wetland A is not an (a)(1-4) water. The feature is a fringe wetland associated with Pond 1 and did not have a direct connection to downstream waters.  |
| Wetland B | 0.04 acres | (b)(1) Non-adjacent wetland  | Wetland B is not an (a)(1-4) water. The feature was connected to downstream waters via 157 linear feet of ephemeral stream channel.  |
| Wetland C | 0.08 acres | (b)(1) Non-adjacent wetland  | Wetland C is not an (a)(1-4) water. The feature is a fringe wetland associated with Pond 1 and was separated from downstream waters via an artificial berm/barrier. The wetland did not have a direct connection to downstream waters. |

**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: *Jurisdictional Determination Request: List Family Property. Dated January 25, 2021. Submitted by Ramboll.*  
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) Maps submitted by Agent and Google Earth, 2021.*

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: *Title(s) and/or date(s).*

USFWS NWI maps: *Title(s) and/or date(s).*

USGS topographic maps: *1:24,000 Independence, KY.*

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

- B. Typical year assessment(s):** The PDSI Index indicates “Severe Wetness” at the project location. The Web WIMP H2O Balance indicates the determination was conducted during a wet season. The Antecedent Precipitation Tool determined that during the 30 days prior to the date of the site inspection by Ramboll (agent) on January 8, 2021, wet conditions existed at the project site.
- C. Additional comments to support AJD:** N/A or provide additional discussion as appropriate.

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