

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 29, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-01724-SSC, Cedar Mountain Substation

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota County/parish/borough: Renville City: Franklin

Center coordinates of site (lat/long in degree decimal format): Lat. 44.515434° N, Long. -94.828063° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Threemile Creek

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region; HUC 07020007

☒ 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: December 12, 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 4 and 5, as shown on the attached figures labeled MVP-2022-01724-SSC, Pages 1-2 of 2. Based on the wetland delineation report submitted by the requestor, aerial imagery, and LiDAR contours, we have determined that Wetland 5 is isolated with boundaries that transition to uplands and that Wetland 4 is a stormwater pond/non-jurisdictional ditch feature that was constructed in uplands, draining only uplands and not carrying a relatively permanent flow.**

Wetland 4 is a drainage ditch that wraps around the substation to the south and empties into a stormpond feature. Review of SoilWeb Survey information characterizes the area as predominantly non-hydric, and the National Wetland Inventory (NWI) does not note the area as wetland. A grading plan for the substation was also provided and did not identify any wetlands onsite other than Wetland 5. Review of aerial imagery shows the site being constructed, including Wetland 4, in September 2012.

Wetland 5 is located along the eastern boundary of the project area. The wetland was identified and avoided during the construction of the substation in September 2012. The NWI, National Hydrography Dataset (NHD), and historic USGS topographic maps were reviewed and did not show a surface water connection from Wetland 5 to a Water of the U.S. (WoUS). Review of 2-foot LiDAR contours show that the wetland is surrounded by uplands. There is a culvert located under County Road 3 (CR3) to the east of Wetland 5, however, review of aerial imagery does not show any concentrated flow path to a WoUS. The area to the east of CR 3 is agricultural land and no irregular crop stress is identifiable on aerial imagery suggesting there is no surface water connection offsite.

¹ Supporting documentation is presented in Section III.F.

Wetland 5 does not support links to interstate or foreign commerce; is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. This wetland does not have an ecological connection to a WoUS. Furthermore, the area is hydrologically isolated with no surface water connections to a WoUS. Therefore, the Corps has determined that Wetland 5 is not regulated by the Corps under Section 404 of the Clean Water Act. According to the preamble to the 1986 Corps Regulations (33 CFR 320-330) the Corps generally does not consider settling basins constructed in dry land to be WoUS or ditches constructed in uplands that drain only uplands and have less than relatively permanent flow. Based on the Rapanos decision, Wetland 4 is not a jurisdictional WoUS.

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): **Wetland 4: 0.60 acre (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: acres. List type of aquatic resource: .
- ☒ Wetlands: **Wetland 5: 0.89 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: **Cedar Mountain Substatin - Wetland Delineation Report dated September 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: **Morton SE, MN - 1983, 2022 (24K)**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Soil Web 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): **Google Earth (1991-2020)**
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