



**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): November 04, 2020

ORM Number: MVP-2020-02186-CCK

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Eagan and Inver Grove Heights

County/Parish/Borough: Dakota

Center Coordinates of Review Area: Latitude 44.848057 Longitude -93.106924

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 2, 3, 7, 8, 9, 10	1.92	acre(s)	(b)(1) Nonadjacent wetland.	Wetlands 2, 3, 7, 8, 9, and 10 are six separate wetland areas located on the north and south sides of CSAH 26. A review of the data sources in Section III.A indicates that all six of these wetland areas are geographically isolated and physically separated from potential downstream waters.
Wetland 11, 12, 13, 14, 15	0.40	acre(s)	(b)(1) Nonadjacent wetland.	Wetlands 11, 12, 13, 14, and 15 are five separate wetland areas located to the east of Argenta Trail. A review of the data sources in Section III.A indicates that all five of these wetland areas are geographically isolated and physically separated from potential downstream waters.
Wetland 4 (4a and 4b), PWI#256W	0.32	acre(s)	(b)(1) Nonadjacent wetland.	Wetland 4a and 4b are small wetland areas located on the north side of CSAH 26. These wetland areas may convey flows north into a larger wetland area (PWI #256W). However, the data sources in Section III.A indicates that PWI #256W is surrounded by uplands, and is physically separated from other potential downstream waters. No connectivity conveying flow was found between this wetland area and adjacent wetlands to the north and northeast.
Stormwater pond 1, Stormwater pond 2, Stormwater pond 3	0.58	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.	Stormwater ponds 1, 2, and 3 are stormwater control features constructed in uplands to store stormwater runoff. A review of the data sources in Section III.A indicates Stormwater Pond 1 was constructed in uplands in 2014, and Stormwater Ponds 2 and 3 were constructed in 2017 in uplands.

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)): ⁶			
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination
Wetland 1, 5, 6	0.22	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: [Dakota County Department of Transportation, Joint Permit Application](#)

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, \(1991-2020\); 2006, 2008, 2013, 2014, 2016, 2017, 2018, 2019 photos from Applicant, On-site photos provided by applicant dated November 2019](#)

☐ Corps site visit(s) conducted on: [Date\(s\)](#).

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [MVP-2014-02104-JTB, March 23, 2017 \(for Wetland 14\)](#)

☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☐ USDA NRCS Soil Survey: [Dakota County Web Soil Survey, accessed October 2019](#)

☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)

☒ USGS topographic maps: [1:24k USGS Saint Paul SW 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	Lidar 2-Foot Contours

⁶ 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.

⁷ 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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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 are for this determination is limited to the delineated boundaries of 15 wetland areas, 1 open water area, and 3 stormwater ponds labeled as Wetland 1, Wetland 2, Wetland 3, Wetland 4, Wetland 5, Wetland 6, Wetland 7, Wetland 8, Wetland 9, Wetland 10, Wetland 11, Wetland 12, Wetland 13, Wetland 14, Wetland 15, PWI #256W, Stormwater Pond 1, Stormwater Pond 2, and Stormwater Pond 3 on the attached figures labeled 2020-02186-CCK AJD Attachments, Pages 1-4.. The total area of non-jurisdictional waters within the review area is approximately 3.44 acres.

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). Wetlands 2, 3, 7, 8, 9, and 10 are six separate wetland areas located on the north and south sides of CSAH 26. A review of the data sources in Section III.A indicates that all six of these wetland areas are geographically isolated and physically separated from potential downstream waters. Wetlands 11, 12, 13, 14, and 15 are five separate wetland areas located to the east of Argenta Trail. A review of the data sources in Section III.A indicates that all five of these wetland areas are geographically isolated and physically separated from potential downstream waters

Wetland 4a and 4b are small wetland areas located on the north side of CSAH 26. These wetland areas may convey flows north into a larger wetland area (PWI #256W). However, the data sources in Section III.A indicates that PWI #256W is surrounded by uplands, and is physically separated from other potential downstream waters. No connectivity conveying flow was found between this wetland area and adjacent wetlands to the north and northeast. Wetlands 1, 5, and 6 are roadside ditches that were constructed in uplands and are now linear wetlands.

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).