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): December 29, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2012-00064-SSC; L.G. Everist Ortonville Plant

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Big Stone City: Ortonville

Center coordinates of site (lat/long in degree decimal format): Lat. 45.262362° **N**, Long. -96.399659° **W**.

Universal Transverse Mercator: Zone 14

Name of nearest waterbody: Minnesota River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region; HUC 07020001

☒ 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: November 16, 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: **This AJD is limited to the boundaries of Wetlands A, B, C, D, E, F, G, and J, as shown on the attached figures labeled MVP-2012-00064-SSC, Pages 1-2 of 2. Based on the wetland delineation report submitted by the requestor, LiDAR contours, hillshade, USGS topographic maps, and aerial imagery we have determined that the wetlands are isolated with boundaries that transition to uplands.**

Wetlands A and E are located in the northwest corner of the project area. The wetlands are surrounded by uplands, as shown on 2-foot LiDAR contours (MnTOPO). Additional desktop resources were reviewed including the National Wetland Inventory (NWI), the National Hydrography Dataset (NHD), historic USGS topographic maps, and available aerial imagery (Google Earth), which mapped Wetlands A and E but did not show a surface water connection to a water of the U.S. (WoUS). No inlets/outlets were observed by the wetland delineator during the onsite investigation.

Wetland B is located to the south of the entrance road to the project site in the northwest corner of the site. The wetland is surrounded by upland as shown on LiDAR contours and available hillshade imagery (MnTOPO). Wetland B is mapped on the NWI but no surface water connection is shown to a WoUS (NHD and aerial imagery). The requestor confirmed there is no culvert structure under the access road. No other inlets or outlets were noted during the onsite wetland investigation.

Wetlands C and D are located in the west central portion of the site. LiDAR contours and aerial imagery show that the wetlands are located adjacent to rock outcroppings. The wetlands are also bisected by an access road. LiDAR contours support that the wetlands are surrounded by uplands. Additionally, the wetlands are mapped on the NWI and NHD. No surface water connection to a WoUS is shown on these

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

resources and is not noted in available aerial imagery. No outlet was found during the onsite wetland investigation.

Wetland F is located south of the entrance road in the north, central area of the site. Review of LiDAR contours and hillshade show that the wetland is surrounded by upland along the southern wetland boundary and by the roadway to the north. The requestor confirmed that there is no culvert underneath the access road that could serve as a connection to any offsite waters. The wetland is mapped on the NWI but no surface water connection is evident to a WoUS on the NHD or aerial imagery. No other inlets or outlets were noted during the onsite wetland investigation.

Wetland G is located in the northwest corner of the site and is surrounded by uplands and rock outcroppings that border the wetland. No inlets our outlets were noted during the onsite wetland investigation and there is no surface water connection to a WoUS visible on the NHD, NWI, and aerial imagery.

Wetland J is located in the eastern half of the project area. The wetland is surrounded by rock outcroppings to the south, a rise in elevation to the east, and mining operations and piles to the west and north. Wetland J is mapped on the NWI but no surface water connection to a WoUS is visible on the NWI, NHD, or on aerial imagery. No inlets or outlets were noted during the onsite wetland investigation.

Wetlands A, B, C, D, E, F, G, and J do not support links 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 be taken and sold in interstate or foreign commerce; and are not known to be used for industrial purposes by industries in interstate commerce. These wetlands do not have an ecological connection to a WoUS. Furthermore, the areas are hydrologically isolated with no surface water connections to a WoUS. Therefore, the Corps has determined that Wetlands A, B, C, D, E, F, G, and J 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 A: 0.16 acre; Wetland B: 2.36 acres; Wetland C: 2.44 acres; Wetland D: 0.19 acre; Wetland E: 0.23 acre; Wetland F: 1.90 acres; Wetland G: 0.85 acre; Wetland J: 0.78 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: L.G. Everist Ortonville Plant - Wetland Delineation dated August 29, 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: Ortonville, MN - 1953 (62.5K); Ortonville, MN - 1971 (24K); Ortonville, MN - 2022 (24K)
☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
☒ National wetlands inventory map(s). Cite name: NWI
☐ 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 1991-2022; Site Photos from Wetland Delineation Report
  or ☐ Other (Name & Date):
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): MnTOPO (2-foot LiDAR contours and hillshade)

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A