SECTION I: BACKGROUND INFORMATION
A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 6/1/2016

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: J. Adam Hamilton development; 2015-04317-WAB; Hwy 71 borrow pit wetland

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: MN  County/parish/borough: Beltrami  City: Bemidji
Center coordinates of site (lat/long in degree decimal format): Lat. 47.53598° N, Long. -94.89687° W
Universal Transverse Mercator: 15 357240.05/5266471.62
Name of nearest waterbody: Unnamed stream, tributary to Lake Bemidji
Name of watershed or Hydrologic Unit Code (HUC): Mississippi Headwaters
✓ 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: 4/11/2016
✓ Field Determination. Date(s): 4/11/2016

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 ~1983, the U.S. Highway 71 bypass was constructed to route traffic to the northwest of Bemidji, MN. To construct the highway, gravel was obtained from an approximate 7.8 acre site north of the highway alignment, NW 1/4, S20, T147N, R33W. The removal of borrow material exposed the water table or established saturated soils at or near the ground surface, creating open water, shallow marsh, and scrub shrub wetlands. The borrow site is approximately 1,290 feet from the nearest waterway, a perennial unnamed tributary of Lake Bemidji. The site is isolated from any potential surface water connection by a service road and undisturbed uplands. There is no natural or man-made or discrete and/or confined surface water connection between the basin and any other jurisdictional water, there is no evidence of surface water flow to or from the basin, and the basin is not located within a floodplain. The basin does not cross a state boundary and does not have a use which would associate it with interstate commerce. In consideration of the January 2, 2001 United States Supreme Court decision, Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, we have determined the wetland to be isolated and non-jurisdictional. The basin was determined to not be jurisdictional under the Clean Water Act because it lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction.

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

¹ Supporting documentation is presented in Section III.F.
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: 7.8 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: Site development plans, information regarding construction of U.S. Highway 71.

☐ 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: List of designated navigable waters of the U.S.

☐ 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: 1:24,000, MN-PETERSON LAKE

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: WebSoilSurvey

☐ National wetlands inventory map(s). Cite name: ArcGIS

☐ State/Local wetland inventory map(s):

☐ FEMA/FIRM maps:

☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)

☐ Photographs: ☑ Aerial (Name & Date): Multiple years of aerial photos, USDA

☐ 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): Site visit on 4/11/2016

B. ADDITIONAL COMMENTS TO SUPPORT JD: In ~1983, the U.S. Highway 71 bypass was constructed to route traffic to the northwest of Bemidji, MN. To construct the highway, gravel was obtained from an approximate 7.8 acre site north of the highway alignment, NW 1/4, S20, T147N, R33W. The removal of borrow material exposed the water table or established saturated soils at or near the ground surface,
creating open water, shallow marsh, and scrub shrub wetlands. The borrow site is approximately 1,290 feet from the nearest waterway, a perennial unnamed tributary of Lake Bemidji. The site is isolated from any potential surface water connection by a service road and undisturbed uplands. There is no natural or man-made or discrete and/or confined surface water connection between the basin and any other jurisdictional water, there is no evidence of surface water flow to or from the basin, and the basin is not located within a floodplain. The basin does not cross a state boundary and does not have a use which would associate it with interstate commerce. In consideration of the January 2, 2001 United States Supreme Court decision, Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, we have determined the wetland to be isolated and non-jurisdictional. The basin was determined to not be jurisdictional under the Clean Water Act because it lacks a link to interstate commerce sufficient to serve as a basis for jurisdiction.