



**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): 3/19/2021

ORM Number: MVP-2021-00444-DWW

Associated JDs: N/A

Review Area Location¹: State/Territory: Minnesota City: Forest Lake County/Parish/Borough: Washington

Center Coordinates of Review Area: Latitude 45.2928820505254 Longitude -93.0132791937841

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 or describe rationale.
- ☐ 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				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland	5.05	acre(s)	(b)(9) Water-filled depression constructed/excavated in upland/non-jurisdictional water incidental to mining/construction or pit excavated in upland/non-jurisdictional water to obtain fill/sand/gravel.	The wetland complex on the Matt Schmuck site was created in an upland area as a result of road construction borrow that was not intended to create a wetland at the project site.

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: [Washington County](#)

This information [is](#) sufficient for purposes of this AJD.

Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\).](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

☐ Photographs: [Select. Title\(s\) and/or date\(s\).](#)

☐ 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: [Title\(s\) and/or date\(s\).](#)

☒ USFWS NWI maps: [USFWS NWI mapping](#)

☒ USGS topographic maps: [USGS Washington County](#)

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.

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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- 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:** Abrupt steep slopes surrounding the 40 acres site (the NWPR review area is within the 40 acres property boundary) and conflicting resource map information are an indicator that the site has been disturbed and specifically mined for granular building material. The authorized agent determined the site was used as a borrow site for the construction of I-35 starting in 1969.

Background:

In the 1964 aerial photo the site is a cultivated farm field with no indications of wetness. There are minor areas natural wetlands encroaching on the southwest and southeast corners of the site. I-35 has not been constructed yet. The 1967 USGS topo map indicated this area was 8-10 feet higher than the 1988 USGS topo map. The soil survey maps the excessively well drained Zimmerman fine sand (158B) surrounding the site. Today, at the edges of the site there are cut slopes approximately 8-10 feet high where the borrow area begins.

In December 1968, the property was sold to Johnson Bros. Highway and Heavy Construction Inc. Johnson Bros. constructed I-35 in the Forest Lake area. This site is one of several borrow sites used during the I-35 construction. The historical photos include a similar site during construction about one mile south of the Matt Schmuck site. The use of wheeled scrapers in the photos provides two incites that the intent of the project was not to create a wetland. First, operating a wheeled scraper at or below the water table leads to the equipment getting stuck and excessively wet soil does not load effectively in a bottom loading scraper. Secondly, scrapers would be used to place sand directly on the I-35 roadbed. Wet soil cannot be graded and compacted to meet proctor density standards for road construction. Mining operations that intend to excavate below the water table generally use backhoes, dredges, and conveyors to stack and drain the soil prior to hauling it with dump trucks.

In the 1974 aerial photo I-35 has been completed and the site was left a uniform, flat area. The two natural wetlands in the corners of the site appear to have been avoided during the site excavation. Based on the topographic maps, the final site elevation is approximately 902 which was left about a foot or so above the adjacent natural wetlands (900-902). This is consistent with the method of using wheeled scrapers to excavate the site.