



**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): 7/27/2021

ORM Number: LRN-2018-00744

Associated JDs: N/A

Review Area Location¹: State/Territory: Tennessee City: Allons County/Parish/Borough: Clay

Center Coordinates of Review Area: Latitude 36.5137 Longitude -85.384296

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)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	
S-2b	365 linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	S-2b, unnamed tributary, flows directly into Carter Creek. Carter Creek flows into Mitchell Creek, which flows into Obey River Mile 15.9L. Obey River identified as an (a)(1) water from its mouth to River Mile 58.2 (reference III.C.). The feature determined to have an intermittent flow regime based on submitted hydrologic determination forms, presence of macroinvertebrates (e.g. caddisfly casings found beneath rock substrate), observed water flow, a Corps site inspection, topographical maps, and the	

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

² 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.

³ 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 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.



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Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size		(a)(2) Criteria	Rationale for (a)(2) Determination
				National Hydrography Dataset. Carter and Mitchell Creeks are incorporated into Dale Hollow Lake.
S-6a	269	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	S-6a, an unnamed tributary, flows into Carter Creek via culvert and D-6b (ephemeral channel). Carter Creek flows into Mitchell Creek which flows into Obey River Mile 15.9L that is identified as an (a)(1) water from its mouth to River Mile 58.2 (reference III.C.). The feature was determined to have intermittent flow regime based submitted hydrologic determination forms, a Corps site inspection, topographical maps, and the National Hydrography Dataset. Carter and Mitchell Creeks are incorporated into Dale Hollow Lake.
S-9b	140	linear feet	(a)(2) Intermittent tributary contributes surface water flow directly or indirectly to an (a)(1) water in a typical year.	S-9b, unnamed tributary, flows directly into Mitchell Creek, which flows into Obey River Mile 15.9L. Obey River is identified as an (a)(1) water (reference III.C.) from its mouth to River Mile 58.2. The feature was determined to have intermittent flow regime based on submitted hydrologic determination forms, a Corps site inspection, topographical maps, and the National Hydrography Dataset. Mitchell Creek is incorporated into Dale Hollow Lake.

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.	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.	N/A.

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
S-1	131	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based on submitted hydrologic determination forms, site photos and a Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.

⁴ 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.

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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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
S-2a	171	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based on submitted hydrologic determination forms, site photos, and Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.
S-3	106	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based on submitted hydrologic determination forms, site photos, and Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.
S-4	178	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based on submitted hydrologic determination forms, site photos, and Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.
S-5	55	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based submitted hydrologic determination forms, site photos, and Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.
S-7	239	linear 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).	S-7 is a v-shaped ditch constructed in uplands parallel to the boat launching ramp to direct water from rain events into Carter Creek (Dale Hollow Lake). No bed and bank or ordinary high water mark was identified. The JD report identified the soils as Garmon-Newbern Complex (GnF) that are rocky, typically found on hillslopes ranging from 40 to 80 percent, and is well drained. This feature does not meet the NWPR definition of a WOTUS.
S-8	81	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	S-8 is an erosional feature located adjacent to and down gradient from two roads and a parking area. The feature developed from the surface rainwater runoff from the adjacent roads and parking area. No water or water flow was observed in the channel during the June 24, 2021 site visit. The feature was determined to have an ephemeral flow regime based on submitted hydrologic determination forms, site photos, and Corps site inspection. This feature



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
			does not meet the NWPR definition of a WOTUS.	
S-9a	126	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	S-9a is the ephemeral section of S-9b that provides a surface water connection to Mitchell Creek via S-9b. No water flow was observed the day of the site visit. The feature was determined to have ephemeral flow based on submitted hydrologic determination forms and site photos, and Corps site inspection. This feature does not meet the NWPR definition of a WOTUS
D-6b	189	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	D-6b is a shallow ephemeral feature that displayed no ordinary high water mark or bed and bank, but provides a surface water connection for S-6a to Carter Creek. No water flow was observed the day of the site visit. The feature was determined to have ephemeral flow based on Corps site inspection. This feature does not meet the NWPR definition of a WOTUS.

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: Reference "Waters of the U.S. Delineation and Hydrologic Determination Report, Mitchell Creek Marina (Approx. 38-Acres), 1260 Livingston Boat Dock Road, Allons, Clay County, Tennessee, 27 April 2021 submitted by Jonathan Hopkins, TTL, Inc. on behalf of CTP Mitchell Creek, LLC, 1400 16th Street, Suite 320, Denver, Colorado 80202.

This information is and is not sufficient for purposes of this AJD.

Rationale: Other resources were utilized and a site visit conducted by USACE Nashville District.

☐ Data sheets prepared by the Corps: Title(s) and/or date(s).

☒ Photographs: Other: Reference "Waters of the U.S. Delineation and Hydrologic Determination Report, Mitchell Creek Marina (Approx. 38-Acres), 1260 Livingston Boat Dock Road, Allons, Clay County, Tennessee, 27 April 2021 submitted by Jonathan Hopkins, TTL, Inc. on behalf of CTP Mitchell Creek, LLC, 1400 16th Street, Suite 320, Denver, Colorado 80202.

☒ Corps site visit(s) conducted on: June 24, 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: Reference "Waters of the U.S. Delineation and Hydrologic Determination Report, Mitchell Creek Marina (Approx. 38-Acres), 1260 Livingston Boat Dock Road, Allons, Clay County, Tennessee, 27 April 2021 submitted by Jonathan Hopkins, TTL, Inc. on behalf of CTP Mitchell Creek, LLC, 1400 16th Street, Suite 320, Denver, Colorado 80202.

☒ USFWS NWI maps: Reference "Waters of the U.S. Delineation and Hydrologic Determination Report, Mitchell Creek Marina (Approx. 38-Acres), 1260 Livingston Boat Dock Road, Allons, Clay County,



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Tennessee, 27 April 2021 submitted by Jonathan Hopkins, TTL, Inc. on behalf of CTP Mitchell Creek, LLC, 1400 16th Street, Suite 320, Denver, Colorado 80202.

☒ USGS topographic maps: Reference "Waters of the U.S. Delineation and Hydrologic Determination Report, Mitchell Creek Marina (Approx. 38-Acres), 1260 Livingston Boat Dock Road, Allons, Clay County, Tennessee, 27 April 2021 submitted by Jonathan Hopkins, TTL, Inc. on behalf of CTP Mitchell Creek, LLC, 1400 16th Street, Suite 320, Denver, Colorado 80202.

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	https://wu-next-ibm.wunderground.com/dashboard/pws/KTNHILHA4/table/2021-06-1/2021-06-1/monthly
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s):

Consultant provided Antecedent Precipitation Tool (APT) graph for the site visit conducted on April 9, 2021. The APT was used to evaluate the project area for the 90 day period prior to the site visit. A single point (Latitude 36.5137, Longitude -85.84296) centered on the center of the project site was used to evaluate the rainfall data and was determined to be sufficient based on the small geographic size of the site. The 90 day period beginning February 14, 2021 was determined to be "wetter than normal," with rainfall exceeding the 70th percentile for the 30 day periods ending March 13 and April 15, 2021. The rainfall was below the 70th percentile in the 30 day period ending February 14, 2021. The drought index further describes the period as "severe wetness." The daily total on the Antecedent Precipitation Tool also shows the site received precipitation in the days prior to the site visit. The consultant observed no flow was observed in features S-1, S-2a, S-4, S5, S7 and S8. A small amount of seepage was observed in S-3. Flowing water was observed throughout most of S-2b and S-6. A small trickle of surface water flow observed throughout most of the channel that appears to originate from seeps within the ravine and a thin film of algae on most the the rocks within the channel. and the aquatic during the site visit, therefore the feature was determined to be ephemeral.

USACE conducted a site visit on June 24, 2021 and utilized the APT to evaluate the 90 period prior to the site visit and the same coordinates. The 90 day period beginning April 25, 2021 was determined to be wetter than normal with rainfall exceeding the 70th percentile for the 30 day periods ending May 25 and June 24, 2021. The rainfall was below the 30th percentile in the 30 day period ending April 25, 2021. The drought index describes the period as moderate wetness. The daily total on the Antecedent Precipitation Tool also shows the site received precipitation the day prior to the site visit.

C. Additional comments to support AJD: Reference Nashville District Public Notice #86-23, dated 8 May 1986, that lists the navigable waters over which the Nashville District currently exercises regulatory jurisdiction under the authority of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. It also states, all embayments and tributary streams of all impounded reservoirs of navigable waters of the United States are also considered navigable waters of the United States to the extent of slackwaters, and jurisdiction will be exercised accordingly. Therefore, Mitchell and Carter Creeks, tributaries within Dale



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Hollow Reservoir may be considered navigable waters. Reference
<https://www.lrn.usace.army.mil/Missions/Regulatory/Navigable-Waters-List/>; 03 May 2021.