



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

October 15, 2024

Regulatory Division
South Branch
ID No. LRL-2024-00151-mlk

Mr. Zachary T. Triplett
RES Kentucky, LLC
2307 Greene Way, Suite B
Louisville, Kentucky 40220
ztriplett@res.us

Dear Mr. Triplett:

This letter is in regard to your correspondence dated February 8, 2024, requesting an Approved Jurisdictional Determination (AJD) on behalf of Jonathan Martin Company, LLC, for an approximately 5-acre site located at the address of 1230 Helck Avenue, Louisville, Jefferson County, Kentucky.

The site was reviewed pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899. Section 404 of the CWA requires that a Department of the Army (DA) permit be obtained for the placement or discharge of dredged and/or fill material into “waters of the United States (U.S.),” including wetlands, prior to conducting the work (33 U.S.C. 1344). Section 10 of the Rivers and Harbors Act of 1899 requires that a DA Permit be obtained for structures or work in or affecting navigable “waters of the U.S.,” prior to conducting the work (33 U.S.C. 403).

Based on the information provided to this office, the site contains Wetlands 1, 2, 3, 4 and 5, which are not considered to be “waters of the U.S.” and are not regulated under Section 404 of the Clean Water Act. However, this determination does not relieve you of the responsibility to comply with applicable state law. We urge you to contact the Kentucky Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601 to determine the applicability of state law to your project.

This letter contains an AJD for the aforementioned site. If you object to the AJD, you may request an administrative appeal under Corps regulations at 33 C.F.R. Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the AJD, you must submit a completed RFA form to the Lakes and Rivers Division Office at the address listed on the enclosed NAP RFA form.

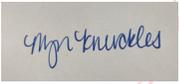
In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within **60 days** of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **December 14, 2024**. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

This jurisdictional determination is valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

The delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center prior to starting work.

If you have any questions, please contact us by writing to the District Regulatory Office at the above address, ATTN: CELRL-RDS, or contact me directly at 502-315-6709 or Meagan.l.knuckles@usace.army.mil. Any correspondence on this matter should refer to our ID Number LRL-2024-00151-mlk. A copy of this letter will be furnished to your authorized agent.

Sincerely,

 Date:
2024.10.15
13:03:17 -04'00'

Meagan Knuckles
Senior Project Manager, South Branch
Regulatory Division

Enclosures



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

CELRL-RDS

15 OCTOBER 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ LRL-2024-00151.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [LRL-2024-00151]

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. Wetland 1, non-jurisdictional
 - ii. Wetland 2, non-jurisdictional
 - iii. Wetland 3, non-jurisdictional
 - iv. Wetland 4, non-jurisdictional
 - v. Wetland 5, non-jurisdictional

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The review area encompasses a 5-acre site and is located at the address 1230 Helck Avenue, Louisville, Jefferson County, Kentucky (Latitude: 38.175255 N and Longitude: -85.70773 W).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW is the Salt River, however the resources in question do not flow to any downstream waters of the U.S. The Corps determined that the Salt River is subject to jurisdiction under Sections 9 and 10 of the Rivers and Harbors Act of 1899. This navigable water was published in a Public Notice dated September 19, 2012.

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The wetlands within the review area do not flow to any downstream waters of the U.S.

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6. SECTION 10 JURISDICTIONAL WATERS⁵: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁶ N/A

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
 - b. The Territorial Seas (a)(1)(ii): N/A
 - c. Interstate Waters (a)(1)(iii): N/A
 - d. Impoundments (a)(2): N/A
 - e. Tributaries (a)(3): N/A
 - f. Adjacent Wetlands (a)(4): N/A
 - g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁵ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁶ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁷ N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

Wetland 1	0.022	Acre	Wetland 1 is located in a depression forested area that has been isolated from the surrounding landscape due to urban development within the immediate area. The main sources of hydrology of the site are direct precipitation and surface runoff from the adjacent upland areas. On ground observations by the agent during their site visit determined that this wetland had no continuous surface connection to downstream waters. This was verified using remote tools including DEM, shaded relief and hillshade mapping. The wetland feature is physically isolated in the landscape and does not meet the definition of adjacency to an (a)(1) water, relatively permanent jurisdictional impoundments, or relatively permanent tributary and therefore does not meet the definition of an (a)(4) adjacent wetland
Wetland 2	0.016	acre	Wetland 2 is located in a depression forested area that has been isolated from the surrounding landscape due to urban development within the immediate area. The main sources of hydrology of the site are direct precipitation and surface runoff from the

⁷ 88 FR 3004 (January 18, 2023)

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			adjacent upland areas. On ground observations by the agent during their site visit determined that this wetland had no continuous surface connection to downstream waters. This was verified using remote tools including DEM, shaded relief and hillshade mapping. The wetland feature is physically isolated in the landscape and does not meet the definition of adjacency to an (a)(1) water, relatively permanent jurisdictional impoundments, or relatively permanent tributary and therefore does not meet the definition of an (a)(4) adjacent wetland.
Wetland 3	0.005	acre	Wetland 3 is located in a depressional forested area that has been isolated from the surrounding landscape due to urban development within the immediate area. The main sources of hydrology of the site are direct precipitation and surface runoff from the adjacent upland areas. On ground observations by the agent during their site visit determined that this wetland had no continuous surface connection to downstream waters. This was verified using remote tools including DEM, shaded relief and hillshade mapping. The wetland feature is physically isolated in the landscape and does not meet the definition of adjacency to an (a)(1) water, relatively permanent jurisdictional impoundments, or relatively permanent tributary and therefore does not meet the definition of an (a)(4) adjacent wetland.
Wetland 4	0.172	Acre	Wetland 4 is located in a depressional forested area that has been isolated from the surrounding landscape due to urban development within the immediate area. The main sources of hydrology of the site are direct precipitation and surface runoff from the adjacent upland areas. On ground observations by the agent during their site visit determined that this wetland had no continuous surface connection to downstream waters. The closest

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			<p>drainage feature is the ditch located just outside of the project site. Wetland 4 is situated near the ditch, however, there was no observed continuous surface connection from the wetland to the ditch. In addition, Data Point 10 as provided by the authorized agent determined the area between Wetland 4 and the ditch to be a dryland area. This area did not exhibit hydrology, hydric soils or hydric vegetation. This was verified using remote tools including DEM, shaded relief and hillshade mapping. The wetland feature is physically isolated in the landscape and does not meet the definition of adjacency to an (a)(1) water, relatively permanent jurisdictional impoundments, or relatively permanent tributary and therefore does not meet the definition of an (a)(4) adjacent wetland</p>
Wetland 5	0.112	Acre	<p>Wetland 5 is located in a depressional forested area that has been isolated from the surrounding landscape due to urban development within the immediate area. The main sources of hydrology of the site are direct precipitation and surface runoff from the adjacent upland areas. On ground observations by the agent during their site visit determined that this wetland had no continuous surface connection to downstream waters. This was verified using remote tools including DEM, shaded relief and hillshade mapping. The wetland feature is physically isolated in the landscape and does not meet the definition of adjacency to an (a)(1) water, relatively permanent jurisdictional impoundments, or relatively permanent tributary and therefore does not meet the definition of an (a)(4) adjacent wetland.</p>

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

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- a. Request for Jurisdictional Determination dated February 8, 2024 submitted by RES Kentucky, LLC and additional information dated March 21, 2024.
- b. Site visit conducted by RES Kentucky, LLC on January 17, 2020
- c. U.S. Geological Survey Map 1:24,000 Louisville East, accessed October 2024.
- d. DEM, shaded relief and hillshade (National Regulatory Viewer, accessed October 2024).
- e. TWC (Product and Technology, LLC (2014/2024) Weather Underground. Available at: <https://www.wunderground.com/> (Accessed 09 October 2024).

10. OTHER SUPPORTING INFORMATION. N/A

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Jonathan Martin Company, LLC		File Number: LRL-2024-00151-mlk	Date: October 15, 2024
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL WITHOUT PREJUDICE	C	
	PERMIT DENIAL WITH PREJUDICE	D	
X	APPROVED JURISDICTIONAL DETERMINATION	E	
	PRELIMINARY JURISDICTIONAL DETERMINATION	F	

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the permit denial

You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice means that you accept the approved JD in its entirety and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also, you may provide new information for further consideration by the Corps to reevaluate the JD.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Meagan Knuckles
U.S. Army Corps of Engineers—Louisville District
P.O. Box 59, Rm 183
Attn: CELRL-RDS
Louisville, Kentucky 40201-0059
(502) 315-6709
Email: Meagan.l.knuckles@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Katherine A. McCafferty
Regulatory Administrative Appeals Officer
U.S. Army Corps of Engineers,
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Office Phone: 513-684-2699, FAX: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

SECTION II – REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. Use additional pages as necessary. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation and will have the opportunity to participate in all site investigations.

<hr/> <p>Signature of appellant or agent.</p>	Date:
Email address of appellant and/or agent:	Telephone number: