

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): December 1, 2021

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2020-02376-DDP (SAP 159-080-021)
(Rochester, City of / SAP 159-080-021 / 65th Street)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Olmsted County City: Rochester

Center coordinates of site (lat/long in degree decimal format): Lat. 44.093997° N, Long. -92.536964° E.

Universal Transverse Mercator:

Name of nearest waterbody: South Fork Zumbro River

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

- ☒ 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: November 24, 2021
☐ 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 SAP 159-080-021 65th Street review area contains two aquatic feature for review; Wet Ditch-10 (0.02 ac) and Stormwater Pond 11 (SP 11) (0.03 ac). The majority of the review area consists of urban land use. Based on analysis of multiple years of aerial photography 1991-2021, USDA web soil survey maps, the 2018 WSB and Associates Summit Pointe, 6th and 7th Project Plans and the October 2020 SRF 65th Street Northwest Reconstruction Delineation Report, the Corps has determined that Wet Ditch 10 and SP 11 are not jurisdictional.

Wet Ditch 10 is best described as a linear roadside drainage feature excavated in uplands during the initial construction of 65th Street NW. In accordance with the December 2nd 2008 Rapanos guidance, Wet Ditch 10 is not within the Corps jurisdiction because Wet Ditch 10 was constructed in uplands, drains only uplands and does not have relatively permanent flow.

SP 11 is best described as a settling basin excavated entirely in uplands for the purpose of collecting stormwater. Upon initial review of the national wetland inventory and web soil survey, SP 11 appeared to be constructed in wetlands. After review of the 2018 WSB and Associates Summit Pointe 6th and 7th Project Plans associated with the adjacent development project along 65th Street NW SP 11 was constructed outside the delineated wetland boundary entirely in the adjacent uplands. The Corps does not generally consider artificial lakes or ponds, created by excavating or diking dry land to collect/retain water and are used exclusively for such purposes as settling basins, to be waters of the U.S. therefore SP 11 would not be jurisdictional.

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

¹ Supporting documentation is presented in Section III.F.

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 II.B.2.**

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: 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: October 2020 SRF 65th Street Northwest Reconstruction Delineation Report, 2018 WSB and Associates Summit Pointe, 6th and 7th Project Plans.

- ☒ 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 Quad Name: Douglas
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Olmsted County Soil Survey
- ☒ National wetlands inventory map(s). Cite name: CorpMaps layer viewed November 24, 2021
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): Aerial and other provided by the applicant and Google Earth 1991, 2003, 2004, 2006, 2008-2011 and 2015

or ☐ Other (Name & Date):

- ☒ Previous determination(s). File no. and date of response letter: MVP-2020-02376-RMH (March 3, 2021)
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: