



**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): 11/4/2020

ORM Number: MVP-2019-01990-SSC

Associated JDs: N/A

Review Area Location¹: State/Territory: MN City: Lake Elmo, Oak Park Heights, Still water, Grant
County/Parish/Borough: Washington

Center Coordinates of Review Area: Latitude 45.035696 Longitude -92.863049

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	
N/A.	N/A.	N/A.	N/A.	

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.	

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wet Ditch 2a, 2b, 2c, 3a, 3b, 3c, 4b, 4c, 6, 8, 15, 16, 17b, 19, and Wetland 1	Total = 0.54	acre(s)	(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).	The listed wet ditches and wetland 1 all are located within the Trunk Highway (TH) 36, 60th Street North, or Manning Avenue right-of-way. They were constructed in uplands to convey runoff from the adjacent roadway and are now linear wetlands that meet the definition of “ditch” under paragraph c(2) of the Navigable Waters Protection Rule. The ditches listed are therefore not jurisdictional because they meet the requirements of the exclusion for ditches in paragraph b(5).
Wetland 9, 10c, and 4a	Total = 0.69	acre(s)	(b)(10) Stormwater control feature constructed or excavated in upland or in a non-jurisdictional water to convey, treat, infiltrate, or store stormwater runoff.	Wetlands 9 and 10c were constructed between August 2004 and May 2006 confirmed by viewing Google Earth Imagery from the time period. SoilWeb mapping denotes the soil as Kingsley sand loam, 6 to 12 percent slopes, characterized as well drained for both wetlands. Wetland 4a was constructed between May 1992 and May 2003, likely with the construction of the adjacent Applewood Hills Golf Course. Historic aerial imagery does not show this feature prior to 1992. Wetlands 4a, 9, and 10c were all stormwater ponds created in upland to convey, treat, infiltrate, or store stormwater. Therefore, they are not considered a water of the U.S. under the Navigable Waters Protection Rule.
Channel 5 and 13a	Total = 547	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Channel 5 was described by the wetland delineator as an incised, v-shaped erosional feature that had banks but no bed as the bottom was vegetated. The channel leads into a culvert under 60th Street N to Wet Ditch 6, which is not a water of the U.S. as outlined above. Channel 13a was described as a relatively flat, meandering feature that drains stormwater runoff north of TH 36 into Wetland 13b. The bed of Channel 13a was composed of sand and had minimal banks. In photos provided in the wetland delineation report, and confirmed by the wetland delineator, there was not water present in either of the features during the site visit. In addition, these features are not found on the National Hydrography Dataset map. Therefore, Channels

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	
			5 and 13a are not considered waters of the U.S. under the Navigable Waters Protection Rule.	
Wetland 14	0.05	acre(s)	(b)(1) Non-adjacent wetland.	The nearest a(3) water is Long Lake, approximately 0.8 miles to the northeast of Wetland 14, separated by residential homes, roadways, and open lots. Wetland 14 is located adjacent to TH 36 and is mapped on the National Wetland Inventory. The National Hydrography Dataset Map was also viewed and did not show any surface water features near the delineation of Wetland 14. In addition, desktop review of Google Earth Imagery did not show any surface water connection to an a(1)-a(3) water. Therefore, Wetland 14 is not considered a water of the U.S. under the Navigable Waters Protection Rule.
Wetland 13B	0.41	acre(s)	(b)(1) Lake/pond or impoundment that does not contribute surface water flow directly or indirectly to an (a)(1) water and is not inundated by flooding from an (a)(1)-(a)(3) water in a typical year.	Wetland 13B is a shallow marsh / open water wetland pond. The wetland delineator described the pond as being fed by the surrounding watershed and Stream Channel 13A. The National Hydrography Dataset and National Wetland Inventory maps this pond, however, it does not show any surface water connection to an a(1)-a(3) water. The pond is also surrounded by upland. Due to the lack of surface water connection to an a(1)-a(3) water, Wetland 13B is not considered a water of the U.S. under the Navigable Waters Protection Rule.

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: [Trunk Highway 36 / Manning Avenue Project – Wetland Delineation Report dated October 2019.](#)

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: Google Earth Imagery 1991-2020](#)

☐ Corps site visit(s) conducted on: [Date\(s\).](#)

☐ 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: [Title\(s\) and/or date\(s\).](#)

☒ USFWS NWI maps: [viewed 10/20/2020](#)

☐ USGS topographic maps: [Title\(s\) and/or date\(s\).](#)



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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.
CorpsMap ORM Map Layers	National Hydrography Dataset viewed 10/20/2020
State/Local/Tribal Sources	Dakota County - GIS
Other Sources	N/A.

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [N/A](#)