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## Regulatory Program



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

This form should be completed by following the instructions provided in the Interim Approved Jurisdictional Determination Form User Manual.

#### SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 09/25/2018

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): LRN-2018-00602

#### C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: TN County/parish/borough: Sumner City: Gallatin

Center coordinates of site (lat/long in degree decimal format): Lat. 36.379346, Long. -86.507603.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are:  attached  in report/map titled

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

#### D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Dates: 07/31/2018 Field Date(s): 08/14/2018.

#### SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Information included with the Pre-Construction Notification (PCN), submitted by BDY Environmental, LLC, on behalf of Century Communities of Tennessee, LLC, for the project identified as Kensington Downs Development, Gallatin, Sumner County, Tennessee, dated 07/19/2018.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date:

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number: HUC 05130201, HUC 0513020105, HUC 051302010501.

USGS maps. Scale & quad name and date: Cottontown 7.5-Minute Quadrangle, Kensington Downs, Gallatin, Sumner County, Tennessee, 07/19/2018.

USDA NRCS Soil Survey. Citation: Kensington Downs, dated 06/25/ 2018.

USFWS National Wetlands Inventory maps. Citation: Kensington Downs, dated 06/15/2018.

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation:

Photographs:  Aerial. Citation:

1. Map of representative photograph locations included with the PCN. Map entitled: "Figure 4. Proposed aquatic resource impacts and locations of representative photographs".

2. Historic aerial photographs provided by BDY Environmental, LLC. 3. Historic aerial photographs generated from Historic Aerials by Netonline (<https://www.historicaerials.com/viewer>). 4. Photographs entitled: "Figure 1. Location of current ponds overlaid on 1975 aerial"; "Figure 2. View of land uses in areas adjacent to the site in 2007", Figure 3. View of land uses in areas adjacent to the site in 2012", and "Figure 4. View of land uses in areas adjacent to the site in 2016".

. or  Other. Citation: Representative photograph locations included with the PCN, dated 07/19/2018. Photographs identified as 5, 6, 7, 10 and 11.

LIDAR data/maps. Citation:

Previous JDs. File no. and date of JD letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): Map included with the PCN. Map entitled: "Figure 3. Proposed aquatic resource impacts and site plan, Kensington Downs, Gallatin, Sumner County, Tennessee", dated 07/19/2018 .

### **SECTION III: SUMMARY OF FINDINGS**

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Water Droplet Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

#### **A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:**

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

*NOTE:* If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

#### **B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.**

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

(a)(3): The territorial seas.

- **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

### C. NON-WATERS OF THE U.S. FINDINGS:

#### Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>
- (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>
- (b)(4)(vii): Puddles.<sup>1</sup>
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>

<sup>1</sup> In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
  - **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD: Three ponds are located within the AJD Area of Review. Pond 1 measures 0.27 acres, Pond 2 measures 0.03 acre, and Pond 3 measures 0.06 acre. Review of aerial imagery, beginning with 1950, indicates that the lands within the review area have historically been utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 1 was constructed between 1981 and 1997, Pond 2 was constructed between 1957 and 1980, and Pond 3 was constructed between 1980 and 1981. Additionally, review of USGS topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of the Ponds. Review of the NRCS Soil Survey identifies that the soils within the Area of Review consist of non-hydric soil types. The Corps performed a site evaluation on 14 August 2018. The findings of the evaluation included the presence of an earthen berm located at the southern edge of Pond 1. No visible inlet or outlet was identified. Additionally, an earthen berm encircles Pond 2, with no visible inlet or outlet. An earthen berm surrounds Pond 3 at its northern boundary. No visible inlet or outlet is present. Based on the information provided and visual observations, it appears that the ponds were excavated entirely in dry land for agricultural purposes, and the excavated material was utilized to construct the surrounding berms. 33 CFR 328, published in Federal Register Volume 80, Number 124, on 29 June 2015, page 37105, defines features which are not considered to be waters of the United States. Under paragraph 328.3(b)(4)(ii), artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds are not waters of the United States. Based on the information provided, review of historic information, and the Corps 14 August 2018 site evaluation, Pond 1, Pond 2 and Pond 3 meet the definition as exempted features under paragraph 328.3(b)(4)(ii). Therefore, Pond 1, Pond 2, and Pond 3 are not jurisdictional under Section 404 of the Clean Water Act, as defined under 33 CFR 328.3(b)(4)(ii)..

Jurisdictional Waters of the U.S.

Table 1. (a)(1) Traditional Navigable Waters

<b>(a)(1) Waters Name</b>	<b>(a)(1) Criteria</b>	<b>Rationale to Support (a)(1) Designation</b> Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

<b>(a)(2) Waters Name</b>	<b>Rationale to Support (a)(2) Designation</b>
N/A	N/A

Table 3. (a)(3) Territorial Seas

<b>(a)(3) Waters Name</b>	<b>Rationale to Support (a)(3) Designation</b>
N/A	N/A

Table 4. (a)(4) Impoundments

<b>(a)(4) Waters Name</b>	<b>Rationale to Support (a)(4) Designation</b>
N/A	N/A
N/A	N/A

**Table 5. (a)(5) Tributaries**

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

**Table 6. (a)(6) Adjacent Waters**

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

**Table 7. (a)(7) Waters**

<b>SPOE Name</b>	<b>(a)(7) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 8. (a)(8) Waters**

<b>SPOE Name</b>	<b>(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus</b>	<b>Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Non-Jurisdictional Waters**

**Table 9. Non-Waters/No Significant Nexus**

<b>SPOE Name</b>	<b>Non-(a)(7)/(a)(8) Waters Name</b>	<b>(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus</b>	<b>Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.</b>
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

**Table 10. Non-Waters/Excluded Waters and Features**

<b>Paragraph (b) Excluded Feature/Water Name</b>	<b>Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.</b>
Pond 1	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have been historically utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 1 was constructed approximately between 1981 and 1997. Additionally, review of USGS topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 1. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm is located at the southern edge of Pond 1. No visible inlet or outlet is present. It is estimated that Pond 1 was excavated in uplands, and the excavated material was utilized to construct the surrounding berm. Based on the above information, Pond 1 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).
Pond 2	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have been historically utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 2 was constructed approximately between 1957 and 1980. Additionally, review of USGS topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 1. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm encircles Pond 2. No visible inlet or outlet is present. It is estimated that Pond 2 was excavated in uplands, and the excavated material was utilized to construct the surrounding berm. Based on the above information, Pond 2 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).
Pond 3	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have been historically utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 3 was constructed approximately between 1980 and 1981. Additionally, review of USGS topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 3. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm encircles Pond 3 at its northern boundary. No visible inlet or outlet is present. It is estimated that Pond 3 was excavated in uplands, and the excavated material was utilized to



	construct the surrounding berm. Based on the above information, Pond 1 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).
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**Table 11. Non-Waters/Other**

<b>Other Non-Waters of U.S. Feature/Water Name</b>	<b>Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.</b>
N/A	N/A

Excluded Waters or Features

EXCLUDED WATERS OR FEATURES		
(b) Excluded Feature/Water Name	(b) Exclusion Criteria	Rationale for (b) Excluded feature and Additional Discussion.
Pond 1	(b)(4)(ii) Artificial constructed lakes and ponds	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have historically been utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 1 was constructed approximately between 1981 and 1997. Additionally, review of USGS Cottontown topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 1. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm is located at the southern edge of Pond 1. No visible inlet or outlet is present. It is estimated that Pond 1 was excavated in uplands, and the excavated material was utilized to construct the surrounding berm. Based on the above information, Pond 1 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).
Pond 2	(b)(4)(ii) Artificial constructed lakes and ponds	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have historically been utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 2 was constructed approximately between 1957 and 1980. Additionally, review of USGS Cottontown topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 1. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm encircles Pond 2. No visible inlet or outlet is present. It is estimated that Pond 2 was excavated in uplands, and the excavated material was utilized to construct the surrounding berm. Based on the above information, Pond 2 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).
Pond 3	(b)(4)(ii) Artificial constructed lakes and ponds	Review of aerial imagery, beginning with 1950, indicates that the lands within the AJD Area of Review have historically been utilized for agricultural purposes. Based on the aerial imagery, it is estimated that Pond 3 was constructed approximately between 1980 and 1981. Additionally, review of USGS Cottontown topographic maps (years 1942, 1953, 1974, and 1994) do not identify the presence of Pond 3. Review of the NRCS Soil Survey identifies that the soils within the area of review consist of non-hydric soil types. An earthen berm surrounds Pond 3 at its northern boundary. No visible inlet or outlet is present. It is estimated that Pond 3 was excavated in uplands, and the excavated material was utilized to construct the surrounding berm. Based on the above information, Pond 1 was constructed entirely in dry land for agricultural purposes and meets the criteria for exclusion per 33 CFR 328.3(b)(4)(ii).