

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): 12 October 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Hursh Storage Facility
MVP-2022-01434-JMB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Burnett City: Siren

Center coordinates of site (lat/long in degree decimal format): Lat. 45.80921° N, Long. -92.37409° W.

Universal Transverse Mercator: 15N

Name of nearest waterbody: Crooked Lake (0.32 miles south of site)

Name of watershed or Hydrologic Unit Code (HUC): Upper St. Croix (07030001 8-digit HUC)

☒ 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: 15 September 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: **Wetland W1 (0.31 acres), W2 (0.63 acres), W3 (0.01 acres), W4 (0.10 acres), and W5 (0.07 acres) within the review area are located in closed depressions surrounded by a mixture of undeveloped land and existing commercial development. The wetlands (W1 - W5) are approximately 200' from State Highway 70. The wetlands do not have any unbroken surface or shallow subsurface connections to the nearest waterbody, Crooked Lake located 0.32 miles to the south. They are not mapped within the 100-year floodplain. The wetlands are not adjacent (bordering, contiguous, or neighboring) to another WOUS and are not separated from other WOUS by man-made dikes or barriers, natural river berms, or beach dunes. Due to its distance from the nearest waterbody (0.32 miles), there is no science-based inference (ex. does not support life cycles of amphibians or anadromous and catadromous fish) that supports an ecological connection. Additionally, there is no link to interstate or foreign commerce and they are not used by interstate or foreign travelers for recreation or another purpose. The wetlands 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. Therefore, the Corps has determined that the wetlands are hydrologically isolated and 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

¹ Supporting documentation is presented in Section III.F.

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: 1.12 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: Wetland Delineation Report submitted by consultant, dated 09 August 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: 1:24K - Siren
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Web Soil Survey (USDA - NRCS)
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Wisconsin Wetland Inventory
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date):
or ☒ Other (Name & Date): Site photos included in Wetland Delineation Report
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Site layout and proposed development plan for property; 2' LiDAR contours - Burnett County

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands W2 and W3 both extend outside of the project boundary. Wetland W2 does not extend to STH 35/70 and does not appear to drain towards the highway; the highway is approximately 4 – 6' higher in elevation than W2, and any shallow road ditch is also higher

in elevation. It appears that overland runoff from the surrounding basin drains into the wetland W2. Wetland W3 was determined to be an enclosed depression based on 2' LiDAR contours provided by the consultant. Finally no culvert was identified near W5, which is located within an enclosed depression adjacent to Luverne Road. The Corps has determined that the wetlands (W1, W2, W3, W4, and W5) within the review area are hydrologically isolated, and are therefore not regulated by the Corps under Section 404 of the Clean Water Act.