

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 3, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2018-01528-BGO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota County/parish/borough: Nicollet County City: New Ulm to Nicollet

Center coordinates of site (lat/long in degree decimal format): Lat. 44.275865° N, Long. -94.220712° W.

Universal Transverse Mercator: X: 402584.899331 Y: 4903237.852083 Zone 15

Name of nearest waterbody: Swan Lake Outlet

Name of watershed or Hydrologic Unit Code (HUC): Middle Minnesota Watershed (HUC-8: 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: November 1, 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 includes forty roadside ditches labeled as WD-1, WD-2, WD-3, WD-5, WD-7, WD-8, WD-9, WD-10, WD-11, WD-12, WD-13, WD-14, WD-15, WD-16, WD-17, WD-18, WD-19, WD-20, WD-21, WD-22, WD-24, WD-26, WD-28, WD-30, WD-31, WD-32, WD-33, WD-34, WD-35, WD-36, WD-37, WD-38, WD-39, WD-40, WD-41, WD-43, WD-44, WD-46, WD-47, and WD-48 and one stormwater pond labeled as OAR-12 on the attached figures labeled 2018-01528-BGO Figures 1-62 of 62. The total area of non-jurisdictional waters/features is approximately 9.76 acres.**

The roadside ditches were constructed in uplands, drain only uplands, and do not carry a relatively permanent flow of water into waters of the U.S. (WOUS). This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report. Per the Rapanos decision, the assessed ditches are not WOUS because they are not tributaries and do not have a significant nexus to traditionally navigable waters.

The stormwater pond was designed and constructed in uplands under a previous project by the Minnesota Department of Transportation in 2016 to treat runoff from the highway. This was confirmed by reviewing aerial photography and the wetland delineation report, which shows the stormwater pond was constructed in predominantly nonhydric soils under the previous project. The non-jurisdictional determination for this stormwater pond is in accordance with the preamble to the 1986 Corps Regulations (CFR Parts 320-330), which states that the Corps generally does not consider the following waters to be Waters of the United States; "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."

¹ Supporting documentation is presented in Section III.F.

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, 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: MnDOT SP 5202-58/TH 14 Wetland Delineation Report, March 2018
- ☒ 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: NHD - High Resolution - MN, 2015
 - ☒ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24k DRG - Nicollet, 2003
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Nicollet County Soils Survey
- ☒ National wetlands inventory map(s). Cite name: USFWS NWI of MN, 1974-1978
- ☒ State/Local wetland inventory map(s): DNR NWI Update - MN, 2015
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth Imagery 1991-2021
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): LIDAR

B. ADDITIONAL COMMENTS TO SUPPORT JD: NA