



**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): 4/28/2021

ORM Number: MVP-2021-00287-CCK

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Alexandria County/Parish/Borough: Douglas

Center Coordinates of Review Area: Latitude 45.94770209 Longitude -95.2919656 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.	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 The review area for this determination is limited to the delineated boundaries of 3 wetland areas labeled as Wetland B, Wetland A, and Wetland O on the attached figures labeled 2021-00287-CCK, Douglas County CSAH 9, Pages 16-17.				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland B	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).	Wetland B is a roadside ditch that was constructed in uplands and is now a linear wetland.
Wetland A	0.36	acre(s)	(b)(1) Non-adjacent wetland.	Wetland A contains an isolated wetland on the west side of CSAH 9, between two private driveways. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
Wetland O	0.42	acre(s)	(b)(1) Non-adjacent wetland.	Wetland O contains an isolated wetland on the east side of CSAH 9, surrounded by an agricultural field. A review of the data sources in Section III.A indicates that the wetland is geographically isolated and physically separated from potential downstream waters.
N/A.	N/A.	acre(s)	N/A.	N/A.

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: [USACE Permit Application for Douglas CSAH 9 Improvements Project](#)

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.](#)

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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- ☐ USDA NRCS Soil Survey: <http://websoilsurvey.nrcs.usda.gov/>
- ☒ USFWS NWI maps: [USFWS NWI of MN, 1974-1978](#)
- ☒ USGS topographic maps: [1:24k USGS Alexandria East 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 3 wetland areas labeled as Wetland B, Wetland A, and Wetland O, on the attached figures labeled 2021-00287-CCK, Douglas County CSAH 9, Pages 16-17. The total area of non-jurisdictional waters within the review area is approximately 0.86 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 was constructed in uplands to convey runoff from the adjacent roadway, and is now a linear wetland that meet the definition of “ditch” under paragraph \(c\)\(2\). Historic aerial imagery from 1938 \(oldest available\) indicates that the ditch was not constructed in an \(a\)\(4\) water and the ditch was surrounded by uplands when constructed. In addition, the ditch is not an \(a\)\(1\) waters, is not a relocated tributary, and is not constructed in a tributary. This wetland is a linear wetland parallel to an existing roadway and does not extend beyond the delineated proposed construction ROW area\(s\), based off the NWI maps, topo maps and aerial photos. Based on this review, Wetland Bis not jurisdictional under the NWPR because it meets 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 \(c\)\(1\).](#)

[Wetland A and Wetland O contain isolated depressional wetlands surrounded by uplands. A review of the data sources in Section III.A indicates that these wetlands are geographically isolated and physically separated from potential downstream waters. Topography lines, LiDAR contours and color changes on USGS topo maps demonstrate this wetland area is surrounded by uplands. Wetland A is bounded by CSAH 9 to the east, private driveways to the north and south, and uplands to the west. Wetland O is bounded by CSAH 9 to the west. There is a culvert underneath CSAH 9, conveying surface water flows between these two wetland areas; however the culvert only conveys surface water flows between two isolated wetlands and does not provide direct hydrologic connection to any downstream \(a\)\(1\)-\(a\)\(3\) waters. Aerial photos \(1938-present\), NWI maps and topo maps demonstrate that Wetland O has surface water connection to pockets of wetland areas to the east outside of the project area, however surface water connection to any further downstream \(a\)\(1\)-\(a\)\(3\) waters has been severed by roadways to the east \(private road\) and south \(County Road 30 NE\).](#)



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Wetland A and Wetland O do not abut any downstream (a)(1)-(a)(3) waters and do not appear to be inundated by flooding from (a)(1)-(a)(3) waters. Based on this review, Wetland A and Wetland O are 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). These assessed wetlands 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.

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).