

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): May 20, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-00274-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Becker City: Toad Lake

Center coordinates of site (lat/long in degree decimal format): Lat. 46.870292° N, Long. -95.437405° E. Universal

Transverse Mercator: Zone 15

Name of nearest waterbody: Tributary to Toad Lake

Name of watershed or Hydrologic Unit Code (HUC): 0902010303

☒ 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: April 5, 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.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos guidance, the Corps does not generally consider the following activities to be waters of the United States; non-tidal drainage and irrigation ditches excavated on dry land. Further clarification is provided in the December 2, 2008 Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S. issued jointly by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow are not waters of the United States. According to the wetland delineation report submitted by Environmental Scientific, fourteen linear ditches were delineated within the review area. Wetland M, P, Q, S, T, AA, DD, EE, FF, GG, JJ, MM, OO and PP as shown on the attached figure are outside of mapped NWI wetlands and are described as wetlands formed within upland constructed ditches to convey runoff and have an upland backslope. The oldest available aerial imagery (1991, Google Earth) indicates no wet signatures within or adjacent to these ditch features. These features do not convey relatively permanent flow (as seen in photos from delineation report), were constructed wholly in uplands during construction, and drain only uplands (based on delineation report). Therefore, Wetland M (0.05 acre), Wetland P (0.04 acre), Wetland Q (0.1 acre), Wetland S (0.06 acre), Wetland T (0.08 acre), Wetland AA (0.01 acre), Wetland DD (0.01 acre), Wetland EE (0.02 acre), Wetland FF (0.01 acre), Wetland GG (0.06 acre), and Wetland JJ (0.07 acre) as shown on the attached figures are not waters of the U.S.

In addition, the review area contains twenty intrastate wetlands (Wetland CC, BB, Z, Y, X, W, V, U, R, J, K, I, G, H, F, E, D, C, B and A) that according to the County Road 39 Improvement Wetland Delineation Report dated July 22, 2021 by Environmental Scientific are isolated wetland basins.

¹ Supporting documentation is presented in Section III.F.

These wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters. This was confirmed by reviewing the supporting information in IV(A) below. There are no inlets or outlets to these wetland basins. They are not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding landuse is a mixture of residential development and agriculture. The residential development, active agriculture and disturbance from CSAH 39 alongside these wetland basins precludes an ecological connection to a WOUS.

Wetland CC and Wetland BB are across from CSAH 39 from each other. They are within a hydric soils unit that is surrounded by upland soils. Wetland BB is not mapped on the NWI, while Wetland CC is a mapped NWI that is surrounded by uplands. The closest mapped waterway is a tributary to Toad Lake associated with Wetland LL approximately 0.5 miles to the north. Wetland X, Y and Z are each situated along the east side of CSAH 39 just north of 210th Street. There are not within hydric soils and only Wetland Y is within a mapped NWI wetland that is surrounded by uplands. The closest mapped waterway is a tributary to Toad Lake associated with Wetland LL approximately 0.75 miles to the north. Wetland W, V, U and R are across from CSAH 39 from each other within mapped hydric soils and NWI wetlands but are surrounded by uplands. The closest mapped waterway is a tributary associated with Wetland L and N approximately 0.5 miles to the south. Wetland J, K and I are across from CSAH 39 from each other within mapped hydric soils and NWI wetlands but are surrounded by uplands. The closest mapped waterway is a tributary to Toad Lake associated with Wetland L and N approximately 0.25 miles to the north. Wetland H, G and F are across from CSAH 39 from each other within mapped hydric soils and NWI wetlands but are surrounded by uplands. The closest mapped waterway is a tributary to Toad Lake associated with Wetland L and N approximately 0.5 miles to the north. Wetland D, C, B and A are situated along CSAH 39 north of CSAH 38. They are within mapped hydric soils but are surrounded by uplands. Only Wetland D, B and A are located within mapped NWI wetlands while Wetland E and C are not. In all cases they are surrounded by uplands. The closest mapped waterway is a tributary to Toad Lake approximately 0.25 miles to the south.

These aquatic resource do not support a link to interstate or foreign commerce; are not known to be used by interstate or foreign travelers for recreation or other purposes; do not produce fish or shellfish that could taken and sold in interstate or foreign commerce; are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetland CC, BB, Z, Y, X, W, V, U, R, J, K, I, G, H, F, E, D, C, B and A, as shown of attached figures, are not regulated by the Corps under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

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

C. SIGNIFICANT NEXUS DETERMINATION: N/A

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

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): N/A

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: Wetland CC is 0.06, Wetland BB is 0.04, Wetland Z is 0.03, Wetland Y is 0.1, Wetland X is 0.01, Wetland W is 0.35, Wetland V is 0.4, Wetland U is 0.25, Wetland R is 0.18, Wetland J is 0.19, Wetland K is 0.16, Wetland I is 0.03, Wetland G is 0.06, Wetland H is 0.08, Wetland F is 0.01, Wetland E is 0.01, Wetland D is 0.02, Wetland C is 0.32, Wetland B is 0.01 and Wetland A is 0.03 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: **County Road 39 Improvement Wetland Delineation Report dated July 22, 2021 by Environmental Scientific**
- ☐ 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: **USGS Topographic Quads (USA Topo Maps)**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **USA Soil Survey (USDA Service)**
- ☒ National wetlands inventory map(s). Cite name: **National Wetland Inventory**
- ☒ State/Local wetland inventory map(s): **DNR NWI Update - MN, 2010-2018**
- ☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Google Earth 1991**
 or ☒ Other (Name & Date): **Ground level photos in delineation report**
- ☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): **2-foot contours Minnesota (LiDAR Service), Google Earth**

B. ADDITIONAL COMMENTS TO SUPPORT JD: