

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 18, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-00288-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota

County/parish/borough: St. Louis

City: Hermantown

Center coordinates of site (lat/long in degree decimal format): Lat. 46.844069° N, Long. -92.262594° E.

Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Rocky Run

Name of watershed or Hydrologic Unit Code (HUC): 0401020114

☒ 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 16, 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 Minnesota Department of Transportation, seventeen ditches were delineated within the TH 194/CSAH 13 intersection and TH 194/TH 53 intersection that are proposed to be impacted by replacing culverts and reconstructing of the two intersections. Wetland Ditch 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 16 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 from the adjacent roads. The oldest available aerial imagery (Google Earth 1991) indicates no wet signatures within or adjacent to the ditch features. 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, Wetland Ditch 1 (0.28 acre), Wetland Ditch 2 (0.19 acre), Wetland Ditch 3 (0.02 acre), Wetland Ditch 4 (0.23 acre), Wetland Ditch 5 (0.21 acre), Wetland Ditch 6 (0.07 acre), Wetland Ditch 7 (0.17 acre), Wetland Ditch 9 (0.01 acre), Wetland Ditch 10 (0.02 acre), Wetland Ditch 11 (0.22 acre), Wetland Ditch 12 (0.05 acre), Wetland Ditch 13 (0.06 acre), Wetland Ditch 14 (0.02 acre), and Wetland Ditch 16 (0.29 acre), as shown on the attached figures are not waters of the U.S.**

SECTION III: CWA ANALYSIS

¹ Supporting documentation is presented in Section III.F.

- 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: **Minnesota Department of Transportation SP 6916-113 & SP 6932-14 Wetland Delineation Report dated December 2020**
 - ☐ 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: **St. Louis County**
 - ☒ National wetlands inventory map(s). Cite name: **National Wetland Inventory**
 - ☒ State/Local wetland inventory map(s): **DNR Protected Waters Inventory Map**
 - ☐ FEMA/FIRM maps:
 - ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 - ☒ Photographs: ☒ Aerial (Name & Date): **Google Earth (1991)**
 - or ☒ Other (Name & Date): **Ground-level photos in the delineation report**
 - ☐ Previous determination(s). File no. and date of response letter:
 - ☐ Applicable/supporting case law:
 - ☐ Applicable/supporting scientific literature:
 - ☒ Other information (please specify): **LiDAR 2-foot contours**

B. ADDITIONAL COMMENTS TO SUPPORT JD: