



**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): 6/22/2020
 ORM Number: MVP-2016-03962-BGO
 Associated JDs: N/A
 Review Area Location¹: State/Territory: Minnesota City: Walker County/Parish/Borough: Cass County
 Center Coordinates of Review Area: Latitude 47.052313 Longitude -94.377224

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.

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				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
S12-01, S12-02, S01-01, S01-02, T06-01, T06-02, T06-03, T06-04, T07-01, T07-02, T07-03, T07-04	3.72	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 2 of 22 on the attached figures.
S12-WD01, T07-WD01	0.13	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).	Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 2 of 22 on the attached figures.
T07-05, T07-06, T07-07, T07-08, T07-10, T08-01, T08-02, T06-05, T06-06, T06-08, T06-10, T05-01	2.47	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 3 of 22 on the attached figures.
T07-09, T06-09	2.61	acre(s)	(b)(1) Non-adjacent wetland.	Wetland T06-09 is connected to Wetland T07-09 by a culvert located under the highway. Wetland T07-09 extends south beyond the review area and is connected to a large natural pond known as Conklin Lake. Conklin Lake is an isolated basin that does not contribute surface water flow to a downstream jurisdictional water in a typical year and is not inundated by flooding from a traditional navigable water, or tributary, or from another jurisdictional lake, pond, or impoundment. This was confirmed by reviewing aerial photography, national hydrography and wetland inventory data, and 2-foot LIDAR contours. Based on this review, Conklin Lake is a non-jurisdictional water and, therefore, Wetlands T06-09 and T07-09 do not meet the conditions of an adjacent wetland under paragraph (a)(4) because they do not abut jurisdictional waters, are not inundated by flooding from a traditional navigable water, or

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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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
			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. Assessed waters are shown on Page 3 of 22 on the attached figures.
T07-WD02, T07-WD03, T07-WD04, T07-WD05, T07-WD06, T07-WD07, T08-WD01, T08-WD02, T06-WD01, T06-WD02	0.32	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). Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 3 of 22 on the attached figures.
T08-03, T05-06, T05-07, T05-08, T05-02, T05-04, T05-05	0.52	acre(s)	(b)(1) Non-adjacent wetland. Physically remote isolated wetlands. Assessed waters are shown on Page 4 of 22 on the attached figures.
T08-WD03, T08-WD04, T05-WD01, T05-WD02	0.10	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). Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 4 of 22 on the attached figures.
T04-01, T04-02, T04-03, T04-04, T04-05, T04-06	2.48	acre(s)	(b)(1) Non-adjacent wetland. Physically remote isolated wetlands. Assessed waters are shown on Page 5 of 22 on the attached figures.
T04-WD01, T04-WD02	0.02	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). Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 5 of 22 on the attached figures.
T03-02	0.16	acre(s)	(b)(1) Non-adjacent wetland. Physically remote isolated wetland. Assessed water is shown on Page 6 of 22 on the attached figures.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
T10-WD01, T10-WD02, T10-WD03, T10-WD04, T10-WD05	0.06	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).	Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 6 of 22 on the attached figures.
T11-08, T11-09	0.02	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 8 of 22 on the attached figures.
P06-01	0.04	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 10 of 22 on the attached figures.
P05-02	0.06	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 11 of 22 on the attached figures.
P10-01, P03-01	0.39	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 14 of 22 on the attached figures.
P03-WD01, P03-WD02, P03-WD04, P03-WD05	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).	Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 14 of 22 on the attached figures.
P03-10, P03-13, P03-14	0.65	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 15 of 22 on the attached figures.
P02-10	0.04	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 16 of 22 on the attached figures.
P02-WD02, P12-WD01	0.11	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	Ditches constructed in uplands that are now linear wetlands. Assessed waters are shown on Page 16 of 22 on the attached figures.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination	
			conditions of (c)(1).	
P12-01, P01-01, P01-02, P12-05	2.77	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 17 of 22 on the attached figures.
K05-06	0.01	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 19 of 22 on the attached figures.
K08-09, K09-01, K09-02	0.82	acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetlands. Assessed waters are shown on Page 20 of 22 on the attached figures.
K08-WD01	0.03	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 constructed in uplands that is now a linear wetland. Assessed water is shown on Page 20 of 22 on the attached figures.
K09-08, K04-09	0.70	acre(s)	(b)(1) Non-adjacent wetland.	Wetland K09-08 is connected to Wetland K04-09 by a culvert located under the highway. Wetland K04-09 extends northwest beyond the review area and is connected to a large natural pond. The pond is an isolated basin that does not contribute surface water flow to a downstream jurisdictional water in a typical year and is not inundated by flooding from a traditional navigable water, or tributary, or from another jurisdictional lake, pond, or impoundment. This was confirmed by reviewing aerial photography, national hydrography and wetland inventory data, and 2-foot LIDAR contours. Based on this review, the pond is a non-jurisdictional water and, therefore, Wetlands K09-08 and K04-09 do not meet the conditions of an adjacent wetland under paragraph (a)(4) because they 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. Assessed waters are shown on Page 21 of 22 on the attached figures.



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Excluded waters ((b)(1) – (b)(12)): ⁴			
Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
K03-01	0.24 acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 21 of 22 on the attached figures.
K03-02	0.15 acre(s)	(b)(1) Non-adjacent wetland.	Physically remote isolated wetland. Assessed water is shown on Page 21 of 22 on the attached figures.

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 1106-15/TH 200 Joint Application Form, September 2019 and Wetland Delineation Report, October 2016](#)

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 – Walker, 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: The review area for this determination is limited to the delineated boundaries of 62 wetlands labeled as S12-01, S12-02, S01-01, S01-02, T06-01, T06-02, T06-03, T06-04, T07-01, T07-02, T07-03, T07-04, T07-05, T07-06, T07-07, T07-08, T07-10, T08-01, T08-02, T06-05, T06-06, T06-08, T06-10, T05-01, T07-09, T06-09, T08-03, T05-06, T05-07, T05-08, T05-02, T05-04, T05-05, T04-01, T04-02, T04-03, T04-04, T04-05, T04-06, T03-02, T11-08, T11-09, P06-01, P05-02, P10-01, P03-01, P03-10, P03-13, P03-14, P02-10, P12-01, P01-01, P01-02, P12-05, K05-06, K08-09, K09-01, K09-02, K09-08, K04-09, K03-01 and K03-02, and 30 roadside ditches labeled as S12-WD01, T07-WD01, T07-WD02, T07-WD03, T07-WD04, T07-WD05, T07-WD06, T07-WD07, T08-WD01, T08-WD02, T06-WD01,



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T06-WD02, T08-WD03, T08-WD04, T05-WD01, T05-WD02, T04-WD01, T04-WD02, T10-WD01, T10-WD02, T10-WD03, T10-WD04, T10-WD05, P03-WD01, P03-WD02, P03-WD04, P03-WD05, P02-WD02, P12-WD01 and K08-WD01 on the attached figures labeled as 2016-03962-BGO AJD Attachments, Pages 1-22 of 22. 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 18.70 acres.

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 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).