



**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): 7/30/2020

ORM Number: MVP-2018-01611-BGO

Associated JDs: MVP-2018-01611-BGO, June 25, 2019

Review Area Location¹: State/Territory: Minnesota City: Duluth County/Parish/Borough: St. Louis

Center Coordinates of Review Area: Latitude 46.7651 Longitude -92.1237

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.



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

D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)):⁴ The review area for this determination is limited to the piped reaches of Miller and Coffee Creeks within box culverts described below, and shown within the “Wetland and Aquatic Resource Investigation Areas” on the attached figures labeled 2018-01611-BGO AJD Attachments, Pages 1-3 of 3.

Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Miller Creek (Within Box Culvert)	721	linear feet	(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.	<p>Miller and Coffee Creeks are currently piped beneath the Lincoln Park neighborhood of Duluth, MN. Miller Creek enters a tunnel at West 3rd Street, and exists into an open channel at West Michigan Street. The creek is then diverted back underground and enters the investigation area through a 10-foot span by 10-foot tall box culvert below the Duluth Transit Authority building. Miller Creek opens briefly to two separate reaches of rip-rap lined channel and encounters two additional reaches of box culverts within the investigation area as it flows downstream to its outlet at St. Louis Bay: a 126-foot-long (including aprons) dual barrel 8-foot span by 8-foot tall transitioning to a 16-foot span by 6.5-foot tall box culvert beneath the abandoned Soo Line Railroad embankment, and a 595-foot-long (including aprons) dual-barrel 10-foot wide by 6-foot tall box culvert beneath I-35 and the BNSF Railway mainline.</p> <p>The two reaches of Miller Creek within box culverts do not meet the definition of an (a)(2) water because the buried culverts do not satisfy the surface water flow conditions of the “tributary” definition under paragraph (c)(12). Both of these reaches of Miller Creek are non-jurisdictional under the (b)(1) exclusion, and are identified with a purple and black dashed line feature and labeled as “Approx. Miller Creek Alignment (Within Box Culvert)” on Figure 5-4 of the attachments. The total structure length of these non-jurisdictional features is approximately 721 linear feet.</p> <p>This jurisdictional determination does not include the two reaches of open channel between culvert ends, which are identified with a purple dashed line feature and labeled as “Approx.</p>

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
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

Excluded waters ((b)(1) – (b)(12)):⁴ The review area for this determination is limited to the piped reaches of Miller and Coffee Creeks within box culverts described below, and shown within the “Wetland and Aquatic Resource Investigation Areas” on the attached figures labeled 2018-01611-BGO AJD Attachments, Pages 1-3 of 3.

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			Miller Creek Alignment (Open Channel)” on Figure 5-4 of the attachments. Both of these reaches are part of the surface water channel of Miller Creek and were not assessed as part of this determination.
Coffee Creek (Within Box Culvert)	1,340	linear feet	<p>(b)(1) Water or water feature that is not identified in (a)(1)-(a)(4) and does not meet the other (b)(1) subcategories.</p> <p>Coffee Creek is entirely confined within an underground network of culverts and tunnel within the review area. Coffee Creek is diverted through culverts beginning upstream near the intersection of North 23rd Avenue West and West 9th Street to the outlet. It crosses under the roadways and urbanized neighborhood and outlets to the St. Louis Bay approximately 200 feet north of the Miller Creek outlet. Currently, the in-place outlet of Coffee Creek is a 5-foot by 7-foot tunnel that transitions to a 60-inch reinforced concrete pipe, transitioning to a 72-inch corrugated metal pipe.</p> <p>The entire reach of Coffee Creek within the investigation area does not meet the definition of an (a)(2) water because the buried culverts and tunnel do not satisfy the surface water flow conditions of the “tributary” definition under paragraph (c)(12). This reach of Coffee Creek is non-jurisdictional under the (b)(1) exclusion, and is identified with a black dashed line feature and labeled as “Coffee Creek Alignment (Within Box Culvert)” on Figure 5-4 of the attachments. The total structure length of these non-jurisdictional features is approximately 1,340 linear feet.</p>

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 6982-322/Twin Ports Interchange Joint Application Form, February 2020 and Wetland Delineation Report, May 2018](#)

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\(s\)](#).



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

- ☐ 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 – Duluth, 2003

Other data sources used to aid in this determination:

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

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

C. Additional comments to support AJD: [N/A](#)