

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): July 6, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Highland Hills First Subdivision, MVP-2022-00367-RMH

C. PROJECT LOCATION AND BACKGROUND INFORMATION: This AJD considers wetlands identified as Wetlands: 1-2 within the the approximately 53.12 acre property located in Section 18, Township 107 North, Range 14 West.

State: Minnesota

County/parish/borough: Olmsted County City: Rochester

Center coordinates of site (lat/long in degree decimal format): Lat. 44.07318° N, Long. -92.54355° W.

Universal Transverse Mercator: X: 536550.489025, Y: 4880102.12534, Zone 15

Name of nearest waterbody: South Fork Zumbro River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region Watershed (HUC 07040004)

☒ 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: July 6, 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: **The review area for this jurisdictional determination is the extent of Wetlands 1 and 2 identified within the review area. According to the wetland assesment report submitted, the wetlands are located within constructed impoundments. Photos from 1964 through 2002 indicate that the area in and adjacent to wetlands was continously tilled for agricultural crop production with little or no wetland indication of wetland signatures. The wetlands appear to be associated with stormwater treatment/retention actions and did not exist prior to 2002. Evidence of berm sections that established sedimentation basins down gradient of residential development appear in 3DEP Hillshadelayer, 2 foot contour. The applicant confirmed the features are associated with stormwater treatment/retentiaon actions and uncontrolled stormwater discharge. 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.” Wetland 1 and 2 were constructed in uplands to prevent sediment from washing into downgradient wetlands. Therefore, Wetlands 1 and 2 are not jurisdictional. Based upon a review of aerial photographs, United States Geographical Society (USGS) 1:24K Quad and its associated National Hydrography Dataset (NHD), Natural Resource Conservation Service (NRCS) soil survey, National Wetland Inventory (NWI) maps, topography data, and the materials submitted, the wetlands have been determined to be impoundments constructed in uplands to be used as settling basins.**

¹ Supporting documentation is presented in Section III.F.

The wetlands 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 or foreign commerce. The wetlands were determined to not be WOUS and therefore not to be jurisdictional under the CWA.

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 1: 0.21 ac, Wetland 2: 0.29 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 Assessment Report for Highland Hills First Subdivision submitted by G-Cubed Engineering, Surveying & Planning Inc., dated January 25, 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: USGS 1:24K Quad Name: Douglas
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Olmsted County Soil Survey
- ☒ National wetlands inventory map(s). Cite name:

- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Historic photos submitted with report: 1964, 1971, 1980, 1983, 1985-1983, 1995, 1999, 2000, 2003, 2006, 2009-2011, 2013 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): National Regulatory Viewer: 3DEP Hillshade layer, 2 foot contours

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Technical Evaluation Panel conducted a field review of the wetland assessment on November 17, 2021 and concurred with the delineated wetland boundaries.