

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 6, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2021-02315-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Kandiyohi City: Norway Lake & Arctander
Center coordinates of site (lat/long in degree decimal format): Lat. 45.325412° N, Long. -95.152400° E.
Universal Transverse Mercator: Zone 15
Name of nearest waterbody: Tributary to Norway Lake
Name of watershed or Hydrologic Unit Code (HUC): 0702000508
☒ 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: April 13, 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:

In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos guidance, 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. According to the wetland delineation report submitted by Moore Engineering, Inc. on behalf of Kandiyohi County, four ditches were delineated within the County Road 1 corridor that are proposed to be impacted by reconstructing and widening CR 1. Wet Ditch 1, 2, 3 and 4 as shown on the attached figure are outside of mapped NWI wetlands and are described as wetlands formed within upland constructed ditches to convey runoff along CR 1. The ditches do not convey relatively permanent flow (as seen in photos from delineation report), were constructed wholly in uplands during initial road construction, and drain only uplands (based on delineation report and LiDAR imagery). Therefore, Wet Ditch 1 (0.1 acre), Wet Ditch 2 (0.2 acre), Wet Ditch 3 (0.2 acre), and Wet Ditch 4 (0.5 acre), as shown on the attached figures are not waters of the U.S.

The review area also contains eight intrastate wetlands (Wetland A, B, C, E, F, 3, 4 & 7) that according to the County Road 1 (SAP 034-601-038) Wetland Delineation Report dated October 2021 by Moore Engineering, Inc. are isolated wetland basins.

These wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters. This was confirmed by reviewing the supporting information in IV(A) below. There

¹ Supporting documentation is presented in Section III.F.

are no inlets or outlets to these wetland basins with the exception of Wetland A, E and F which are discussed further below. 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 residential development, active agriculture and disturbance from CSAH 1 alongside these wetland basins precludes an ecological connection to a WOUS.

Wetland A and Wetland B are located within defined contour basins along the west side of CSAH 1. They are located within a partial hydric soil unit and neither is a mapped NWI wetland. The closest mapped waterway is a tributary to Norway Lake approximately 200 feet to the east on the other side of CSAH 1. A culvert is located at Wetland A connecting it to the other side of CSAH 1, however the area between CSAH 1 and the tributary was delineated as upland and there is no evidence of a direct or confined surface water connection on historic aerial imagery. Wetland 3, 4, 7 and C are each situated along CSAH 39 at the 210th Avenue intersection. They are within a mapped NWI wetland that is surrounded by uplands and 1-foot contour layer shows this overall wetland basin to be enclosed. The closest mapped waterway is Norway Lake approximately 0.3 miles to the east. Wetland E is located on the east side of CSAH 1 at the intersection with 225th Avenue. There is no mapped NWI at this location and the 1-foot contour layer shows the wetland in an enclosed basin surrounded by upland with a ditch running through along CSAH 1. The closest mapped waterway is a tributary to Norway Lake approximately 500 feet to the south. Wetland F is situated near the south east corner of the intersection with CSAH 1 and State Highway 9. There are no hydric soil indicators nor mapped NWI wetlands within this area. A culvert near Wetland F conveys an upland constructed ditch to the north side of State Highway 9 to another upland constructed ditch. The closest mapped waterway is a tributary to Norway Lake approximately 500 feet to the west on the other side of CSAH 1.

These aquatic resource 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 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 A, B, C, E, F, 3, 4 & 7, as shown of attached figures, 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 A is 0.31, Wetland B is 0.02, Wetland C is 0.18, Wetland E is 0.13, Wetland F is 0.07, Wetland 3 is 0.38, Wetland 4 is 0.33, and Wetland 7 is 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: **County Road 1 (SAP 034-601-038) Wetland Delineation Report dated October 2021 by Moore Engineering, Inc.**
- ☐ 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 Wetland 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**
or ☒ Other (Name & Date): **Ground level photos in delineation report**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **1-foot contours Minnesota (LiDAR Service), Google Earth Streetview**

B. ADDITIONAL COMMENTS TO SUPPORT JD: