

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 29, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Duluth office, Pulte Group, 2021-01245-DWW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Washington County

City: Cottage Grove

Center coordinates of site (lat/long in degree decimal format): Lat. 44.7959956016428° N, Long. -92.9695801804145° W.

Universal Transverse Mercator: 15

Name of nearest waterbody:

Name of watershed or Hydrologic Unit Code (HUC): 070102060903, Spring Lake-Mississippi River

☒ 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 29, 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 AJD contains "portions" of 4 wetlands (WB-01-A, WB-01-B, WB-01-C, and WB-01-D), totaling 6.112 acres that were created as a result of excavation/impoundment in dry land for the purpose of creating irrigation ponds for golf course operations. 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.... (b) Artificially irrigated areas which would revert to upland if the irrigation ceased. (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. (d) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons. The impoundments were created with the construction of a golf course, and a pumphouse for irrigation is located near WB-01-A.

Historic aerial imagery shows that the review area was upland prior to the excavation/impoundment activity. Aerial photos from 1936, 1937, 1947, 1957, 1964, 1991 and 2003 indicate the area was a long linear swale/erosional feature until around 1991. In the 1991 aerial, the first of four berms can be seen between wetland WB-01-C and WB-01-D. In a 2003 aerial, 4 berms are in place and ponding is observed in all 4 wetlands. If the berms ponding all four wetland basins were removed, based on the elevations in the swale that WC-01 is located in, wetlands WB-01A-D would all drain completely.

Based on this data, the majority of these wetlands (6.112 acres) were created and are Preamble Waters as defined above. WB-01-A-2 Created Portion 0.048 Non-Jurisdictional-Preamble Water, WB-01-A-3 Created Portion 0.118 Non-Jurisdictional-Preamble Water, WB-01-B-2 Created Portion 0.236 Non-Jurisdictional-

¹ Supporting documentation is presented in Section III.F.

Preamble Water, WB-01-B-3 Created Portion 0.017 Non-Jurisdictional-Preamble Water, WB-01-B-4 Created Portion 0.047 Non-Jurisdictional-Preamble Water, WB-01-C-2 Created Portion 2.134 Non-Jurisdictional-Preamble Water, WB-01-D-2 Created Portion 2.790 Non-Jurisdictional-Preamble Water, WB-01-D-3 Created Portion 0.722 Non-Jurisdictional-Preamble Water.

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: 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: 6/25/2021 Westwood delineation, 10/4/2021 Westwood delineation, supplemental info 1/19/2022, supplemental info 2/23/2022.
- ☒ 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:
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **MnDNR**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):

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): The impoundments were created with the construction of a golf course, and a pumphouse for irrigation is located near WB-01-A.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Based on this data, the majority of these wetlands in AJD review area (6.112 acres) were created and are Preamble Waters as defined in Section II.B.2. WB-01-A-2 Created Portion 0.048 Non-Jurisdictional-Preamble Water, WB-01-A-3 Created Portion 0.118 Non-Jurisdictional-Preamble Water, WB-01-B-2 Created Portion 0.236 Non-Jurisdictional-Preamble Water, WB-01-B-3 Created Portion 0.017 Non-Jurisdictional-Preamble Water, WB-01-B-4 Created Portion 0.047 Non-Jurisdictional-Preamble Water, WB-01-C-2 Created Portion 2.134 Non-Jurisdictional-Preamble Water, WB-01-D-2 Created Portion 2.790 Non-Jurisdictional-Preamble Water, WB-01-D-3 Created Portion 0.722 Non-Jurisdictional-Preamble Water.