



**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): 3/9/2021

ORM Number: MVP-2016-00847-CCK

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Independence County/Parish/Borough: Hennepin

Center Coordinates of Review Area: Latitude 45.027485 N Longitude -95.723793 W

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
- ☐ 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 determination is limited to the delineated boundaries of 22 wetland areas labeled as Wetland 3, Wetland 4, Wetland 6, Wetland 7, Wetland 9, Wetland 11, Wetland 12, Wetland 15, Wet ditch 1, Wet ditch 2, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, Wet ditch 11, Wet ditch 12, Wet ditch 13, Wet ditch 16, and Wet ditch 17 on the attached figures labeled 2016-00847-CCK, CSAH 92 and TH 12, Hennepin County, Pages 1-7.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 3	0.73	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 3 contains a roadside ditch that was constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that the wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 4, Wetland 6, Wetland 7	0.37	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 4, Wetland 6, and Wetland 7 contain roadside ditches that are constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that the wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 9, Wetland 11, Wetland 12	1.67	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 9, Wetland 11, and Wetland 12 contain roadside ditches that are constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that the wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 15	.03	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 15 contains a roadside ditch that was constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters.
Wet ditch 1, Wet ditch 2, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, Wet ditch 11, Wet ditch 12, Wet ditch 13, Wet ditch 16, Wet ditch 17	0.51	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).	Wet Ditch 1 - Wet Ditch 17 are roadside ditches that were constructed in uplands and are now linear wetlands.

III. SUPPORTING INFORMATION

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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- 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: [Wetland Delineation Report of CSAH 92 Safety Improvements at TH 12 for Hennepin County](#)
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: Google Earth Imagery, \(1938-2015\)](#)
 - ☐ 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: <http://websoilsurvey.nrcs.usda.gov/>
 - ☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)
 - ☒ USGS topographic maps: [1:24k USGS Rockford Quadrangle](#)

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 or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.](#)
- C. Additional comments to support AJD:** [The review area for this determination is limited to the delineated boundaries of 22 wetland area labeled as Wetland 3, Wetland 4, Wetland 6, Wetland 7, Wetland 9, Wetland 11, Wetland 12, Wetland 15, Wet ditch 1, Wet ditch 2, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, Wet ditch 11, Wet ditch 12, Wet ditch 13, Wet ditch 16, and Wet ditch 17 on the attached figures labeled 2016-00847-CCK, CSAH 92 and TH 12, Hennepin County, Pages 1-7. The total area of non-jurisdictional waters within the review area is approximately 3.04 acres of wetlands.](#)

[All of the wetlands within the review area meet the definition of “wetlands” under paragraph \(c\)\(16\) and are not \(a\)\(4\) waters because they do not meet the definition of “adjacent wetlands” under paragraph \(c\)\(1\).](#)

[Wetland 3 contains roadside ditches that were constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. Wetland 3 is bounded by Trunk Highway 14 to the north and by uplands on all three other sides. No culvert exists through the artificial structure to the north and no hydrologic surface connection to any other \(a\)\(1\)-\(3\) waters. Wetland 3 may convey surface water to the closest downstream \(a\)\(1\)-\(a\)\(3\) waters \(tributary flowing south of Robina Lake just west of this wetland\) via roadside ditch along TH 14, that were constructed through uplands. However a non-jurisdictional feature,](#)



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such as a roadside ditch, cannot render an otherwise non-jurisdictional wetland jurisdictional regardless of flow. Historic aerial imagery from 1937 (oldest available) indicates that the ditches were not constructed in an (a)(4) water and the ditches were surrounded by uplands when constructed. Based on this review, Wetland 3 is not jurisdictional under the Navigable Waters Protection Rule (NWPR) because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland 4, Wetland 6, and Wetland 7 contain roadside ditches that are constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that the wetlands are geographically isolated and physically separated from potential downstream waters. Wetland 4 and Wetland 6 are bisected by CSAH 92. There is no culvert or culvert(s) conveying surface water flows through CSAH 92 providing direct hydrologic connection to Robina Lake or any downstream (a)(1)-(a)(3) waters. Topography lines, LiDAR contours and color changes on USGS topo maps also demonstrate these wetland areas are surrounded by uplands. Wetland 7 is a linear wetland adjacent to CSAH 92 tied to a depressional wetland containing a small artificial pond, constructed sometime between 1971 and 1991, based on historic aerial photographs. The artificial pond is approximately 200' from Robina Lake but is not 'abutting' and is surrounded by uplands. Wetland 7 is not inundated by flooding from the (a)(3) water (Robina Lake), therefore is a non-adjacent wetland/excluded lake or pond. Based on this review, Wetland(s) 4, 6, and 7 are not jurisdictional under the NWPR because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). These assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland 9, Wetland 11, and Wetland 12 contain roadside ditches that are constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that the wetlands are geographically isolated and physically separated from potential downstream waters. These wetlands are linear wetlands bisected by CSAH 92, BNSF railroad line and TH 12 with no culvert or culvert(s) conveying surface water flows through CSAH 92 or the railroad line providing direct hydrologic connection to Robina Lake or any downstream (a)(1)-(a)(3) waters. The portion of Wetland 11 south of TH 12 has continuity to a larger depressional wetland to the south as evidenced by aerial photography. However, the larger depressional wetland also is geographically isolated and physically separated from potential downstream waters as evidenced by topography lines, LiDAR contours and color changes on USGS topo maps. Based on this review, Wetland(s) 9, 11, and 12 are not jurisdictional under the NWPR because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). These assessed wetlands do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wetland 15 contains a roadside ditch that was constructed through non-jurisdictional wetlands. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically



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separated from potential downstream waters. Topography lines, LiDAR contours and color changes on USGS topo maps also demonstrate this wetland area is surrounded by uplands. This wetland may convey surface water to the closest downstream (a)(1)-(a)(3) waters (tributary flowing southwest of Robina Lake just south of this wetland) via roadside ditch along 'Old County Road 92' that was constructed through uplands. However a non-jurisdictional feature, such as a roadside ditch, cannot render an otherwise non-jurisdictional wetland jurisdictional regardless of flow. Historic aerial imagery from 1937 (oldest available) indicates that the ditches were not constructed in an (a)(4) water and the ditches were surrounded by uplands when constructed. Based on this review, Wetland 15 is not jurisdictional under the NWPR because it meets the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1). This assessed wetland does not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or tributary, or from a jurisdictional lake, pond, or impoundment, and are not physically separated from a jurisdictional water by only a natural feature or artificial structure that allows for a direct hydrologic surface connection. This was confirmed by reviewing the data sources in Section III.A.

Wet ditch 1, Wet ditch 2, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, Wet ditch 11, Wet ditch 12, Wet ditch 13, Wet ditch 16, and Wet ditch 17 were constructed in uplands to convey runoff from the adjacent roadway, and are now linear wetlands that meet the definition of "ditch" under paragraph (c)(2). In addition, the ditches are not (a)(1) waters, are not relocated tributaries, are not constructed in a tributary, and are not constructed in an adjacent wetland. All of these wetlands are linear wetlands parallel to an existing roadway and do not extend beyond the delineated proposed construction ROW area(s), based off NWI maps, topo maps and aerial photos. Based on this review, Wet ditch 1-17 are not jurisdictional under the NWPR because they meet the requirements of the exclusion for (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).

This was confirmed by reviewing aerial photography, national hydrography data, and topographic data. Based on this review, the assessed ditches are not jurisdictional under the Navigable Waters Protection Rule because they meet the requirements of the exclusion for ditches under paragraph (b)(5).