

**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 14, 2021

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** MVP-2021-02027-SSC, Croteau Property

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Minnesota County/parish/borough: Wright City: Otsego

Center coordinates of site (lat/long in degree decimal format): Lat. 45.239776° N, Long. -93.537903° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Crow River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region, HUC 07010203 and 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: November 18, 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):<sup>1</sup>**

☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: **The review area contains several aquatic resources. This AJD is limited to the boundaries of Wetlands A and C as well as Swale 1. Based on the wetland delineation report, site photos, and additional info submitted by the requestor, we have determined that the wetlands are isolated wetlands with boundaries that transition to uplands, and that Swale 1 is not a tributary or wetland feature.**

**Wetlands A and C are surrounded by upland as shown on the 2-foot LiDAR contour figures submitted in the wetland delineation report. The National Wetland Inventory (NWI) denotes both wetlands but does not have a surface connection to a WoUS. This is supported by the National Hydrography Dataset (NHD) and by aerial imagery submitted in the wetland delineation report.**

**Swale 1, the area north of Wetland B, was investigated as a possible tributary or wetland and was found to be a swale. The wetland delineator provided sufficient documentation of the feature to support the conclusion of the feature being a swale. There is no surface water flow or defined bed or bank present anywhere along the swale feature. The swale is not a tributary. A sample point was taken within the northern end of the swale at its low point, where reed canary grass was the dominant vegetation. Soils were non-hydric and no redox features were present in the extent of the soil pit. All along the swale is a mix of wetland and upland vegetation. The swale feature does not meet wetland indicators and was determined to be non-wetland. The 2007 Corps and EPA Rapanos Guidance Memorandum states that the following geographic features generally are not jurisdictional waters: swales or erosional features (e.g. gullies, small washes characterized by low volume, infrequent, or short duration flow). We have determined that Swale 1 does not qualify as a tributary feature, or a wetland, and it is not a water of the U.S.**

<sup>1</sup> Supporting documentation is presented in Section III.F.

Wetlands A and C 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 A and C are not regulated by the Corps under Section 404 of the Clean Water Act. Additionally, swales are generally not WoUS, unless they are tributaries or wetlands. For this reason, Swale 1 is 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): **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: Swale 1: 281 Linear Feet, Approx 0.20 acres. List type of aquatic resource: Swale.
- ☒ Wetlands: Wetland A: 0.24 acre, Wetland C: 0.36 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 Delineation Report - Croteau Property, Otsego, MN dated October 13, 2021, Swale info and site photos submitted on November 12, 2021
- ☒ 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 Survey
- ☒ 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): 2003, 2004, 2006, 2008, 2009, 2010, 2012, 2013, 2015, 2016, 2017, 2018, 2019, 2020 (Wetland Delineation Report); Site photos of Swale 1 submitted by agent.  
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:**