

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): April 26, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Duluth office, JHM Investments, 2021-01921-DWW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: Washington County

City: Grant

Center coordinates of site (lat/long in degree decimal format): Lat. 45.0690944695535° N, Long. -92.921439779852° W.

Universal Transverse Mercator: 15

Name of nearest waterbody:

Name of watershed or Hydrologic Unit Code (HUC): 070102060303, Clearwater Creek

☒ 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 15, 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: **Wetland A is identified as an overflow channel between a small closed drepressional cattail marsh to the south across a residential driveway (off-site) and a closed depressional wetland complex to the northwest across Jamaca Ave N. (off-site). Desktop resources such as aerial photography, LiDAR derived elevation models and contours, and stream and wetland, were reviewed and we determined that there would be surface or subsurface connections between this wetland within the review area and other off-site wetlands, however, the connected adjacent wetlands are in closed depressions with no outlets. Wetland A, would drain overflow from the wetland to the south, under Jamaca Ave. to the wetland basin on the west side of the road. Those wetlands in turn might overflow to large PABH wetland in a closed depression. The NWI doesn't show connections between these wetlands and any down gradient wetlands. The USGS map doesn't show any streams in the area. The Rice Creek Watershed Districts interactive map does not show any streams or ditches mapped in the area that would connect these basins to other Waters of the US. Aerial photos also do not show any obvious drainageways, streams, ditches connecting the basins to other wetlands/streams/waters of the US. Therefore, Wetland A would be considered geographically isolated.**

Wetland A (.18 acre) does not support a link to interstate or foreign commerce because it is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. The wetland was determined to not be jurisdictional under the CWA because the wetland lacked links to interstate commerce sufficient to serve as a basis for jurisdiction.

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):

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 A, 0.18 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: Bopray Environmental 9/07/2021.
- ☒ 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:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): MnDNR
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☐ Photographs: ☐ Aerial (Name & Date):
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):

The wetland is classified as a Palustrine, Emergent, Temporarily Flooded (PEMA), seasonally flooded basin. Most of the basin is unvegetated. Wetland A is identified as an overflow channel between a closed

depressional cattail marsh to the south (off-site) and a closed depressional wetland complex to the northwest (off-site).

B. ADDITIONAL COMMENTS TO SUPPORT JD: We determined that there would be surface or subsurface connections between Wetland A within the review area and other off-site wetlands, however, the connected adjacent wetlands are in closed depressions with no outlets. Therefore, the wetland would be considered geographically isolated.