



**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): 8/13/2021

ORM Number: MVP-2020-02246-CCK

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Kalmar County/Parish/Borough: Olmsted

Center Coordinates of Review Area: Latitude 44.07105026 N Longitude -92.62751050 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 14 wetland area labeled as Ditch 1A, Erosional Feature 1T, Ditch 3A, Ditch 3B, Ditch 3C, Ditch 5, Ditch 6, Ditch 7, Ditch 9, Ditch 11, Wetland 2, Farmed Wetland 14, Farmed Wetland 15, and Farmed Wetland 16, on the attached figures labeled 2020-02246-CCK, CSAH 4, Olmsted County, Pages 3-13.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Ditch 1A	0.15	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).	Ditch 1A is a roadside ditch that was constructed in uplands and is now a linear wetland.
Wetland 2	0.09	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 2 is a roadside ditch that was constructed in uplands and is now a linear wetland.
Erosional Feature 1T	0.007	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).	Erosional Feature 1T is a roadside ditch that was constructed in uplands and is now a linear wetland.
Ditch 3A, Ditch 3B, Ditch 3C	0.12	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).	Ditch 3A, Ditch 3B and Ditch 3C are roadside ditches that were constructed in uplands and are now linear wetlands.
Ditch 5, Ditch 11	.07	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).	Ditch 5 and Ditch 11 contain roadside ditches that were constructed in uplands and are now linear wetlands.
N/A.	N/A.	acre(s)	N/A.	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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
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Excluded waters ((b)(1) – (b)(12)): ⁶ The review area for this determination is limited to the delineated boundaries of 14 wetland area labeled as Ditch 1A, Erosional Feature 1T, Ditch 3A, Ditch 3B, Ditch 3C, Ditch 5, Ditch 6, Ditch 7, Ditch 9, Ditch 11, Wetland 2, Farmed Wetland 14, Farmed Wetland 15, and Farmed Wetland 16, on the attached figures labeled 2020-02246-CCK, CSAH 4, Olmsted County, Pages 3-13.				
Exclusion Name	Exclusion Size	Exclusion ⁷	Rationale for Exclusion Determination	
Ditch 6, Ditch 7, Ditch 9	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).	Ditch 6, Ditch 7, and Ditch 9 are roadside ditches that were constructed in uplands and are now linear wetlands.
Farmed Wetland 14, Farmed Wetland 15, Farmed Wetland 16	0.07	acre(s)	(b)(1) Non-adjacent wetland.	Farmed Wetland(s) 14, 15, and 16 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.

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: [CSAH 4 West Segment Project/Olmsted County Wetland Delineation Report, by SRF, Inc](#)

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, \(1940-2015\)](#)
- ☐ 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.

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.



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Data Source (select)	Name and/or date and other relevant information
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

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

C. Additional comments to support AJD: The review area for this determination is limited to the delineated boundaries of 14 wetland area labeled as Ditch 1A, Erosional Feature 1T, Ditch 3A, Ditch 3B, Ditch 3C, Ditch 5, Ditch 6, Ditch 7, Ditch 9, Ditch 11, Wetland 2, Farmed Wetland 14, Farmed Wetland 15, and Farmed Wetland 16, on the attached figures labeled 2020-02246-CCK, CSAH 4, Olmsted County, Pages 3-13. The total area of non-jurisdictional waters within the review area is approximately 1.01 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).

Ditch 1A, Erosional Feature 1T, Ditch 3A, Ditch 3B, Ditch 3C, Ditch 5, Ditch 6, Ditch 7, Ditch 9, Ditch 11, and Wetland 2 are roadsides ditches that 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, these listed wetlands 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 wetland areas are not jurisdictional under the Navigable Waters Protection Rule because they meet the requirements of the exclusion for ditches or non-adjacent wetlands under paragraph (b)(5).

Farmed Wetland 14, Farmed Wetland 15, and Farmed Wetland 16 contain roadside ditches that were 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. Farmed Wetland 14 is on the south side of CSAH 4, approximately 1000 feet to the north of a tributary to the Zumbro River. However this wetland appears to be isolated as there is no evidence of a direct hydrologic connection to the Zumbro River tributary or any downstream (a)(1)-(a)(3) waters. Topography lines, LiDAR contours and color changes on USGS topo maps also demonstrate this wetland area is surrounded by uplands. Farmed Wetland 15 and Farmed Wetland 16 are also on the south side of CSAH 4, further east. These wetlands continue outside of the CSAH 4 ROW (therefore are not roadside ditches constructed in uplands), but there is no evidence of a direct hydrologic connection to the Zumbro River tributary or any downstream (a)(1)-(a)(3) waters. Upland areas surrounding these wetland areas were confirmed by topography lines, LiDAR contours and color changes on USGS topo maps. Based on this review, Farmed Wetland(s) 14, 15, and 16 are not jurisdictional under the NWPR because they meet the



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REGULATORY PROGRAM
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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.