

**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 17, 2023

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** 2023-00133-MMG

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

State: MN County/parish/borough: Becker City: Richwood and Sugar Bush Townships

Center coordinates of site (lat/long in degree decimal format): Lat. 46.997208° N, Long. -95.783805° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Buffalo River

Name of watershed or Hydrologic Unit Code (HUC): 0902010601

☒ 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 16, 2023

☐ 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: **In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following activities to be waters of the United States; non-tidal drainage and irrigation ditches excavated on dry land. Further clarification is provided in the December 2, 2008 Revised Guidance on Clean Water Act Jurisdiction follow the Supreme Court Decision in Rapanos v U.S. and Carabell v. U.S. issued jointly by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow are not waters of the U.S.**

**The review area contains 11 such aquatic resources. According to the project consultant and permit application submitted by Houston Engineering Inc., Wetland 1 (0.01 acre), 2a (0.01 acre), 3 (0.47 acre), 5a (0.01 acre), 6 (0.02 acre), 7a (0.02 acre), 7b (0.06 acre), 7c (0.01 acre), 8f (0.02 acre), 10b (0.02 acre) & 12 (0.01 acre) are roadside ditches constructed in uplands associated with the initial construction of CSAH 34. These linear ditches are located outside of mapped wetlands on the National Wetlands Inventory and largely outside of mapped hydric soils. The ditches do not convey relatively permanent flow (as seen in photos from Google Earth), were constructed wholly in uplands during initial construction (as seen in historic aerial imagery), and drain only uplands (based on application report and LiDAR imagery). Therefore, Wetland 1, 2a, 3, 5a, 6, 7a, 7b, 7c, 8f, 10 & 12, as shown of attached figures, are 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

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

**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 IIB 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:      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: **CSAH 34 Wetland Delineation Report by Houston Engineering Inc.**
- ☐ 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: **USGS Topographic Quads (USA Topo Maps)**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Websoil survey 2008 data**
- ☒ National wetlands inventory map(s). Cite name: **National Wetlands Inventory**
- ☒ State/Local wetland inventory map(s): **DNR NWI Update - MN, 2010-2018**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Historic aerial imagery (1991) Google Earth**
- or ☒ Other (Name & Date): **ground level photos in Google Earth Streetview**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **2-foot contours Minnesota (LiDAR Service)**

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**