

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): November 9, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-01396-BGO; Upper Sioux Community Wastewater Access Rd

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Minnesota** County/parish/borough: **Yellow Medicine** City: **Minnesota Falls TWP**

Center coordinates of site (lat/long in degree decimal format): Lat. **44.752068° N**, Long. **-95.499334° W**.

Universal Transverse Mercator: X: 302165.909354, Y: 4958447.740866, UTM Zone 15

Name of nearest waterbody: **Minnesota River**

Name of watershed or Hydrologic Unit Code (HUC): **HUC 8: 07020004 - Hawk-Yellow Medicine Watershed**

☒ 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: **October 21, 2022**

☒ Field Determination. Date(s): **September 2, 2022**

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: **The review area for this determination includes Wetland 1 (0.06 ac), Wetland 2-A (0.27 ac), and Wetland 2-B (0.01 ac), all identified as Type 3 - Shallow Marsh wetlands on the attached figures labeled 2022-01396-BGO Figures 1-8 of 8. All of the wetland areas are located along the bluffs of the Minnesota River valley and appear to be incidental from past aggregate mining activities that took place during the 1950s and 1960s. This was confirmed based on historic aerial photography and observances made by Corps staff during a site visit conducted on September 2, 2022, including evidence of a remnant roadbed located in between Wetlands 1 and 2-B.**

All three wetlands (Wetlands 1, 2-A, and 2-B) are concave, isolated basins and do not have a surface or shallow subsurface connection to any downstream waters. This was confirmed by reviewing aerial photography and the attached figures from the wetland delineation report that was completed for this site in July 2022. The National Wetland Inventory and DNR Public Waters maps do not identify any aquatic resources within the study area and the Yellow Medicine County Soil Survey data shows all three wetlands are surrounded by non-hydric soils. The 2-foot LiDAR contour and hillshade maps show all three wetlands are depressional basins with no defined topographic connectivity to downstream waters. In addition, no drainage ways or aboveground discharge points were observed during the site visit and there was approximately 8 feet of upland separation between Wetlands 2-A and 2-B from the bluff. Wetland 1 was further separated by the remnant roadbed. The nearest tributary is the Minnesota River, located approximately 0.33-mile east of Wetland 2-A and 120 feet lower in elevation. Wetlands 1, 2-A, and 2-B are not located within a floodplain and based on proximity and topographic relief to other waters, do not have an ecological connection to waters of the U.S.

¹ Supporting documentation is presented in Section III.F.

Wetlands 1, 2-A, and 2-B do not support a link to interstate or foreign commerce because they 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. Based on this information, the Corps has determined that Wetlands 1, 2-A, and 2-B are isolated waters and not jurisdictional 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: 0.34 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: Wastewater Facility Access Rd - Upper Sioux Community - Wetland Delineation Report, July 6, 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: National Hydrography Dataset (USGS Service)
 - ☒ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Yellow Medicine County Soil Survey
- ☒ National wetlands inventory map(s). Cite name: USFWS NWI of MN, 1974-1978
- ☒ 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 Imagery 1991-2015; 1955 and 1961 Historic Aerial Imagery**
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): **2-Foot Contours Minnesota (LIDAR Service)**

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A