

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 16, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2020-02240-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Hennepin City: Maple Grove

Center coordinates of site (lat/long in degree decimal format): Lat. 45.135732° N, Long. -93.502684° W. Universal

Transverse Mercator: Zone 15

Name of nearest waterbody: South Fork Rush Creek

Name of watershed or Hydrologic Unit Code (HUC): Elm Creek

☒ 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 15, 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; and artificial wetlands created by excavating dry land to collect and retain water and used exclusively as a settling basin. 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 9 such aquatic resources. According to the project consultant and wetland delineation report submitted by SRF Consultants, Wet Pond 2H (0.01 acre), Wet Pond 8 (0.14 acre), Wetland_5 (0.12 acre), Wet Ditch 6 (0.06 acre), Wet Ditch 8 (0.06 acre), Wet Ditch 9 (0.18 acre), Wet Ditch 14 (0.1 acre), Wet Ditch 15 (0.44 acre), Wet Ditch 18 (0.55 acre) and Wet Ditch 19 (0.01 acre) are roadside ditches and stormwater basins constructed in uplands associated with the TH 610 Extension project. These linear ditches and stormwater basins 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, Wet Pond 2H, Wet Pond 8, and Wet Ditches 6, 8, 9, 14, 15, 18 & 19, as shown of attached figures, are not regulated by the Corps under Section 404 of the Clean Water Act.

The review area also contains 3 intrastate wetlands (Wetland 4, Wetland 12A and Wetland 12B).

¹ Supporting documentation is presented in Section III.F.

Wetlands labeled as 12A and 12B on the AJD attachments are both a part of the same larger wetland. This wetland is traversed by Lawndale Lane North separating the wetland. Wetland 12A is located on the west side of the road and Wetland 12B is located on the east side of the road. Wetland 4 is a small wetland basin located on the south side of TH 610 and the east side of IH 94.

Each of these wetlands 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 each area to be completely surrounded by non-hydric soils, the NWI map shows the areas to be surrounded by non-wetlands, and aerial imagery shows the areas surrounded by an upland farmed area with no wetland hydrology or vegetation signatures connecting the wetlands to downstream jurisdictional waters. Historic imagery does show a linear drainage ditch connecting the Wetland 12A and 12B basin to Rush Creek to the west as far back as 1937 through 1975. No other wetland hydrology was observed during this time frame and then sometime between 1975 and 1991 the drainage ditch was plugged and filled in. A hydrologic connection between this wetland basin and Rush Creek where the drainage ditch was located is no longer seen past 1991. Wetland 12A and 12B are situated within a closed basin at approximately 925' in elevation. Wetland 4 is at the toe slope of the south side of TH 610 and situated within a closed basin at approximately 914' in elevation. They are not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding landuse is primarily agriculture along with the TH 610 and IH 94 interchange. The ongoing farming disturbance and presence of TH 610 and IH 94 precludes an ecological connection to a WOUS.

These aquatic resources do not support a link 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 taken and sold in interstate or foreign commerce; are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that wetlands 12A, 12B and 4, as shown of attached figures, 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 4 is 0.54, Wetland 12A is 2.09, and Wetland 12B is 0.37 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: **610 Extension Wetland Delineation Report dated November 2020 by SRF Consulting**

☐ 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 in delineation report 1937-2017**
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)**

B. ADDITIONAL COMMENTS TO SUPPORT JD: