

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): May 23, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2021-01194-SSC, Cedar Creek Villas

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Dakota

City: Lakeville

Center coordinates of site (lat/long in degree decimal format): Lat. 44.657591° N, Long. -93.220444° W.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Vermillion River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region; HUC 07040001

☒ 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 15, 2022

☒ Field Determination. Date(s): April 25, 2022

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 1 (KK) and 2. Wetlands 1 (KK) and 2 gently slope from north to south as indicated on 2-foot LiDAR contours. A large rock inlet is found on the southern side of the project area and conveys flows underneath 202nd Street West to the south into a wetland stream complex that flows into East Branch South Creek which confluences with the Vermillion River that eventually discharges into the Mississippi River. A desktop review of the site was completed alongside review of submitted materials by the agent. The National Wetland Inventory (NWI), National Hydrography Dataset (NHD), and USGS topographic maps did not denote any surface water connections to a water of the U.S. (WoUS). However, based on the topography of the site, a field visit was conducted to further investigate the wetlands and their jurisdictional status.

The Antecedent Precipitation Tool (APT) was run for the date of the field visit and indicated wetter than normal conditions. The APT provided precipitation info that indicated it had rained approximately 0.54 inches the day prior to the site visit. Corps staff on site noted that the site was saturated and light precipitation had fallen in the area just prior to arriving onsite. The southern point of Wetland 1 (KK) was investigated, and no flow was observed to the south. A rut, that aligned with a silt fence previously in place for construction east of the wetland, with water in it extended approximately 10 feet to the south outside of the delineated wetland. The rut did not extend to the roadway where a roadside ditch was flowing into the rock inlet structure. A shallow swale feature was noted extending southwest from Wetland 1 (KK) but no flow was visible. Wetland 2, a historic ditch remnant based on historic aerials (no tile outlets were found), had ponded water at the southern point of the wetland that seemed to dissipate outward but not in any distinguishable flow path. Similar to Wetland 1 (KK), Wetland 2 had a shallow swale feature that extended to the southeast but did not have any visible flow being conveyed. No flow was observed to Wetland 3 which is found along the southern border of the site. Additionally, Upland and Non-Wetland Sample points

¹ Supporting documentation is presented in Section III.F.

were taken, as part of the wetland delineation materials submitted, along the southern point of Wetland 2 indicating an upland break based on a lack of hydrophytic vegetation and primary/secondary hydrology indicators. The recent rainfall and wetter than normal conditions likely would have made apparent any surface water connection to a WoUS, however, none were found during the site visit. Based on the offsite and onsite information, it was determined that Wetlands 1 (KK) and 2 were isolated features.

Wetlands 1 (KK) and 2 do not support links 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; and are not known to be used for industrial purposes by industries in interstate commerce. These wetlands do not have an ecological connection to a WoUS. Furthermore, the areas are hydrologically isolated with no surface water connections to a WoUS. Therefore, the Corps has determined that Wetlands 1 (KK) and 2 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

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 1 (KK): 0.65 acre; Wetland 2: 0.71 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: Summergate-Lakeveille-Engdahl Wetland Delineation Reported dated June 30, 2021; Klym and Kunik Properties Wetland Delineation Report dated August 12, 2021; Cedar Creek Villas Wetland Permit Application dated February 18, 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: **Farmington 1957 (Scale 1:62500)**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ 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 1991-2021**
 - or ☒ Other (Name & Date): **Site Visit Photos collected April 25, 2022**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **Antecedent Precipitation Tool (APT)**

B. ADDITIONAL COMMENTS TO SUPPORT JD: NA