



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

ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): July 15, 2021

ORM Number: LRL-2021-146-sea

Associated JDs: N/A

Review Area Location¹:

State/Territory: KY City: Shepherdsville County/Parish/Borough: Bullitt County

Center Coordinates of Review Area: Latitude 37.946659 Longitude -85.697933

I. 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
INT 1	800 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 1 is 8 to 15 feet wide with silt, gravel, cobble, and bedrock substrate. INT 1 flows into PER 1 to Long Lick Creek, to the Salt River, a section 10 water, to the Ohio River, a traditional navigable water (TNW).
INT 2	1980 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 2 is 3 to 5 feet wide with silt, gravel, and cobble substrate. INT 2 flows into PER 1 to Long Lick Creek, to the Salt River, a section 10 water, to the Ohio River, a TNW.
INT 3	980 feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	INT 3 is 5 feet wide with silt, sand, and gravel substrate. INT 3 flows into INT 1 which flows to PER 1 into Long Lick Creek, to the Salt River, a section 10 water, to the Ohio River, a TNW.

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

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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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PER 1	850 feet	(a)(2) Perennial tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year	PER 1 begins at the confluence of INT 1 and INT 2 and is 12-20 feet wide with silt, gravel, cobble, and bedrock substrate. PER 1 flows into Long Lick Creek, to the Salt River, a section 10 water, to the Ohio River, a TNW.
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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
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
EPH 1	1490 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	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.
EPH 2	20 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	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.
EPH 3	105 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 3 only contains surface water flowing or pooling in direct response to precipitation. EPH 3 is a (b)(3) water and is therefore excluded from the rule.
EPH 4	50 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 4 only contains surface water flowing or pooling in direct response to precipitation. EPH 4 is a (b)(3) water and is therefore excluded from the rule.
EPH 5	15 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 5 only contains surface water flowing or pooling in direct response to precipitation. EPH 5 is a (b)(3) water and is therefore excluded from the rule.
EPH 6	345 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 6 only contains surface water flowing or pooling in direct response to precipitation. EPH 6 is a (b)(3) water and is therefore excluded from the rule.
EPH 7	45 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 7 only contains surface water flowing or pooling in direct response to precipitation. EPH 7 is a (b)(3) water and is therefore excluded from the rule.
EPH 8	55 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 8 only contains surface water flowing or pooling in direct response to precipitation. EPH 8 is a (b)(3) water and is therefore excluded from the rule.
EPH 9	35 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	EPH 9 only contains surface water flowing or pooling in direct response to precipitation. EPH 9 is a (b)(3) water and is therefore excluded from the rule.
Wetland 1	1.08 acres	(b)(1) Non-adjacent wetland	Wetland 1 flows into EPH 1. Wetland 1 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.
Wetland 2	1.02 acres	(b)(1) Non-adjacent wetland	Wetland 2 flows into EPH 5 which flows west under Preston Highway. Wetland 2 does not physically abut

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			an (a)(1)-(a)(3) water and is not inundated by water from an (a)(1)-(a)(3) water in a typical year.
Wetland 3	0.125 acres	(b)(1) Non-adjacent wetland	Wetland 3 is physically isolated in the landscape. Wetland 3 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.

II. 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 Jurisdictional Determination, Project Derby Property dated March 8, 2021 and additional information submitted April 8, 2021.

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: kygisserver.ky.gov ArcGIS services (2016) and site photographs taken January 26 and 27, 2021 and October 15, 2015.

Corps Site visit(s) conducted on: March 19, 2021

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: SSURGO, Bullitt County, Kentucky (2018)

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

USGS topographic maps: 1:24,000 – Shepherdsville, Kentucky 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	Weather Underground Historic Precipitation Data (WUHPD)

B. Typical year assessment(s): The Antecedent Precipitation Tool (APT) was utilized for the January 26, 2021 assessment date, the March 19, 2021 Corps site visit date, and the October 19, 2015 photo date. The data shows that for the stream assessment date of January 26, 2021 that the assessment was conducted during the wet season with a severe wetness drought index but was still within normal conditions. Similarly, data from the Corps site visit on March 19, 2021 indicated that the site visit was during the wet season with a severe wetness drought index but was still within normal conditions. The data from the October 15, 2015 visit indicated that the photos were taken during the wet season with a moderate wetness drought index, also during normal conditions.

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- C. Additional comments to support AJD:** WUHPD was reviewed for January 26, 2021 to see the precipitation totals for the days leading up to the assessment date and site visit. The Louisville International Airport Station located approximately 17 miles away from the review area, recorded 0.12 inches of rain the day before the site visit and 1.71 inches of rain the day of the site visit. Therefore, the presence of water in ephemeral channels during the January 26, 2021 is not unusual given the function of ephemeral tributaries in the landscape. The WUHPD was also reviewed for the date of the Corps site visit, March 19, 2021. Three days before the site visit, 0.36 inches of rain were recorded and the day before the site visit 0.65 inches of rain were recorded. During the two site visits in 2021, INT 1 contained a significant amount of water in the channel and the photos from 2015 showed the channel as dry with vegetation present. The WUHPD indicates that 0.39 inches of rain was recorded two days prior to the October 2015 photo date. The results of the APT support the determination that INT 1 exhibits intermittent flow as the channel was observed with and without water during the wet season under normal conditions. As INT 1 flows downstream and converges with INT 2, the channel widens and contains more consistent, perennial flow.

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