

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): January 18, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2015-03931-MJB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Hennepin County

City: Dayton

Center coordinates of site (lat/long in degree decimal format): Lat. 45.16556° N, Long. -93.50845° W.

Universal Transverse Mercator:

Name of nearest waterbody: Diamond Creek

Name of watershed or Hydrologic Unit Code (HUC): 07010206

☒ 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 30, 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):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 jurisdictional determination is the extent of Wetlands 9, 11, 18, and 20 within the review area, and excludes all other waters on-site. The wetlands are located within an agricultural field or forested area and do not have a surface or shallow subsurface hydrologic connection to any navigable waters or their tributaries. Based upon a review of aerial photographs, United States Geological Society (USGS) 1:24K Quad and its associated National Hydrography Dataset (NHD), Natural Resource Conservation Service (NRCS) soil survey, National Wetland Inventory (NWI) maps, topography data, and the materials submitted, the wetland is determined to be hydrologically isolated with no surface water connection to a water of the United States (WOUS). A lake that is connected to a downstream tributary is located approximately 1,300 feet from the nearest wetland. An agricultural field, forested area, residential area, and transportation corridor is located between the lake and the wetlands. The review area is not within a 100-year floodplain. The wetlands in review are surrounded by non-jurisdictional upland, and have no swales, ditches, pipes, or other means that would provide a surface or subsurface connection to a WOUS. Wetland 9 has a swale that leads north from the wetland, and towards the direction of Wetland 20. Wetland 20 drains towards a wetland north, but the wetland north of Wetland 20 does not have a surface or subsurface connection to downstream waters. There is a culvert under the road to the north of this wetland, but the culvert drains towards the wetland not away. This wetland, that is connected to Wetland 20, is isolated and does not drain off-site, and does not have a ditch or swale that drains towards downstream waters. Wetland 18 is along a roadside ditch. The ditch ends at a road without a culvert and does not convey water to downstream waters. We have determined that the wetlands subject to this review are isolated and hydrologically separated from other aquatic resources. The surrounding land use comprises of agricultural, forested, residential, and transportation uses and do not sufficiently provide cover or habitat between the wetland and other aquatic resources. The wetlands do not have an ecological connection to a WOUS.**

¹ Supporting documentation is presented in Section III.F.

The wetlands do not support a link to interstate or foreign commerce because they 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 or foreign commerce. The wetlands are determined to not be a WOUS and not to be 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):

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 9: 0.25 acres, Wetland 11: 0.25 acres, Wetland 18: 0.18 acres, Wetland 20: 0.13 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: Cubes at French Lake Application, applicant site visit documentation, and TEP site visit documentation
- ☐ 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: Hennepin County Soil Survey
- ☒ National wetlands inventory map(s). Cite name: current USFWS 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): FSA NAIP 2019 and Google Earth Historical Imagery
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): MN TOPO contours

B. ADDITIONAL COMMENTS TO SUPPORT JD: