



**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): 2/23/2021

ORM Number: MVP-2020-01974-CCK

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Lake Lillian County/Parish/Borough: Kandiyohi

Center Coordinates of Review Area: Latitude 44.999698 N Longitude -94.85973 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			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Wetland B	0.17	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).
Wetland I, Wetland J	0.98	acre(s)	(b)(1) Non-adjacent wetland.
Wetland L	0.38	acre(s)	(b)(1) Non-adjacent wetland.
Wet ditch 1, Wet ditch 2, Wet ditch 3, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, Wet ditch 11	1.51	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).

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: [Wetland Delineation Report: Kandiyohi County SAP 034-604-030 – CSAH 4 Realignment Report, Submitted by Wenck Associates, Inc.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

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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- ☐ 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 Lake Lillian 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 15 wetland area labeled as Wetland B, Wetland I, Wetland J, Wetland L, Wet ditch 1, Wet ditch 2, Wet ditch 3, Wet ditch 4, Wet ditch 5, Wet ditch 6, Wet ditch 7, Wet ditch 8, Wet ditch 9, Wet ditch 10, and Wet ditch 11 on the attached figures labeled 2020-01974-CCK AJD Attachments, Pages 1-57. 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 B and Wet Ditch 1 – 11 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.](#)

[Wetland I and Wetland J 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 may have at one time been part of jurisdictional wetlands but connection has since been severed by an artificial structure \(CSAH 4 roadway\); and are now surrounded by uplands. Topography lines and color changes on USGS topo maps also demonstrate this wetland area is surrounded by uplands. These wetlands may convey surface water to the closest downstream \(a\)\(1\)-\(a\)\(3\) waters \(Lake Lillian directly the west and the South Fork Crow River directly to the east\) via culverts and roadside ditches that were 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 1938 \(oldest available\) indicates that the](#)



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ditches were not constructed in an (a)(4) water and the ditches were surrounded by uplands when constructed.

Wetland L is an isolated wetland surrounded by upland areas, that does not have a direct surface water connection to a downstream (a)(1)-(a)(3) water. A review of the data sources in Section III.A indicates that this wetland is geographically isolated and physically separated from potential downstream waters. This wetland may have at one time been part of jurisdictional wetlands but connection has since been severed by an artificial structure (CSAH 4 roadway); and is now surrounded by uplands. Lake Lillian is directly across CSAH 4 from Wetland L, however there is no culvert providing a surface water connection to Lake Lillian or any other jurisdictional water. NWI maps, topo maps and hydric soils maps also indicate the wetland does not extend in any other direction either; and is physically separated from Lake Lillian as well as the channelized tributary located southeast of Wetland L.

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).