

**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):** June 6, 2022

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Dale Properties, LLC - Lakeville Site  
MVP-2009-00936-DAS

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Minnesota County/parish/borough: Dakota City: Lakeville  
Center coordinates of site (lat/long in degree decimal format): Lat. 44.65612° N, Long. 93.2988° W.  
Universal Transverse Mercator:

Name of nearest waterbody: Credit River

Name of watershed or Hydrologic Unit Code (HUC): 07040001

- ☒ 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: June 3, 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):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: The review area contains 10 aquatic resources identified as Drainage Ditch 1, Drainage Ditch 2, Drainage Ditch 3, Drainage Ditch 4, Drainage Ditch 5, Drainage Ditch 6, Wetland 3, Wetland 4, Wetland 5 and the basin identified as Sedimentation Basin.

Drainage Ditches 1, 2, 3, 4, 5, and 6 were constructed in uplands, have less than seasonal flow, and do not drain a wetland. The applicant submitted historical photos that show the site prior to the excavation activities (1940, 1951, 1957, 1964, 1970 and 1980). Based on those aerial photos the ditches were constructed in dryland. The ditches also do not drain any wetlands as there are no adjacent wetlands. The last piece of jurisdictional info is whether the ditches have relatively permanent flow. The agent observed no water in the northern one-third of Drainage Ditch 2 during a site visit on April 11, 2022. During a site visit, Mr. Ryan Malterud (COE) noted that the ditches are situated in a low point in the landscape due to the mining activities and that the watershed for the ditches is very small. USGS StreamStats were used to identify the watershed of the ditches of ~0.17 acre. Based on our own guidance (Identification of Seasonal stream in Minnesota and Wisconsin) these streams don't have seasonal flow; therefore, they do not carry a relatively permanent flow. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), states "For clarification, it should be noted that we generally do not consider the following waters to be "Waters of the United States...(a) Non-tidal drainage and irrigation ditches excavated on dryland." These ditches (1, 2, 3, 4, 5, and 6) are not jurisdictional because they are ditches created in dryland that do not carry a relatively permanent flow and do not drain a wetland.

<sup>1</sup> Supporting documentation is presented in Section III.F.

The Sedimentation Basin is a sediment pond constructed to retain sediment prior to discharge into the large natural wetland identified as Wetland 1. The applicant has submitted information that documents that area as being constructed, and for the purposes of a settling pond. The applicant has supplied detailed operation plans that show the site during construction and the Sedimentation Pond was constructed with a large berm for the purposes of being a settling pond. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), states "For clarification, it should be noted that we generally do not consider the following waters to be "Waters of the United States....(c) Artificial lakes or ponds created by excavating and / or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing." This basin was constructed in uplands to prevent sediment from washing directly into the large natural wetland (Wetland 1). Therefore, the Sedimentation Basin is not jurisdictional.

Wetland 3, 4, and 5 were constructed in upland as a result of mining activities. Aerial photos from 1940, 1951, 1957, 1964, 1970, 1980, and 1991 show no evidence of wetland in the areas of Wetland 3, 4, and 5. The 1991 aerial photo appears to show agricultural row crops with no evidence of wetlands and shows mining activities throughout the remainder of the site. Mining activity in the area of Wetland 3, 4, and 5 appears in aerial photo from 1997. Mining Operations Plans identify mining and stripping activities in the area. Water appears in Wetland 3, 4, and 5 in an aerial photo taken in August 2021. 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), states "For clarification, it should be noted that we generally do not consider the following waters to be "Waters of the United States.....(e) Water-filled depressions constructed or excavated in upland or in non-jurisdictional waters incidental to mining or construction activity, and pits excavated in upland or in non-jurisdictional waters for the purpose of obtaining fill, sand, or gravel." Therefore, Wetland 3, 4, and 5 are not Waters of the United States.

### 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): **The water resources reviewed in this document are non-jurisdictional because they were constructed in upland as drainage ditches, settling basin, or incidental to mining activities.**

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): **Drainage Ditch 1: 1,400 lineat feet, Drainage Ditch 2: 1,600 linear feet, Drainage Ditch 3: 520 linear feet, Drainage Ditch 4: 1,380 linear feet, Drainage Ditch 5: 530 linear feet, and Drainage Ditch 6: 725 linear feet** width (ft).

☒ Lakes/ponds: **Sedimentation Pond: 1.60 acres.**

☐ Other non-wetland waters: \_\_\_\_\_ acres. List type of aquatic resource: \_\_\_\_\_.

☒ Wetlands: **Wetland 3: 3.5 acres, Wetland 4: 0.1 acres, and Wetland 5: 0.1 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:
- ☐ 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: 1:24K Quad Name Orchard Lake
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: 1:24K Quad Name Orchard Lake
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:          (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 1940, 1951, 1957, 1964, 1970, 1980, 1991, 1997, and 2021.  
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):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**