Appendix G – Approved Wetland Jurisdictional Determination

From: Babcock, Chad
To: Marty Falk; Ross Harris
Subject: FW: AJD - NWO-2022-00214-PIE
Date: Thursday, October 26, 2023 4:42:35 PM
Attachments: image001.png

Fyi – and thanks for uploading the word version. Chad

From: Carnahan, Bridget G CIV USARMY CENWO (USA) <Bridget.G.Carnahan@usace.army.mil>
Sent: Thursday, October 26, 2023 4:19 PM
To: Babcock, Chad <Chad.Babcock@state.sd.us>
Cc: Juhas, Catherine D CIV USARMY CENWO (USA) <Catherine.D.Juhas@usace.army.mil>
Subject: RE: [EXT] AJD - NWO-2022-00214-PIE

Chad,

Good afternoon. We've just received confirmation from our district jurisdiction subject matter expert that AJD's completed under the pre-2015 regulatory regime, pre-Sackett are still valid. In reviewing the types of waters present within the review area, there were wetlands that abut a relatively permanent water and isolated wetlands. We no longer use the term abutting wetlands, they are now adjacent wetlands, but even with the change of guidance, they would still be jurisdictional. The other features identified were isolated wetlands, which is another term we don't use. Technically these wetlands would not meet the adjacency test and would not be jurisdictional. So it boils down to the fact that the only real changes are to vocabulary and an AJD would not be necessary. I hope that helps to clear up your concerns.

Thanks,

Bridget Carnahan
U.S. Army Corps of Engineers
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

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Thanks,

Bridget Carnahan
U.S. Army Corps of Engineers
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

From: Babcock, Chad <Chad.Babcock@state.sd.us>
Sent: Monday, October 16, 2023 1:51 PM
To: Juhas, Catherine D CIV USARMY CENWO (USA) <Catherine.D.Juhas@usace.army.mil>; Carnahan, Bridget G CIV USARMY CENWO (USA) <Bridget.G.Carnahan@usace.army.mil>
Subject: [Non-DoD Source] AJD

Good afternoon,

We received an AJD for SDDOT Project I229 Exits 3 and 4 on March 31, 2022. Is this still valid for 5 years (from the date of issuance) or would we need to submit a new application given changes in federal definitions? Thanks

Chad Babcock
Environmental Manager | South Dakota Department of Transportation
Better Lives Through Better Transportation
700 E. Broadway Ave, Pierre SD 57501
O: 605.773.3721 | C: 605.280.6035 | dot.sd.gov

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
SOUTH DAKOTA REGULATORY OFFICE
28563 POWERHOUSE ROAD, ROOM 118
PIERRE, SOUTH DAKOTA 57501-6174

REPLY TO
ATTENTION OF

March 31, 2022

South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

South Dakota Department of Transportation
Attn: Steve Gramm
700 East Broadway Avenue
Pierre, South Dakota 57501

Dear Mr. Gramm:

Reference is made to the information received January 26, 2022, concerning Section 404 of the Clean Water Act permit requirements for the I-229 Exits 3 and 4 reconstruction project. The review area is located in Sections 27, 28, 29, 33 and 34, Township 101 North, Range 49 West, Minnehaha County, South Dakota.

Based on the information provided, we have determined that there are waters of the United States (i.e. jurisdictional waters) located within the review area. Specifically, seven wetlands at Exit 3 (Wetlands 1, 2, 3, 4, 5, 6, and 11) and five wetlands at Exit 4 (Wetlands 1, 2, 3, 4, and 5), as identified in the submitted jurisdictional determination request, are Waters of the United States subject to regulation under Section 404 of the Clean Water Act. Therefore, any activity involving the discharge of dredged or fill material within these aquatic resources would require a permit from the Corps of Engineers.

It has also been determined that Wetlands 7, 8, 9, and 10 at Exit 3 and Wetlands 6, 7, 8, 9, and 10 at Exit 4 are not Waters of the United States and are not subject to regulation by the Corps of Engineers. Therefore, activities within these four locations are not subject to Department of the Army regulatory authorities and no permit pursuant to Section 404 of the Clean Water Act is required from the Corps of Engineers.

An approved jurisdictional determination (JD) has been completed for your project. This JD is valid for 5 years from the date of this letter. The JD is enclosed and also may be viewed at our website. The link to the website is shown below. The JD will be available on the website within 30 days. If you are not in agreement with the JD, you may request an administrative appeal under Corps of Engineers regulations found at 33 C.F.R. 331. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal form (RFA). Should you decide to submit an RFA form, it must be received by the Corps of Engineers Northwestern Division Office within 60

days from the date of this correspondence (by May 30, 2022). It is not necessary to submit a RFA if you do not object to the JD.

You can obtain additional information about the Regulatory Program from our website:
http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/SouthDakota.aspx

If you have any questions concerning this determination, please contact Cathy Juhas via email at catherine.d.juhas@usace.army.mil, by mail at the address above, or by phone at (605) 224-8531 and reference action ID NWO-2022-00214-PIE.

Sincerely,

Steven E. Naylor
Regulatory Program Manager,
South Dakota

Enclosures

cc:
SEH (Nelson)

Building a Better World for All of Us®

MEMORANDUM

TO: USACE - South Dakota Regulatory

FROM: Bailey Nelson, SEH Wetland Biologist

DATE: January 26, 2022

RE: AJD Request - Exit 4 (I-229 and Cliff Avenue)
SEH No. SDDOT 147016

Please see the attached Request for Corps Jurisdictional Determination form for the Exit 4 (I-229 and Cliff Avenue) Interchange project in Sioux Falls, Minnehaha County, South Dakota. SEH, on behalf of the SDDOT, is requesting an approved jurisdictional determination for all the wetlands in the attached figure, as they may be influenced by the proposed project.

If you have any questions, please contact Bailey Nelson at bnelson@sehinc.com or 218.491.3054.

BN

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U.S. ARMY CORPS OF ENGINEERS

REQUEST FOR CORPS JURISDICTIONAL DETERMINATION

*__Authorities__: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers; Final Rule for 33 CFR Parts 320-332. **Principal Purpose**: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above. **Routine Uses**: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website. **Disclosure**: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

CORPS USE ONLY:
DATE RECEIVED:

PROJECT NO.:

1. PROPERTY LOCATION:

Street Address: Exit 4 (I-229 and Cliff Ave)

City/Township/Parish: Sioux Falls

County: Minnehaha County State: SD

Acreage of Parcel/Review Area for JD: 90

Section: 227 Township: 101 Range: 49

Latitude: 43.515189 Longitude: -96.71163

(For linear projects, please include the center point of the proposed alignment.)

2.REQUESTOR CONTACT INFORMATION:

Typed or Printed Name: Steve Gramm

Company Name: SDDOT

Street Address: 700 East Broadway Avenue

City: Pierre State: SD ZIP: 77501

Phone Number: (605) 773-6641

E-mail: steve.gramm@state.sd.us

3. MAP: Please attach a survey/plat map and vicinity map identifying location and review area for the JD.

4. REASON FOR REQUEST (check as many as applicable):

- ☐ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all aquatic resources.
- ☐ I intend to construct/develop a project or perform activities on this parcel which would be designed to avoid all jurisdictional aquatic resources under Corps authority.
- ☒ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps, and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources and as an initial step in a future permitting process.
- ☐ I intend to construct/develop a project or perform activities on this parcel which may require authorization from the Corps; this request is accompanied by my permit application and the JD is to be used in the permitting process.
- ☐ I intend to construct/develop a project or perform activities in a navigable water of the U.S. which is included on the district Section 10 list and/or is subject to the ebb and flow of the tide.
- ☒ A Corps JD is required in order to obtain my local/state authorization.
- ☐ I intend to contest jurisdiction over a particular aquatic resource and request the Corps confirm that jurisdiction does/does not exist over the aquatic resource on the parcel.
- ☐ I believe that the site may be comprised entirely of dry land.
- ☐ Other:

5. TYPE OF DETERMINATION BEING REQUESTED:

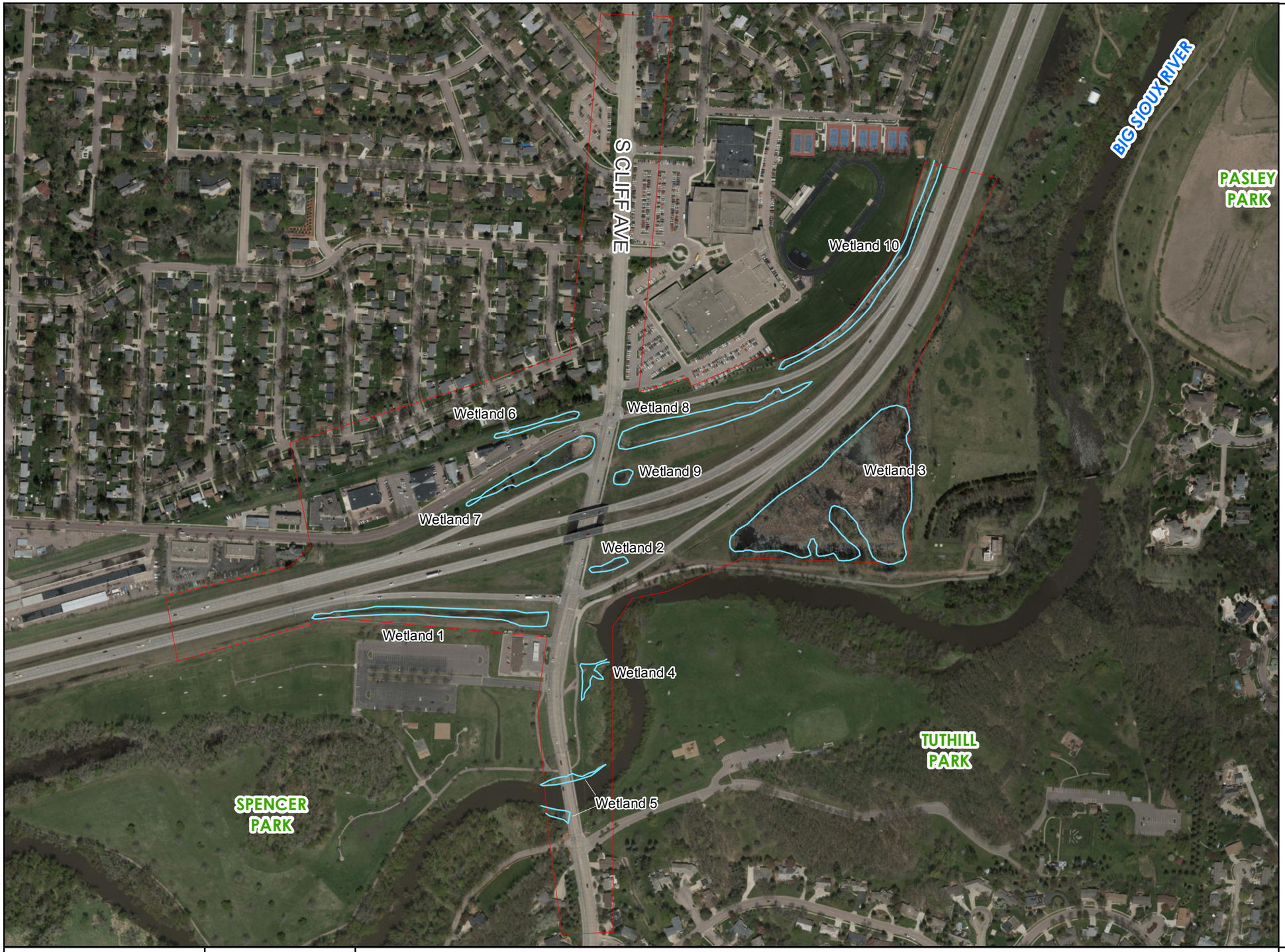
- ☒ I am requesting an approved JD.
- ☐ I am requesting a preliminary JD.
- ☐ I am requesting a “no permit required” letter as I believe my proposed activity is not regulated.
- ☐ I am unclear as to which JD I would like to request and require additional information to inform my decision.

6. OWNERSHIP DETAILS:

- ☐ I currently own this property.
- ☐ I plan to purchase this property.
- ☒ I am an agent/consultant acting on behalf of the requestor.
- ☐ Other (please explain:)

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent of a person or entity with such authority, to and do hereby grant Corps personnel right of entry to legally access the site if needed to perform the JD. Your signature shall be an affirmation that you possess the requisite property rights to request a JD on the subject property.

Signature: Bailey Nelson Date: 1/26/2022



Legend

- Area of Investigation
- Wetland Boundary

N

0 250 500 1,000 Feet

This map is neither a legally recorded map nor a survey map and is not intended to be used as one. This map is a compilation of records, information, and data gathered from various sources listed on this map and is to be used for reference purposes only. SEH does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and SEH does not represent that the GIS Data can be used for navigational, tracking, or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. The user of this map acknowledges that SEH shall not be liable for any damages which arise out of the user's access or use of data provided.

Path: S:\PT\SDDOT\147016\3-env-stdy-regs\30-env-doc\90-wetlands\Wetlands GIS\Exit 4\Wetland Delineation Boundary.mxd

SEH
3535 VADNAIS CENTER DR.
ST. PAUL, MN 55110
PHONE: (651) 490-2000
FAX: (651) 490-2150
WATTS: 800-325-2055
www.sehinc.com

Project: SDDOT 147016
Print Date: 1/7/2019

Map by: rbeduhn
Projection: UTM NAD 83 Zone 14N
Source: SEH, SDDOT, ESRI, FWS, USGS, NRCS, USDA

WETLAND DELINEATION RESULTS

Interstate 229 Exit 4 Reconstruction
Sioux Falls, Minnehaha County

Exit 4

Figure 4-1

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 31, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District - SDDOT I-229 Exits 3 and 4 - NWO-2022-00214-PIE

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The project consists of two review areas: I-229 Exits 3 and 4. Eleven wetlands are located at Exit 3; 7 are adjacent to the Big Sioux River and 4 are isolated. Exit 4 contains 10 wetlands; 5 are adjacent to the Big Sioux River and 5 are isolated. The Big Sioux River is a TNW.

State: South Dakota County/parish/borough: Minnehaha County City: Corson
Center coordinates of site (lat/long in degree decimal format): Lat. 43.510150 N; Long. -96.731234 W
Universal Transverse Mercator: 14
Name of nearest waterbody: Big Sioux River
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Big Sioux River
Name of watershed or Hydrologic Unit Code (HUC): 10170203

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: March 8, 2022
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]

☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: 10.24 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
      Elevation of established OHWM (if known): .

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

2. **Non-regulated waters/wetlands (check if applicable):**[3]

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Four aquatic resources at Exit 3 (Wetlands 7, 8, 9, and 10) and five aquatic resources at Exit 4 (Wetlands 6, 7, 8, 9, and 10) are isolated waters that are not located within a reasonably close proximity to jurisdictional waters; whereby, nonspeculative ecological connection(s) could be made. Further, these aquatic resources: 1) are not used by interstate or foreign travelers for recreational or other purposes; 2) do not support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) are not used for industrial purposes by industries in interstate commerce. Based upon these principle considerations, it is determined that these aquatic resources are non-jurisdictional under the auspices of Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) General Area Conditions:

Watershed size: **acres**
Drainage area: **acres**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

[3] Supporting documentation is presented in Section III.F.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

☐ Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: .
Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

☐ Silts	☐ Sands	☐ Concrete
☐ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: **Pick List**
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM[6] (check all indicators that apply):

☐ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☐ destruction of terrestrial vegetation
☐ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☐ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☐ abrupt change in plant community
☐ other (list):	

☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.
☐ tidal gauges
☐ other (list):

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):
☐ Riparian corridor. Characteristics (type, average width): .
☐ Wetland fringe. Characteristics: .
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Wetland size:
Wetland type. Explain: .
Wetland quality. Explain: .
Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☐ Directly abutting
☐ Not directly abutting
☐ Discrete wetland hydrologic connection. Explain: .
☐ Ecological connection. Explain: .
☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW
Project wetlands are **Pick List** river miles from TNW.
Project waters are **Pick List** aerial (straight) miles from TNW.
Flow is from: **Pick List.**
Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .
Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):
☐ Riparian buffer. Characteristics (type, average width): .
☐ Vegetation type/percent cover. Explain: .
☐ Habitat for:
☐ Federally Listed species. Explain findings: .
☐ Fish/spawn areas. Explain findings: .
☐ Other environmentally-sensitive species. Explain findings: .
☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: width (ft).
   - ☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   ☐ Tributary waters: linear feet width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Wetlands 1, 2, 3, 4, 5, 6 and 11 at Exit 3 and Wetlands 1, 2, 3, 4, and 5 at Exit 4 exhibit a contiguous surface connection to the Big Sioux River, a perennial TNW.**

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: **10.24 acres**.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]
☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
☐ Other: (explain, if not covered above):

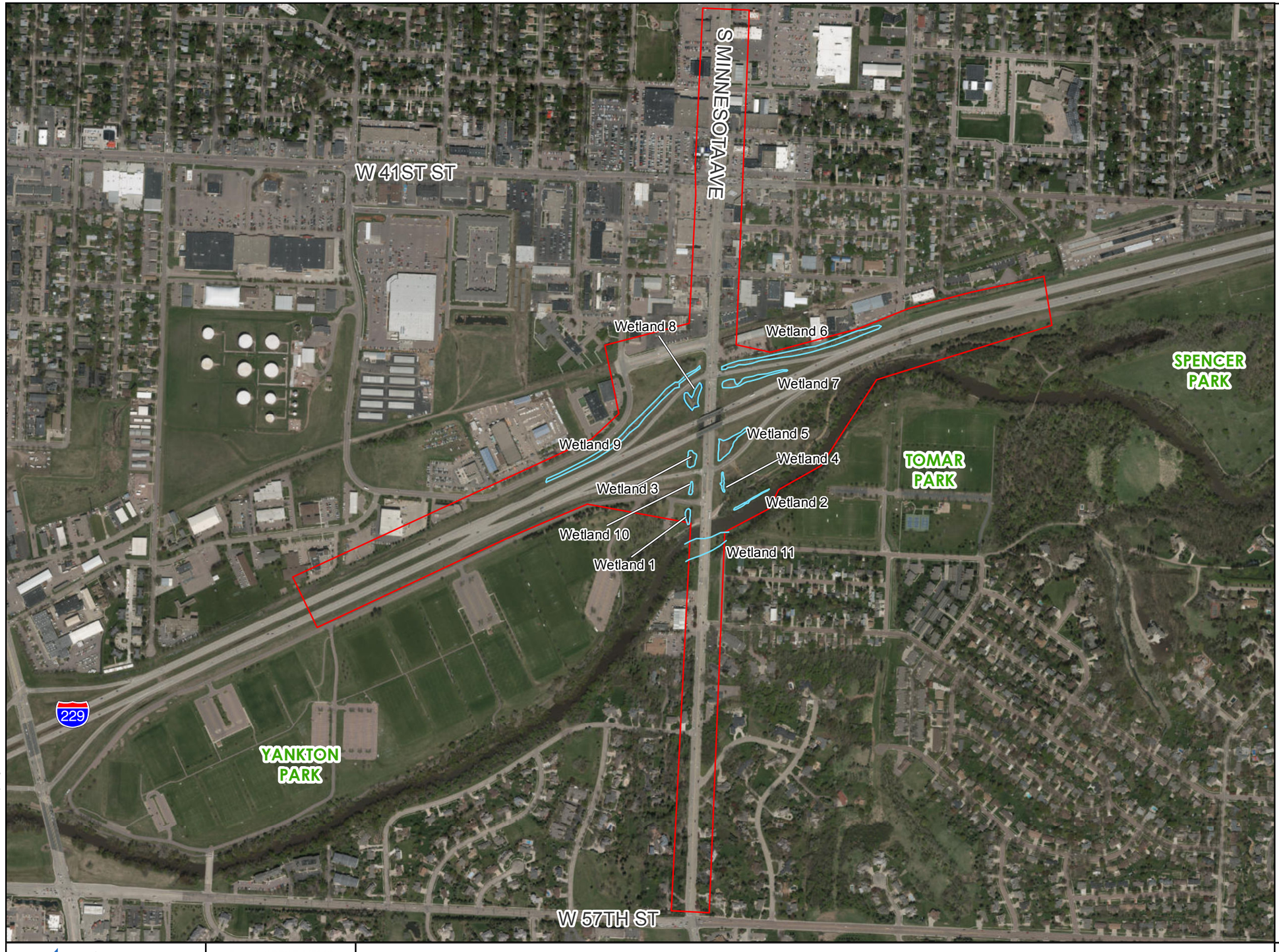
Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 4.71 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: JD request received January 26, 2022.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24,000 Sioux Falls East.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: FWS Online Mapper.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro and ORM2 Database.
or ☒ Other (Name & Date): Onsite provided on behalf of applicant (2021).
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: .



Legend

- Area of Investigation
- Wetland Boundary

N

0 500 1,000 2,000 Feet

Path: S:\PT\SDDOT\147016\3-env-stdy-regs\30-env-doc\90-wetlands\Wetlands GIS\Exit 3\Wetland Delineation Results.mxd

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Project: SDDOT 147016
Print Date: 1/7/2019

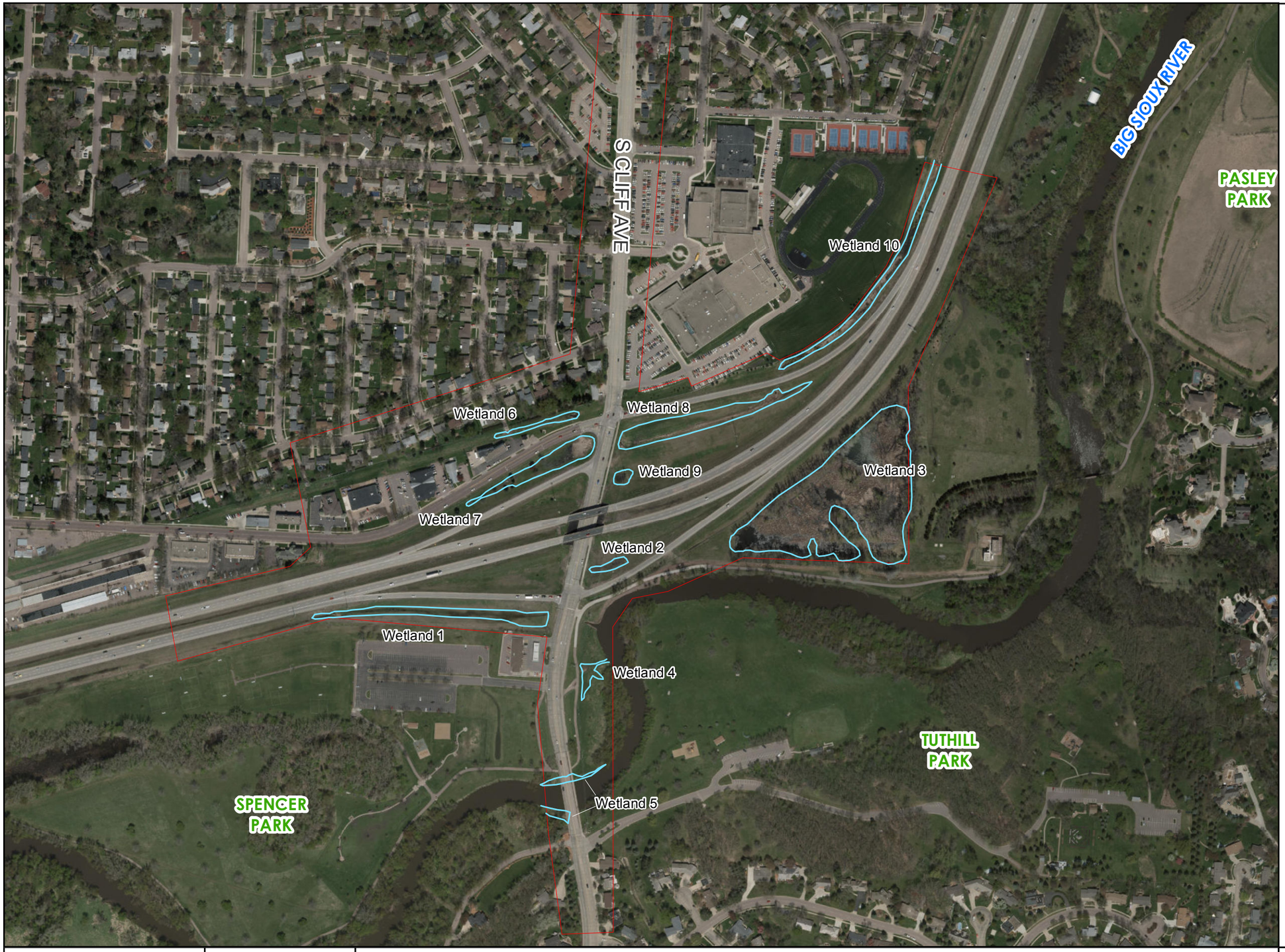
Map by: rbeduhn
Projection: UTM NAD 83 Zone 14N
Source: SEH, SDDOT, ESRI, FWS
USGS, NRCS, USDA

WETLAND DELINEATION RESULTS

Interstate 229 Exit 3 Reconstruction
Sioux Falls, Minnehaha County

Exit 3

Figure 4-1



Legend

- Area of Investigation
- Wetland Boundary

N

0 250 500 1,000 Feet

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WETLAND DELINEATION RESULTS

Interstate 229 Exit 4 Reconstruction
Sioux Falls, Minnehaha County

Exit 4

Figure 4-1

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We're confident in our ability to balance these requirements.

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