

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 17, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-00901-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Roseau City: Roseau, Warroad

Center coordinates of site (lat/long in degree decimal format): Lat. 48.880475° N, Long. -95.545107° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Roseau River, Warroad River

Name of watershed or Hydrologic Unit Code (HUC): 0902031403, 0902031405, 0903000903

☒ 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 17, 2023

☐ 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), 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 follow 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 U.S.**

The review area contains 39 such aquatic resources. According to the wetland delineation report subitted by MnDOT District 2, Ditch 1 (0.69 acre), Ditch 2 (0.79 acre), Ditch 3 (0.24 acre), Ditch 4 (0.69 acre), Ditch 5 (2.04 acre), Ditch 6 (2.36 acre), Ditch 7 (0.16 acre), Ditch 8 (0.18 acre), Ditch 9 (0.33 acre), Ditch 10 (3.39 acre), Ditch 11 (0.8 acre), Ditch 12 (0.46 acre), Ditch 13 (1.2 acre), Ditch 14 (1.41 acre), Ditch 15 (2.72 acre), Ditch 16 (2.92 acre), Ditch 17 (2.81 acre), Ditch 18 (2.52 acre), Ditch 19 (4.44 acre), Ditch 20 (4.41 acre), Ditch 21 (1.98 acre), Ditch 22 (3.34 acre), Ditch 23 (2.19 acre), Ditch 24 (1.88 acre), Ditch 25 (4.22 acre), Ditch 26 (5.63 acre), Ditch 27 (1.07 acre), Ditch 28 (0.5 acre), Ditch 29 (0.45 acre), Ditch 30 (2.24 acre), Ditch 31 (4.46 acre), Ditch 32 (0.65 acre), Ditch 33 (0.72 acre), Ditch 34 (9.7 acre), Ditch 35 (2.69 acre), Ditch 36 (0.21 acre), Ditch 37 (3.43 acre), Ditch 38 (5.65 acre) and Ditch 39 (4.76 acre) are roadside ditches constructed in uplands associated with the TH 11 construction. These linear ditches are located outside of mapped wetlands on the National Wetlands Inventory and largely outside of mapped hydric soils. The ditches do not convey relatively permanent flow (as seen in photos from delineation report), were constructed wholly in uplands during initial construction (as seen in historic aerial imagery), and drain only uplands (based on delineation report and LiDAR imagery). Therefore, Ditches 1-39, as shown of attached figures, are not regulated by the Corps under Section 404 of the Clean Water Act.

¹ Supporting documentation is presented in Section III.F.

The review area also contains 1 intrastate wetland (Wetland 7) located in the northeast corner of the intersection between TH 11 and 570th Avenue.

This wetland is surrounded by uplands and does not have a direct hydrologic surface connection to downstream waters. This was confirmed by reviewing the supporting information in III(A) below. Soils maps show the area to be non-hydric and surrounded by non-hydric soils, the NWI map does not include Wetland 7, and aerial imagery shows the areas surrounded by mowed turf and residential development with no wetland hydrology or vegetation signatures connecting the wetlands to downstream jurisdictional waters. Historic imagery from 1940 shows some grading activity with the footprint of Wetland 7. The next available imagery from 1960 shows Wetland 7 as it exists today. Wetland 7 is situated within a closed basin at approximately 1098' in elevation. It is not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding landuse is primarily residential along with the TH 11 and 570th Avenue intersection. The ongoing mowing disturbance and presence of TH 11 and 570th Avenue precludes an ecological connection to a WOUS.

This aquatic resources does not support a link to interstate or foreign commerce; is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; is not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetland 7, as shown on attached figures, is 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): **See section IIB2 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 7 is 0.26 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: MNDOT TH 11 Pavement Rehabilitation and Safety Improvements Project (Roseau to Warroad) Wetland Delineation Report dated January 2022 by MnDOT District 2
- ☐ 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: Websoil survey 2008 data
- ☒ National wetlands inventory map(s). Cite name: National Wetlands 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): Historic aerial imagery 1940, 1960
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), Digital Elevation Model, MN Historical Aerial Photographs Online

B. ADDITIONAL COMMENTS TO SUPPORT JD: