

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 9, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2021-00029-SSC, Marx Property

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Wright

City: St. Michael

Center coordinates of site (lat/long in degree decimal format): Lat. 45.177187° N, Long. -93.649391° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Crow River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region; HUC 07010204

☒ 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: February 14, 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: **This AJD is limited to the boundaries of Wetlands 2, 3, 4, and OAR 3. Based on the wetland delineation report submitted by the requestor, aerial photos, and LiDAR contours, we have determined that the wetlands are isolated wetlands with boundaries that transition to uplands and that OAR 3 is a pond feature that was excavated in upland.**

Wetlands 2, 3, and 4 are shown to be depressional basins that transition to uplands, based on the LiDAR contour map submitted in the wetland delineation report. Review of Google Earth imagery does not show a surface water connection to a WoUS. This is supported by the National Hydrography Dataset (NHD). Additionally, the National Wetland Inventory (NWI) identifies Wetlands 2 and 3 and SoilWeb defines this area as hydric soil surrounded by non-hydric soils. Wetland 4 was not identified on the NWI.

OAR 3 is located along the southern border of the site area. The area was excavated between 1991 and 2003 as seen on aerial imagery. The pond remains consistent in size from 2003 (earliest imagery noted with the feature) through present time. The soil in this area is listed as Pits, gravel-Udipsammments complex (non-hydric soils). Review of LiDAR contours show that OAR 3 is surrounded by upland. Confirmation from the project engineer was received that the pond does not have any outlets.

Wetlands 2, 3, and 4 do not support links 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 be taken and sold in interstate or foreign commerce; and are not known to be used for industrial purposes by industries in interstate commerce. These wetlands do not have an ecological connection to a WoUS. Furthermore, the areas are hydrologically isolated with no surface water connections to a WoUS. Therefore, the Corps has determined that Wetlands 2, 3, and 4 are not regulated by the Corps under

¹ Supporting documentation is presented in Section III.F.

Section 404 of the Clean Water Act. Additionally, the preamble of the 1986 Regulations of 33 CFR Parts 320 through 330 states, with respect to the interpretation of the definition of waters of the U.S. given by 33 CFR 328.3, that ponds that were created in dry land or retain water and used for purposes such as for a settling basin or ornamental bodies of water created in dryland for aesthetic reasons are generally not intended to be considered waters of the U.S. Therefore, OAR 3 is not a water of the U.S., and is not 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): **See Section II.B.2 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: 8.23 acres. List type of aquatic resource: **Excavated Pond.**
- ☒ Wetlands: Wetland 2: 3.97 acres, Wetland 3: 2.35 acres, Wetland 4: 0.04 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: **Marx Property - Level 2 Wetland Delineation Report dated January 4, 2021; Marx Property Residential Development Environmental Assessment Worksheet 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:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **SoilWeb**

- ☒ National wetlands inventory map(s). Cite name: NWI
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth: August 2021, October 2020, October 2019, April 2018, May 2017, May 2003, April 1991
- 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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A