



US Army Corps
of Engineers
St Paul District

Special Public Notice

ISSUED: August 28, 2008
SECTION: 404-Clean Water Act

REFER TO: JD 4 RMP

NOTICE OF JD 4 RESOURCE MANAGEMENT PLAN IMPLEMENTATION

1. PURPOSE OF THIS PUBLIC NOTICE. The Rice Creek Watershed District (RCWD) has published a Resource Management Plan (RMP) for the subwatershed that contains Judicial Ditch (JD) 4 and Anoka County Ditch (ACD) 15, identified as the JD 4 RMP.

Interested parties are hereby notified that the Army Corps of Engineers St. Paul District (Corps) is implementing a watershed-based approach to Clean Water Act (CWA) Section 404 permit evaluations for proposed projects located in the JD 4 RMP study area. The Corps will be utilizing the JD 4 RMP in its permit evaluations for proposed projects in the RMP study area.

2. BACKGROUND. The RCWD has prepared a Comprehensive Wetland Protection and Management Plan under the Minnesota state Wetland Conservation Act (WCA), for the ACD 15 and JD 4 subwatershed basin, identified as the JD 4 RMP. Attachment 1 to this public notice provides figures identifying the JD 4 RMP study area, the majority of which is located in Columbus and Forest Lake, in portions of Anoka County and Washington County, MN.

The JD 4 RMP takes into consideration the findings and recommendations in the 2001 National Research Council (NRC) report entitled "Compensating for Wetland Losses under the Clean Water Act." This Report concluded that a watershed approach would improve permit decision making, and stated that wetland functions must be understood from a watershed perspective to fulfill the objectives of the CWA. The watershed approach may be based on a structured consideration of watershed needs and how wetland types in specific locations can fulfill those needs.¹

The RCWD has incorporated Corps comments into the JD 4 RMP, and the Corps now believes that the methodologies and criteria in the JD 4 RMP are consistent with the Corps' CWA Section 404 regulatory framework.

¹ Federal Register, Vol. 71, No 59, March 26, 2006. Compensatory Mitigation for Losses of Aquatic Resources; Proposed Rule.

3. STUDY PURPOSE. The purpose of the JD 4 RMP is to provide a resource and conservation-based framework for aquatic resource management, particularly as development occurs within the JD 4 watershed basin. The JD 4 RMP addresses future water quality, quantity, and flow rates in light of forecasted development and associated impervious area.

The RMP also provides watershed-based mitigation opportunities, varies wetland replacement ratios to create disincentives for impacting high quality and hard-to-replace wetland types, and it prioritizes wetland replacement activities by giving credit incentives for wetland re-establishment and restoration instead of wetland creation.

The goal of aligning the JD 4 RMP with both state and federal wetland regulations is to achieve effective and consistent regulation of aquatic resources under federal, state and local requirements, while reducing the public and private costs of compliance with those regulatory requirements.

4. CWA Section 404 Consistency of the RMP. The Corps has found the following components of the JD 4 RMP to be consistent with CWA Section 404 requirements:

- The RMP contains an inventory and assessment of aquatic resources in the RMP study area, to aid in watershed-based wetland management.
- The RMP contains an alternatives analysis and selection of a preferred water control and management alternative for the RMP study area, based on local comprehensive planning documents. This water management strategy will be applied by the RCWD if individual developments are proposed in the RMP study area.
- The RMP identifies, on a planning level, a network of waterways, wetlands, and adjacent uplands for preservation, restoration, and/or establishment. These areas are identified in the JD 4 RMP as the Wetland Preservation Zone (WPZ).
- The RMP includes compensatory wetland mitigation guidelines, based upon wetland impact type and location, that are applicable to projects permitted within the study area.

While many elements of the RMP are consistent with the Corps' Section 404 regulatory program, the RMP does not address all of the elements required under federal law in order for a CWA Section 404 permit to be issued. For example, to be compliant with the CWA, individual development proposals must demonstrate avoidance and minimization of wetland impacts to the maximum extent practicable.

This means that most development proposals involving discharges of dredged or fill material in wetlands within the JD 4 RMP study area must overcome the CWA presumption that alternative upland sites are available, and that the use of an upland site would be less environmentally damaging.

The JD 4 RMP requires individual applicants to fully evaluate off-site and on-site alternatives to their proposed action with the goal of avoiding and minimizing water or wetland impacts. *Depending on the project purpose, the analysis of off-site alternatives may require evaluating sites outside of the JD 4 RMP study area.*

If an applicant demonstrates that there are no practicable alternatives to constructing a proposed project within the RMP study area that would avoid wetland impacts, the above components of the JD 4 RMP will be incorporated into CWA Section 404 permit evaluations within the study area. *It is important to note that proposing a project that complies with the RMP does not guarantee that a Corps permit will be issued for that project.*

There may be locations where the combination of wetland impact ratios and replacement credit ratios in the JD 4 RMP do not meet or exceed the wetland mitigation guidelines of the May 2007 Memorandum of Understanding (MOU) between the Minnesota Board of Water and Soil Resources (BWSR) and the Corps for wetland mitigation. Because the RMP addresses protection and management of wetlands on a watershed basis, and was approved by BWSR in December 2007, after the MOU was executed, the Corps will use its discretion in applying the JD 4 RMP mitigation guidelines in our permit reviews in the study area.

Applicants may be required to account for any temporal wetland loss if wetland mitigation is not provided in advance of the proposed work in wetlands.

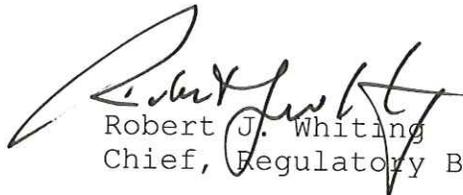
The identification and assessment of wetlands in the JD 4 RMP study area has been conducted in a manner equivalent to the U.S. Environmental Protection Agency (EPA) Advanced Identification (ADID) process, which can be used to identify wetlands that are not suitable for fill.² Applicants proposing to impact wetlands located within the JD 4 RMP high priority areas, shown conceptually in figure 3 of Attachment 1, are encouraged to contact the Corps regarding the jurisdiction and status of these wetlands relative to the ADID process.

² Chapter 40, Code of Federal Regulations, Part 230.80
<http://www.epa.gov/owow/wetlands/facts/fact28.html>

5. INITIAL PUBLIC NOTICE COMMENTS. On October 2, 2007 the Corps invited public comment on its proposed use of the JD 4 RMP in permit evaluations within the area addressed by the RMP, and made the RMP and draft RCWD Rule implementing the RMP available for review. No comment letters were received in response to the public notice. However, the U.S. EPA provided comments to the Corps in advance of the Corps public notice, and these comments have been incorporated into the JD 4 RMP.
6. DOCUMENT AVAILABILITY. This public notice, the JD 4 RMP, and the RCWD's rule implementing the RMP are available on the Corps' internet web site at <http://www.mvp.usace.army.mil/regulatory/>.
7. FEDERALLY-LISTED THREATENED/ENDANGERED WILDLIFE OR PLANTS OR CRITICAL HABITAT. No comments were received from the USFWS in response to the October 2, 2007 public notice.
8. HISTORICAL/ARCHAEOLOGICAL. No comments were received from the National Park Service, the State Archaeologist, and the State Historic Preservation Officer in response to the October 2, 2007 public notice.
9. PUBLIC INTEREST REVIEW. The decision whether to issue a given permit for a proposed project within the JD 4 RMP study area will be based on an evaluation of the probable impacts, including cumulative impacts, of each individual proposal on the public interest.

Separate public notices will be issued for any subsequent individual permit applications received in the RMP study area, to solicit site-specific information regarding any effects to threatened or endangered species, and to solicit site-specific information regarding any known cultural resources that may be affected by individual proposed projects. For each permit application, environmental and other documents will be available for review in the St. Paul District Office.

10. FURTHER INFORMATION. For additional information, please contact Marita Valencia at (651) 290-5364, in the Corps Regulatory Branch.


Robert J. Whiting
Chief, Regulatory Branch

Enclosure

NOTICE TO EDITORS: This public notice is provided for your information only and is not a request for publication.

Attachment 1. JD 4 RMP Study Area

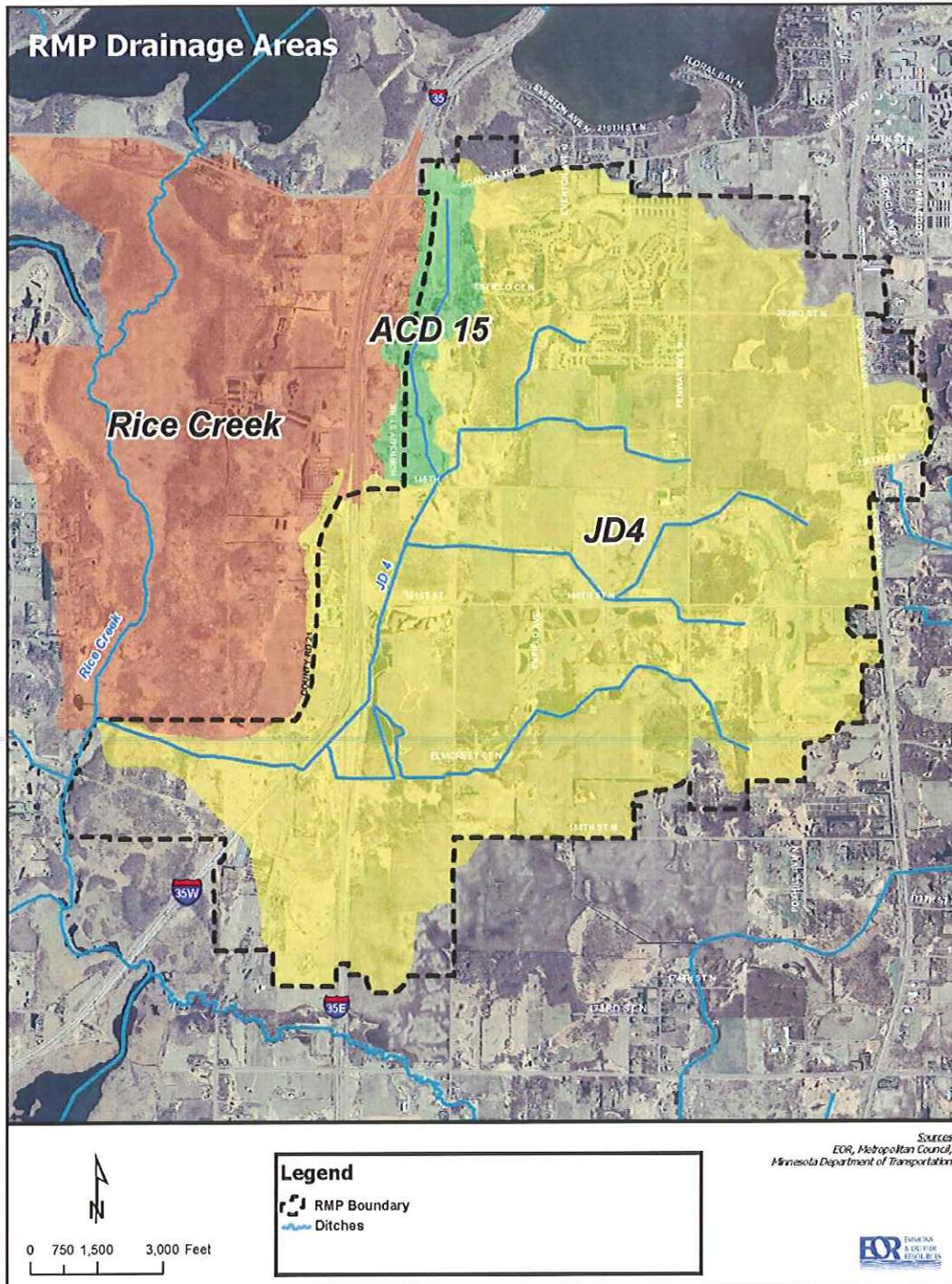


Figure 1. Drainage Areas in the JD 4 RMP
Source: RCWD JD 4 RMP

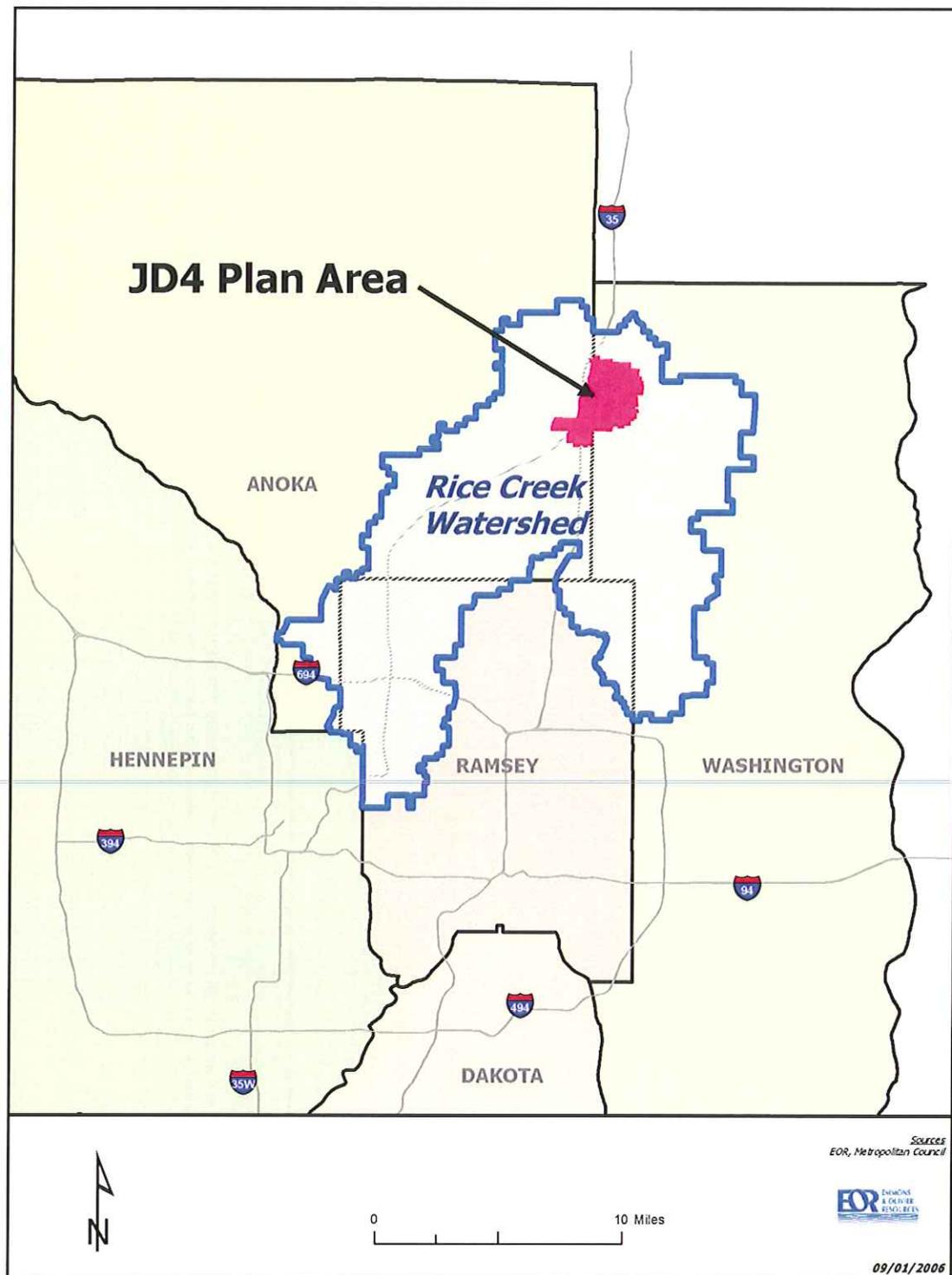


Figure 2. Location of JD 4 Subwatershed in the Rice Creek Watershed
 Source: RCWD JD 4 RMP

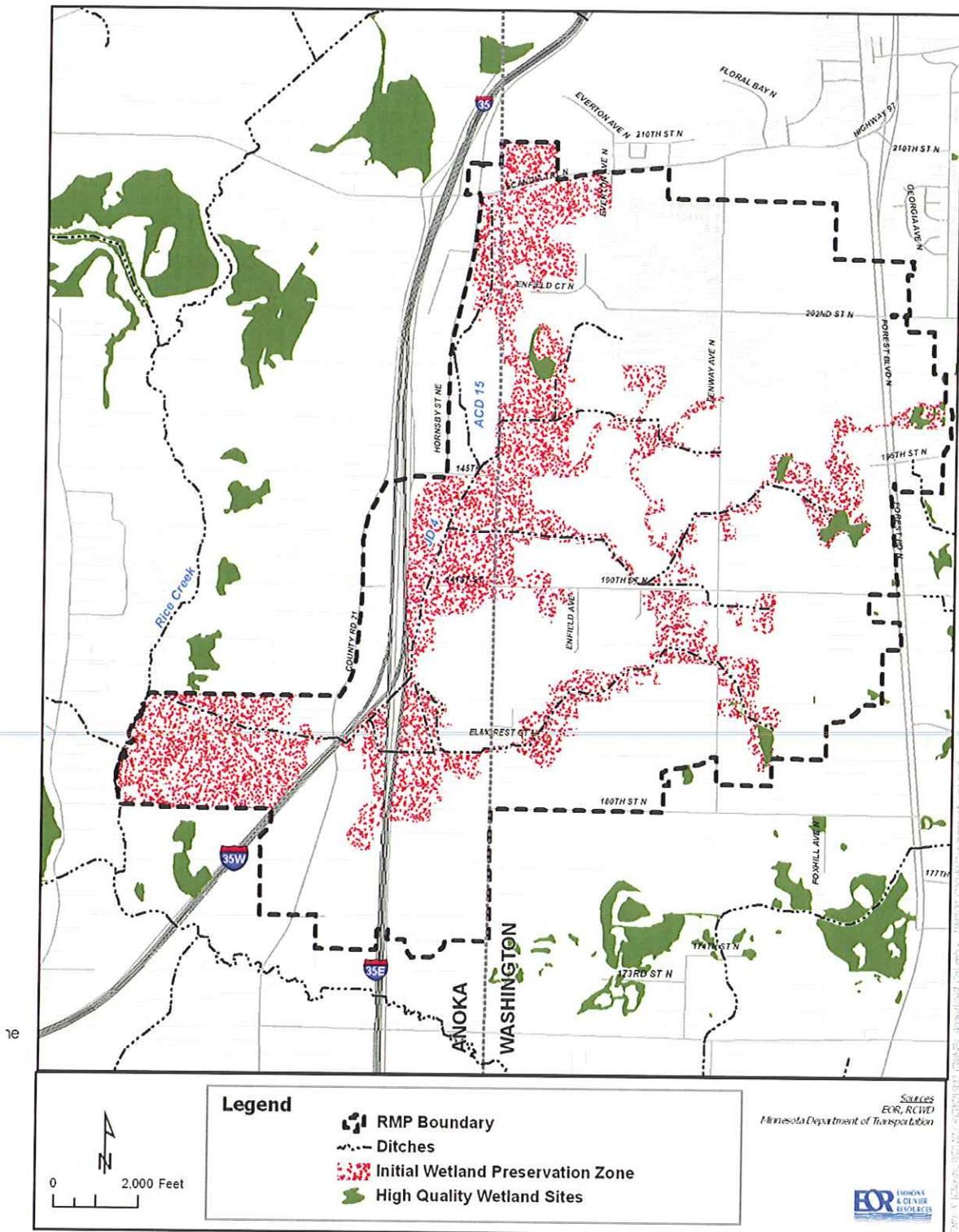


Figure 3. RMP High Priority Areas

Source: RCWD Rule RMP 2 (http://ricecreek.org/content/files/Certified%20Rule%20RMP-2%2006_11_2008.pdf)