



**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): 1/6/2021

ORM Number: 2011-02669-JLK

Associated JDs: N/A

Review Area Location¹: State/Territory: Wisconsin City: Nekimi County/Parish/Borough: Winnebago

Center Coordinates of Review Area: Latitude 43.93986 Longitude -88.59231

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.	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.	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.	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.	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
Wetland A	0.38	acre(s)	(b)(1) Non-adjacent wetland.	A review of aerial photos and ground level photos provided in the delineation report show Wetland A is in a topographically low area and surrounded by a paved roadway to the east and south and commercial development to the west and northeast. An upland area is located immediately adjacent to the north. Further north is an additional wetland area however the delineation map and historical aerial photos (photos taken 05/2018, 06/2017, 04/2015, 05/2011, 11/2010, 09/2008, 09/2006, 09/2005, 05/1992) primarily taken during the wetter months of the year illustrates Wetland A is contained within the review area and completely surrounded by uplands. Topographic maps show a gradual decrease in elevation heading towards the nearest (a)(1)-(a)(3) water which is an unnamed tributary to Lake Winnebago located approximately 0.39 mile to the south. This combined with aerial photography and floodplain maps indicates Wetland A does not abut the unnamed tributary to the south, is not separated from this tributary by natural or man-made barriers, is outside of the 100-year floodplain, and does not receive flooding in a typical year.
Wetland D	1.16	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	A review of aerial photos and ground level photos provided in the delineation report show Wetland D is a man-made stormwater pond area surrounded by uplands. A review of historical aerial photos provided by Google Earth (photos previously mentioned) demonstrates extensive groundwork on site starting during or shortly before 2005. Historical aerial photos provided in the delineation report (dating back to 1979) show predominantly dry conditions in the footprint of Wetland D before construction started, indicating the stormwater pond was constructed in upland areas. The feature has since existed as a man-made pond surrounded by higher elevations. An unnamed tributary to Lake Winnebago is the nearest (a)(1)-(a)(3) water located approximately 0.40 mile to the southwest. The pond has no

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	
			connection to this tributary by natural or man-made barriers and is not flooded by the tributary in a typical year.	
Wetland C, C(1)	0.08	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).	A review of aerial and ground level photos provided in the delineation report and Google Earth (photos previously mentioned) indicate these features are man-made linear ditches constructed during or shortly before 2005 and was designed to convey water runoff. A review of the Wisconsin Wetland Inventory illustrates they do not relocate a tributary and were not constructed in a tributary or adjacent wetlands.

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: [Bates Soil & Water Testing Services, LLC. Nekimi Avenue Property-Town of Nekimi 2019 Wetland Delineation](#)

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 and Other: Google Earth and 2020 Site Photos](#)
- ☐ 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 wetland inventory maps	Wisconsin Wetland Inventory
Other information (specify)	Floodplain Map

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

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