



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): May 4, 2021

ORM Number: MVP-2020-00916-DAS

Associated JDs: N/A

Review Area Location¹:

State/Territory: MN City: Rochester County/Parish/Borough: Olmsted County

Center Coordinates of Review Area: Latitude 44.064025 Longitude -92.53002

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 independent 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.

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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Tributary 1 NWPR	154 feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool	Tributary 1 is an ephemeral water feature resulting from discharge of stormwater with an approximately 24-inch bank and defined bed. The closest tributary with observed surface water present in aerial photography is an unnamed tributary approximately 5,000 feet east of Tributary 1. The delineation report noted the observance of 4 inches of water in the tributary channel during an April 29 site visit with normal precipitation conditions. Tributary 1 flows approximately 450 feet to the east before discharging into a stormwater pond. No surface water was observed in Tributary 1 in aerial photos taken in 2003, 2004, 2006, 2008, 2009, 2010, 2011, 2015, and 2016. Down gradient of the stormwater pond surrounding development has modified surface water drainage patterns with the construction of culverts and stormwater management features. No continuous surface water feature is present that would provide more than ephemeral flow. This was confirmed by reviewing aerial photography. Therefore, Tributary 1 does not meet the definition of a perennial or intermittent tributary under the NWPR and is not a water of the US
Wetland 1 NWPR	0.845 acres	(b)(1) Non-adjacent wetland	Wetlands 1, 2, 3, and 4 are physically separated from any a(1) through a(3) waters. These wetlands are located in depressional areas surrounded by residential open space with no continuous surface water connection to a downstream water. The closest tributary with perennial flow as shown on the USGS Topographic map is the South Fork Zumbro River approximately 3 miles northeast of Wetland 1. The closest tributary with observed surface water present in aerial photography is an unnamed tributary approximately 5,000 feet east of Wetland 1. These wetlands are approximately 15 feet in elevation above the unnamed stream and are separated by commercial development and a city road. These wetlands do not abut a TNW, lake, pond, or impoundment of a jurisdictional water in a typical year; and are not inundated by flooding from any waterbody. Therefore, these wetlands do not meet the definition of an adjacent wetland under the NWPR and are not waters of the US
Wetland 2 NWPR	0.023 acres	(b)(1) Non-adjacent wetland	
Wetland 3 NWPR	0.002 acres	(b)(1) Non-adjacent wetland	
Wetland 4 NWPR	0.028 acres	(b)(1) Non-adjacent wetland	

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.

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 independent 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.

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: Badger Hills Senior Living Wetland Utility Exemption Application package dated October 22, 2020.
This information (*is/is not/is and is not*) sufficient for purposes of this AJD.
Rationale: *N/A or describe rationale for insufficiency (including partial insufficiency).*
- ☐ Data sheets prepared by the Corps: *Title(s) and/or date(s).*
- ☒ Photographs: aerial; Google Earth Pro and Minnesota Historical Aerial Photographs Online 1940 viewed April 30, 2021.
- ☐ 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: *Title(s) and/or date(s).*

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	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

- B. Typical year assessment(s):** N/A.
- C. Additional comments to support AJD:** 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 independent 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.

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.