



**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): 2/17/2021

ORM Number: MVP-2021-00059-BBY

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Inner Groves Heights

County/Parish/Borough: Dakota

Center Coordinates of Review Area: Latitude 44.849824 Longitude -93.089537

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 The review area for this AJD is limited to Wetlands 1, 2, and 3.				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
Wetland 1	2.12	acre(s)	(b)(1) Non-adjacent wetland.	The joint application states that that Wetland 1 is a large depression that receives surface water from surrounding uplands. The Contour Map submitted in the delineation report indicates that Wetland 1 is a depressional basin, completely surrounded by uplands. This was confirmed using Google Earth imagery. Wetland 1 does not share a surface water connection with an a(1)-a(3) water. Therefore, Wetland 1 is not considered a water of the U.S. under the Navigable Waters Protection Rule.
Wetlands 2 and 3	0.48	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.	The application states that Wetlands 2 and 3 were excavated in uplands for the purpose of stormwater treatment. Google Earth aerial imagery confirmed the applicant's findings. Google Earth imagery indicated that Wetlands 2 and 3 were constructed in uplands between 2016 and 2017. Based on this information, Wetlands 2 and 3 are not waters 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: [The Level 2 Wetland Delineation Report of Condor Development Inner Groves Heights, Minnesota for Falcon Development dated November 23, 2020 and submitted by Sambatek.](#)

This information is and is not sufficient for purposes of this AJD.

Rationale: [Additional Google Earth aerial imagery was needed to determine when the stormwater features were constructed in uplands and if Wetland 1 shared a surface water connection with an a\(1\)-a\(3\) water.](#)

- ☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)
- ☒ Photographs: [Aerial: Google Earth 1991, 2002-2006, 2008-2020](#)
- ☐ Corps site visit(s) conducted on: [Date\(s\).](#)
- ☐ Previous Jurisdictional Determinations (AJDs or PJDs):
- ☐ 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\(s\).](#)

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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☐ 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	NHD map submitted in the application.

B. Typical year assessment(s): [N/A](#) or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.

C. Additional comments to support AJD: [N/A](#) or provide additional discussion as appropriate.