

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 9, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2021-00503-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Renville City: Sacred Heart

Center coordinates of site (lat/long in degree decimal format): Lat. 44.788767° N, Long. -95.442859° E.

Universal Transverse Mercator: 0702000409, 0702000410, 0702000412

Name of nearest waterbody: Limbo Creek/Tributaries to Minnesota River

Name of watershed or Hydrologic Unit Code (HUC):

☒ 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: February 14, 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 contains eight intrastate wetlands (Wetland 2B, 10J, 20B2, 20E, 20H, 23E, 23J and 23K).**

Wetland 2B, 10J, 20B2, 20E and 20H are separate isolated wetland basins located along both sides of Trunk Highway (TH) 212 within the review area. These wetlands are surrounded by uplands and non-jurisdictional roadside ditches and do not have a direct hydrologic surface connection to downstream waters.

Wetlands 23E, 23J and 23K are connected by culverts and non-jurisdictional roadside ditches and are part of a larger NWI mapped wetland area located at the intersection of TH 212 and 200th Street. However, this larger wetland area is also an isolated basin that is physically separated from potential downstream waters.

This was confirmed by reviewing the supporting information in III(A) below including the wetland delineation report completed for the project site, national wetland inventory, hydric soils, and topographic mapping. They are not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding landuse is a mixture of residential development and agriculture. The nearby development disturbance and presence of TH 212 precludes an ecological connection to a WOUS.

These aquatic resources do not support a link to interstate or foreign commerce; 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; are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetland 2B, 10J, 20B2,

¹ Supporting documentation is presented in Section III.F.

20E, 20H, 23E, 23J and 23K, as shown of attached figures, are not regulated by the Corps under Section 404 of the Clean Water Act.

According to the MnDOT SP 6510-67/TH 212 Sacred Heart Wetland Delineation Report dated March 2021, there are 85 linear ditch features (Wet Ditch 1A-1D, 2A, 2C, 3, 4A-4B, 4D-4E, 4G, 5, 6C, 7-9, 10A, 10D, 10F-10I, 10K, 11, 12A, 13, 14A-14D, 14F-14G, 14I-14K, 15-18, 20A-20D, 20F-20G, 21, 22A-22B, 23A, 23C-23D, 23F-23G, 23I, 23L-23M, 24, 25A-25B, 26A-26C, 26E-26G, 26I-26J, 27A-27C, 28, 29A-29B, 30A-30B, 31A-31B, 32A, 32C-32E, and 32H-32J) totalling 19.35 acres that were constructed in uplands associated with TH 212. These linear ditches are not relocated tributaries, nor constructed in a tributary or adjacent wetland (based on review of aerial photography, national hydrography data and the wetland delineation report). They drain only uplands and do not convey relatively permanent flow (as seen in ground level photos in the delineation report). Therefore, Wet Ditch 1A-1D, 2A, 2C, 3, 4A-4B, 4D-4E, 4G, 5, 6C, 7-9, 10A, 10D, 10F-10I, 10K, 11, 12A, 13, 14A-14D, 14F-14G, 14I-14K, 15-18, 20A-20D, 20F-20G, 21, 22A-22B, 23A, 23C-23D, 23F-23G, 23I, 23L-23M, 24, 25A-25B, 26A-26C, 26E-26G, 26I-26J, 27A-27C, 28, 29A-29B, 30A-30B, 31A-31B, 32A, 32C-32E, and 32H-32J, as shown on the attached map are not a waters of the U.S based on the following guidance. 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 following 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 United States.

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 2B, 10J, 20B2, 20E, 20H, 23E, 23J and 23K is 0.37 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 6510-67/TH 212 Sacred Heart Wetland Delineation Report, March 2021**
- ☐ 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: **USA Soil Survey (USDA Service)**
- ☒ 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): **Google Earth Aerial Imagery (1991-2015), 2017 FSA**
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): **2-foot contours Minnesota (LiDAR Service)**

B. ADDITIONAL COMMENTS TO SUPPORT JD: