



**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): 8/21/2020  
 ORM Number: MVP-2015-04662-BGO  
 Associated JDs: N/A  
 Review Area Location<sup>1</sup>: State/Territory: Minnesota City: Richmond, Roscoe  
 County/Parish/Borough: Stearns  
 Center Coordinates of Review Area: Latitude 45.434404 Longitude -94.619653

**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)<sup>2</sup>**

§ 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): <sup>3</sup>			
(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.

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> 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.

<sup>3</sup> 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)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland 3	0.05 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 3 is a roadside ditch that was constructed in uplands and is now a linear wetland.
Wetland A, Wetland B, Wetland 37	1.10 acre(s)	(b)(1) Non-adjacent wetland.	Wetlands A, B, and 37 include three separate wetland areas located on the north side of TH 23. A review of the data sources in Section III.A indicates that all three of these wetlands are geographically isolated and physically separated from potential downstream waters. USGS Topographic Quads and 2-foot LIDAR contours indicate that there is a significant topographic break between Wetland 37 and the larger wetland basin (Wetland 2) to the east, up to a 12-foot increase in elevation at the highest point between these two areas.
Wetland 6, Wetland 29	0.10 acre(s)	(b)(1) Non-adjacent wetland.	Wetlands 6 and 29 are two separate wetland areas located on the north side of TH 23. A review of the data sources in Section III.A indicates that both wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 9, Wetland 10	0.31 acre(s)	(b)(1) Non-adjacent wetland.	Wetlands 9 and 10 are two separate wetland areas located on the north side of TH 23. A review of the data sources in Section III.A indicates that both wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 34	0.32 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 34 is part of a larger wetland basin located on the north side of TH 23. A review of the data sources in Section III.A indicates that this larger wetland basin is geographically isolated and physically separated from potential downstream waters.

<sup>4</sup> 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.

<sup>5</sup> 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)): <sup>4</sup>				
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination	
Wetland 11, Wetland 11.1	0.45	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).	Wetlands 11 and 11.1 are roadside ditches that were constructed in uplands and are now linear wetlands.
Wetland 12.1, Wetland 12.2, Wetland 26.1, Wetland 27.1	2.43	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).	Wetlands 12.1, 12.2, 26.1, and 27.1 are roadside ditches that were constructed in uplands and are now linear wetlands.
Wetland 14, Wetland 36	1.30	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands 14 and 36 are two separate wetland areas located on the north and south sides of TH 23. A review of the data sources in Section III.A indicates that both wetlands are geographically isolated and physically separated from potential downstream waters.
Wetland 24	0.25	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 24 is a small wetland area located on the south side of TH 23. A review of the data sources in Section III.A indicates that this wetland area may convey flows southwest along TH 23 and into an unnamed tributary (Wetlands 15.1T and 23.1T) to North Fork Crow River. However, there is a break by a non-jurisdictional roadside ditch (Wetlands 23.1 and 24.1) between Wetland 24 and the unnamed tributary that would not provide a sufficient hydrologic connection to meet the conditions of an adjacent wetland under paragraph (a)(4). In addition, the data sources in Section III.A indicates that Wetland 24 is surrounded by uplands to the south and east, and is physically separated from other potential downstream waters.
Wetland 15, Wetland 23.1, Wetland 24.1, Wetland 25.1	0.49	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an	Wetlands 23.1, 24.1, and 25.1 are roadside ditches that were constructed in uplands and are now linear wetlands.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination	
		(a)(4) water that do not satisfy the conditions of (c)(1).		
Wetland 16, Wetland 17, Wetland 21, Wetland 38	1.14	acre(s)	(b)(1) Non-adjacent wetland.	Wetlands 16, 17, 21, and 38 are four separate wetland areas located on the north and south sides of TH 23. A review of the data sources in Section III.A indicates that all four of these wetland areas are geographically isolated and physically separated from potential downstream waters.
Wetland 16.1, Wetland 21.1, Wetland 21.2, Wetland 22	0.81	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).	Wetlands 16.1, 21.1, 21.2, and 22 are roadside ditches that were constructed in uplands and are now linear wetlands.
Wetland 20.2	0.16	acre(s)	(b)(1) Non-adjacent wetland.	Wetland 20.2 is a small wetland area located on the south side of TH 23. A review of the data sources in Section III.A indicates that this wetland area may convey flows northeast along TH 23 and into a larger wetland area (Wetland 20) that is connected to an unnamed tributary to the North Fork Crow River. However, there is a break by a non-jurisdictional roadside ditch (Wetland 20.1) between Wetland 20.2 and the larger wetland area to the east that would not provide a sufficient connection to meet the conditions of an adjacent wetland under paragraph (a)(4). In addition, the data sources in Section III.A indicates that Wetland 20.2 is surrounded by uplands to the south and east, and is physically separated from other potential downstream waters.
Wetland 18, Wetland 18.1, Wetland 20.1	0.76	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).	Wetlands 18, 18.1, and 20.1 are roadside ditches that were constructed in uplands and are now linear wetlands.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
Wetland 19	0.09 acre(s)	(b)(1) Non-adjacent wetland.	Wetland 19 is a small wetland area located on the north side of TH 23. A review of the data sources in Section III.A indicates that Wetland 19 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: [MnDOT SP 7305-124/TH 23 North Gap Wetland Delineation Report, May 2019](#)

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: 2017 FSA and Google Earth Imagery, 1991-2020](#)
- 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 of MN, 1974-1978](#)
- USGS topographic maps: [1:24k DRG – Munson, Eden Lake, Zion and Paynesville, 2016](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS/WBD/NHD data/maps</a>	<a href="#">NHD – High Resolution – MN, 2015</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local wetland inventory maps</a>	<a href="#">DNR NWI Update – MN, 2010-2018</a>
<a href="#">Other Sources</a>	<a href="#">2-Foot Contours Minnesota (LIDAR Service)</a>

**B. Typical year assessment(s):** [N/A](#)

**C. Additional comments to support AJD:** The review are for this determination is limited to the delineated boundaries of 17 wetlands labeled as Wetland A, Wetland B, Wetland 37, Wetland 6, Wetland 29, Wetland 9, Wetland 10, Wetland 34, Wetland 14, Wetland 36, Wetland 24, Wetland 16, Wetland 17, Wetland 21, Wetland 38, Wetland 20.2 and Wetland 19, and 18 roadside ditches labeled as Wetland 3, Wetland 11, Wetland 11.1, Wetland 12.1, Wetland 12.2, Wetland 26.1, Wetland 27.1, Wetland 15, Wetland 23.1, Wetland 24.1, Wetland 25.1, Wetland 16.1, Wetland 21.1, Wetland 21.2, Wetland 22, Wetland 18, Wetland 18.1 and Wetland 20.1 on the attached figures labeled 2015-04662-BGO AJD Attachments, Pages 1-20 of 20. All of the labels for these waters are also highlighted in yellow on the attached figures. The total area of non-jurisdictional waters within the review area is approximately 10.86 acres.



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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). The assessed waters primarily include physically remote or small isolated wetlands that 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 in a typical year. This was confirmed by reviewing aerial photography, national hydrography and wetland inventory data, 2-foot LIDAR contours, and the wetland delineation report. Based on this review, the assessed wetlands are not jurisdictional under the Navigable Waters Protections Rule because they meet the requirements of the exclusion for non-adjacent wetlands under paragraph (b)(1).

All of the ditches within the review area 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. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. 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).