# APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

# **SECTION I: BACKGROUND INFORMATION**

- A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): February 3, 2015
- B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CELRL-OPF-S, Hugo Sixtos Property, LRL-2015-55-pjl, Uplands
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Kentucky County/parish/borough: Jefferson City: Louisville

Center coordinates of site (lat/long in degree decimal format): Lat. 38.14698 °, Long. -85.60873 °

Universal Transverse Mercator: Click here to enter text.

Name of nearest waterbody: Little Cedar Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Floyds Fork

Name of watershed or Hydrologic Unit Code (HUC): 5140102

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form

# D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: Click here to enter a date.

Field Determination. Date(s): January 27, 2015, Click here to enter a date.

# SECTION II: SUMMARY OF FINDINGS

# A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: Click here to enter text.

### B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

# 1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply): <sup>1</sup>

TNWs, including territorial seas
Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs

Non-RPWs that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs

Impoundments of jurisdictional waters

Isolated (interstate or intrastate) waters, including isolated wetlands

### b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: # linear feet: # width (ft) and/or # acres.

Wetlands: # acres.

c. Limits (boundaries) of jurisdiction based on: Choose an item.

Elevation of established OHWM (if known): Click here to enter text.

# 2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: The review area for the JD includes approximately 0.85 acre of the total 3.2 acre property, which consisted entirely of uplands.

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<sup>&</sup>lt;sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>&</sup>lt;sup>3</sup> Supporting documentation is presented in Section III.F.

### SECTION III: CWA ANALYSIS

### A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

### 1. TNW

Identify TNW: Click here to enter text.

Summarize rationale supporting determination: Click here to enter text.

### 2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Click here to enter text.

# B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i	Watershed size: # Che Drainage area: # Che	oose an item.
	Average annual rainfa Average annual snow	
(i	(a) Relationship wit	<u>h TNW:</u>
	I ributary ii	lows directly into TNW.
	Tributary fl	lows through <i>Choose an item</i> . tributaries before entering TNW.
	Project waters at Project waters at Project waters at	re Choose an item. river miles from TNW. re Choose an item. river miles from RPW. re Choose an item. aerial (straight) miles from TNW. re Choose an item. aerial (straight) miles from RPW. ross or serve as state boundaries. Explain: Click here to enter text.
		ate to TNW <sup>5</sup> : Click here to enter text.  a order, if known: Click here to enter text.
	(b) General Tributar	ry Characteristics (check all that apply):
	Tributary is:	Natural
	•	Artificial (man-made). Explain: Click here to enter text.
		Manipulated (man-altered). Explain: Click here to enter text

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>&</sup>lt;sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

	Averag Averag	properties with rege width: # feet ge depth: # feet ge side slopes: Ch		of bank (estima	nte):		
	Primary trib	outary substrate co	omposition (	check all that a	pply):		
	Si	ilts	Sand	S			Concrete
	□ C	obbles	Grav	el			Muck
	В	edrock	☐ Vege	etation. Type/%	cover: Click	here to	enter text.
	Го	ther. Explain: Cli	ck here to ent	er text.			
	Presence of Tributary ge	ondition/stability run/riffle/pool co eometry: <i>Choose a</i> radient (approxim	mplexes. E	xplain: Click he			n: Click here to enter text.
(c)	Estimate av Descri	rovides for: <i>Choos</i> erage number of be flow regime: <i>C</i> mation on duratio	flow events Click here to e	nter text.	•	n item.	
	Surface flov	w is: Choose an iter	n. Characte	ristics: Click her	e to enter text.		
		flow: <i>Choose an it</i> ye (or other) test				ext.	
	B O	as (check all that ed and banks HWM <sup>6</sup> (check al clear, natural linchanges in the cashelving vegetation mattleaf litter disturs ediment deposite water staining other (list): Clic iscontinuous OH there than the OHV igh Tide Line indicate oil or scum line fine shell or deliphysical markir tidal gauges other (list): Clici continuous OH	l indicators in indicators in impressed character of ed down, be bed or wash ition  k here to ente WM. <sup>7</sup> Expl WM were use icated by: along shore or is deposits ags/characte.	ann, or absent red away rext.  ann: Click here to determine cobjects (foreshore) ristics	destruction the preser sediment scour multiple of abrupt cha	on of te nce of v sorting observe ange ir of CW vater M availal markin	ed or predicted flow events in plant community Click here to enter text.  WA jurisdiction (check all that apply): Mark indicated by: ble datum;
Cha	Explain: Cli		t.		ily film; wate	er quali	ity; general watershed characteristics, etc.)

(iii)

<sup>&</sup>lt;sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

(iv)	Bio	logical Characteristics. Channel supports (check all that apply):
		Riparian corridor. Characteristics (type, average width): Click here to enter text.
		Wetland fringe. Characteristics: Click here to enter text.
		Habitat for:
		Federally Listed species. Explain findings: Click here to enter text.
		Fish/spawn areas. Explain findings: Click here to enter text.
		Other environmentally-sensitive species. Explain findings: Click here to enter text.
		Aquatic/wildlife diversity. Explain findings: Click here to enter text.
Cha	aract	teristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW
(i)	Phy (a)	ysical Characteristics:  General Wetland Characteristics: Properties: Wetland size: # acres Wetland type. Explain: Click here to enter text. Wetland quality. Explain: Click here to enter text.
		Project wetlands cross or serve as state boundaries. Explain: Click here to enter text.
	(b)	General Flow Relationship with Non-TNW: Flow is: Choose an item. Explain: Click here to enter text.
		Surface flow is: <i>Choose an item.</i>
		Characteristics: Click here to enter text.
		Subsurface flow: Choose an item. Explain findings: Click here to enter text.  Dye (or other) test performed: Click here to enter text.
	(c)	Wetland Adjacency Determination with Non-TNW:  □ Directly abutting □ Not directly abutting □ Discrete wetland hydrologic connection. Explain: Click here to enter text. □ Ecological connection. Explain: Click here to enter text. □ Separated by berm/barrier. Explain: Click here to enter text.
	(d)	Proximity (Relationship) to TNW Project wetlands are <i>Choose an item.</i> river miles from TNW. Project waters are <i>Choose an item.</i> aerial (straight) miles from TNW. Flow is from: <i>Choose an item.</i> Estimate approximate location of wetland as within the <i>Choose an item.</i> floodplain.
(ii)	Cha	emical Characteristics: aracterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics etc.). Explain: Click here to enter text. ntify specific pollutants, if known: Click here to enter text.
(iii		Riparian buffer. Characteristics (type, average width): Click here to enter text.  Vegetation type/percent cover. Explain: Click here to enter text.  Habitat for:  Federally Listed species. Explain findings: Click here to enter text.  Fish/spawn areas. Explain findings: Click here to enter text.  Other environmentally-sensitive species. Explain findings: Click here to enter text.  Aquatic/wildlife diversity. Explain findings: Click here to enter text.
Cha		teristics of all wetlands adjacent to the tributary (if any) wetland(s) being considered in the cumulative analysis: Choose an item.

Approximately (#) acres in total are being considered in the cumulative analysis.

2.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y/N	#	Y/N	#
Y/N	#	Y/N	#
Y/N	#	Y/N	#
Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: Click here to enter text.

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- 1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: Click here to enter text.
- Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.
   Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Click here to enter text.
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Click here to enter text.

# D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1.	TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:  TNWs: # linear feet # width (ft), Or, # acres.  Wetlands adjacent to TNWs: # acres.
2.	RPWs that flow directly or indirectly into TNWs.
	Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that
	tributary is perennial: <i>Click here to enter text.</i> .  Tibutaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional
	Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Click here
	to enter text
	Provide estimates for jurisdictional waters in the review area (check all that apply):
	Tributary waters: # linear feet # width (ft).
	Other non-wetland waters: # acres.
	Identify type(s) of waters: Click here to enter text.

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	3.	Nor	on-RPWs° that flow directly or indirectly into TNWs.  Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Pro	ovide estimates for jurisdictional waters within the review area (check all that apply):  Tributary waters: # linear feet # width (ft).
			Other non-wetland waters: # acres.
			Identify type(s) of waters: Click here to enter text.
	4.		etlands directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Click here to enter text.
			Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: Click here to enter text.
			Provide acreage estimates for jurisdictional wetlands in the review area: # acres.
	5.	Wet	etlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.  Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.
		Pro	ovide acreage estimates for jurisdictional wetlands in the review area: # acres.
	6.	We	etlands adjacent to non-RPWs that flow directly or indirectly into TNWs.  Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.
		Pro	ovide estimates for jurisdictional wetlands in the review area: # acres.
	7.	Imp	appoundments of jurisdictional waters. 9 a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.  Demonstrate that impoundment was created from "waters of the U.S.," or
			Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
			Demonstrate that water is isolated with a nexus to commerce (see E below).
E.	OR	DES	TED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECHAT APPLY): 10
		whi	nich are or could be used by interstate or foreign travelers for recreational or other purposes.
		fron	om which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
		whi	nich are or could be used for industrial purposes by industries in interstate commerce.
		Inte	erstate isolated waters. Explain: Click here to enter text.
		Oth	her factors. Explain: Click here to enter text.
	Ide	ntify	y water body and summarize rationale supporting determination: Click here to enter text.
	Pro		estimates for jurisdictional waters in the review area (check all that apply): ibutary waters: # linear feet # width (ft).
			her non-wetland waters: # acres.  Identify type(s) of waters: Click here to enter text.
			etlands: # acres.

 <sup>8</sup>See Footnote # 3.
 To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
 Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

F.	NO.	N-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
		If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
		Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
		Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
		Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: Click here to enter text.
	V	Other: (explain, if not covered above): The review area for the JD is approximately 0.85 acre in size and is comprised entirely of uplands. There are no aquatic resources contained within the review area for this JD.
	(i.e.	vide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the MBR factors, presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment eck all that apply):
		Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
		Lakes/ponds: # acres.
		Other non-wetland waters: # acres. List type of aquatic resource: Click here to enter text
		Wetlands: # acres.
	D.	
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a ing is required for jurisdiction (check all that apply):
		Non-wetland waters (i.e., rivers, streams): # linear feet # width (ft).
		Lakes/ponds: # acres.
		Other non-wetland waters: # acres. List type of aquatic resource: Click here to enter text
		Wetlands: # acres.
SE	CTIO	ON IV: DATA SOURCES.
	SUPI	PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and tested, appropriately reference sources below):  Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Click here to enter text.
		Data sheets prepared/submitted by or on behalf of the applicant/consultant.
		Office concurs with data sheets/delineation report.
		Office does not concur with data sheets/delineation report.
		Data sheets prepared by the Corps: <i>Click here to enter text</i> .
	7	Corps navigable waters' study: Click here to enter text.
		U.S. Geological Survey Hydrologic Atlas: Click here to enter text.
	A	USGS NHD data.
		USGS 8 and 12 digit HUC maps.
	~	U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 KY-Jeffersontown
	7	USDA Natural Resources Conservation Service Soil Survey. Citation: Dickson Silt Loam soils - nonhydric
	7	National wetlands inventory map(s). Cite name: KY-Jeffersontown
		State/Local wetland inventory map(s): Click here to enter text.
		FEMA/FIRM maps: Click here to enter text.
		100-year Floodplain Elevation is: <i>Click here to enter text.</i> (National Geodectic Vertical Datum of 1929)
	7	Photographs:  Aerial (Name & Date): ArcMap GIS ky_1m_naip_2008_NO21E060.jpg
		or Other (Name & Date): Click here to enter text.
		Previous determination(s). File no. and date of response letter: <i>Click here to enter text</i> .
		Applicable/supporting case law: Click here to enter text.
		Applicable/supporting scientific literature: <i>Click here to enter text.</i>
	-	Other information (please specify): Click here to enter text.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The review area for this JD consists entirely of uplands.

	February 3, 2015
Pam Loeffler	Date
Regulatory Specialist	