



**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): 1/27/2021

ORM Number: MVP-2020-00358-SSC

Associated JDs: N/A

Review Area Location¹: State/Territory: MN City: Rochester County/Parish/Borough: Olmsted

Center Coordinates of Review Area: Latitude 44.036857 Longitude -92.495655

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Tributary 1	1,305	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).	Tributary 1 is a ditch feature that is located to the east of Douglas trail and west of commercial businesses and residences. The ditch drains south into Cascade Creek, an a(2) water to the Mississippi River (via the Zumbro River). A review of historic aerial imagery from 1940 does not clearly show this feature. The 1940 image depicts a railroad in the place of Douglas Trail and agricultural land over the surrounding area that is now heavily urbanized. The urbanization of this area resulted in an increase in impervious surfaces. The ditch feature is most likely a result of that urbanization and serves the purpose of conveying stormwater. Historic topographic maps from 1935 and 1939, similarly, depict a railroad but no ditch feature is noted. Construction plans from the late 1950's were also provided by the City of Rochester and are discussed in Section III. C, below. Additionally, NHD and PWI maps do not show the feature in current mapping. Based on this information, the ditch is not a relocated tributary, constructed in a tributary, and was not constructed in an adjacent wetland. Therefore, Tributary 1 is not a water of the U.S. under the Navigable Waters Protection Rule.
Wetland 1	0.4138	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 1 is located along the fringe of Tributary 1, which is not a water of the U.S. The wetland also extends up to an adjacent parking lot as a means of drainage for the parking lot. Review of Google Earth Imagery shows that the wetland does not abut an a(1)-a(3) water and is not inundated by flooding from an a(1)-a(3) water in a typical year. Additionally the wetland is not physically separated from an a(1)-a(3) water by only a natural or artificial feature. Based on this information, Wetland 1 is not 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.

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

☒ Information submitted by, or on behalf of, the applicant/consultant: [Wetland Delineation Technical Memorandum dated January 6, 2020 and Email correspondence from January 26, 2021 \(construction plans and photo attachments\)](#).

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: Minnesota Historic Aerial Photographs Online – 1940, Google Earth Imagery 1991-2016](#)

☐ 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: [Title\(s\) and/or date\(s\)](#).

☒ USGS topographic maps: [Rochester 1935 and 1939](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS/WBD/NHD data/maps	The National Map viewed January 14, 2020
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local wetland inventory maps	MnDNR NWI and PWI viewed January 14, 2020
Other Sources	N/A.

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

C. Additional comments to support AJD: [Construction plans, submitted by the City of Rochester, show a 60-inch RCP storm sewer along with other utilities proposed for construction into the railroad right-of-way in the late 1950's. The construction plans do not provide a grading plan but a note is made on the plans that the railroad ditch is to be excavated to accommodate the storm sewer outfall. Additionally, the City noted that the elevation for the storm sewer outfall falls well below the railroad ditch elevation, further supporting that the ditch was excavated to accommodate the storm sewer outfall. In addition to the rationale in Section II. D, this information supports the findings that Tributary 1 is not a water of the U.S.](#)