

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): DEC 14 2017

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2017-01744-MVM St. Cloud Southwest Addition

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Minnesota County/parish/borough: Stearns City: Saint Cloud

Center coordinates of site (lat/long in degree decimal format): Lat. 45.51471° N, Long. -94.22218° W.

Universal Transverse Mercator: Zone 15; X: 404554.001722, Y: 5040853.736449

Name of nearest waterbody: Sauk River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region 07010203

☒ 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: October 31, 2017

☒ Field Determination. Date(s): October 24, 2017

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: **There are three wetlands in the review area labeled as Wetland A (0.01 acre), Wetland B (0.57 acre), and Wetland C (0.02 acre) on the enclosed figures labeled MVP-2017-01744-MVM Page 2 of 3 through Page 3 of 3. These are depressional basins and do not have a surface or shallow subsurface hydrologic connection to any navigable waters or their tributaries, as confirmed by the October 24, 2017 site visit. During the site visit, the south side of Wetland B was closely inspected. Wetland B was confirmed to be wet meadow wetland that is unlikely to contain surface water even in wetter than normal conditions. A mowed trail higher in elevation than Wetland B prevents any surface hydrologic connection between the basin and the next nearest aquatic resource south of the review area. The nearest Traditionally Navigable Water (TNW) is Pleasant Lake, approximately 2.8 miles away. The distance between the basins and the TNW precludes a shallow subsurface connection. No natural corridor is present that could provide an ecological connection between the basins and the TNW. The wetlands are surrounded by upland, and have no swales, pipes, or other means to connect them to waters of the U.S. (WOUS). We have determined that these wetlands are isolated depressions and not waters of the U.S.**

The wetlands do not support a link to interstate or foreign commerce because they 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 or foreign commerce. The wetlands do not have an ecological connection to other waters within the review area. Therefore, Wetlands A, B, and C are isolated basins, are not waters of the U.S., and are not jurisdictional under the CWA.

¹ Supporting documentation is presented in Section III.F.

There are also two stormwater infiltration basins within the review area labeled as stormwater basin 1 (0.26 acre) and 2 (0.60 acre) on the enclosed figures labeled MVP-2017-01744-MVM Page 2 of 3 through Page 3 of 3. St. Aerial imagery indicates the basins were constructed in 2015. A review of St. Paul District permit records revealed that the basins were constructed in association with the Individual Permit authorization for the 33rd Street South Road Improvements project (MVP-2013-3022-RMM). A wetland delineation was conducted for the project in 2013 and did not identify any aquatic resources within the vicinity of where the constructed basins are now located. We conclude that the basins were constructed in uplands to act as settling basins for the 33rd Street South Road Improvements Project. Therefore, Stormwater Basin 1 and 2 are not waters of the U.S., and are not jurisdictional under the CWA.

The basis for this determination is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps generally does not consider certain waterbodies to be WoUS, including: Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

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): **Stormwater Basin 1 (0.26 acre) and 2 (0.60 acre) are settling basins constructed in uplands.**

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 (0.01 acre), Wetland B (0.57 acre), Wetland C (0.02 acre)** 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: **Granite City Environmental**
- ☒ 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: 1:24K Saint Cloud
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Stearns County Soil Survey
- ☒ National wetlands inventory map(s). Cite name: USFWS 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 Imagery 1991 - 2017
 - or ☐ Other (Name & Date):
- ☒ Previous determination(s). File no. and date of response letter: Corps file no. MVP-2013-03320-RMM Letter-of-Permission issued on November 4, 2013
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Our office does not concur with the data sheets because multiple data forms identified the incorrect hydric soil indicator, or a hydric soil indicator was checked but the soil profile as described does not meet an indicator. For example, the Wetland B wetland sampling point data form reported that hydric soil indicator F6 Redox Dark Surface was present, but the soil profile does not meet the parameters of this indicator. The soil profile meets no other indicator because the 12-20 inches layer has a matrix color chroma of 3 which does not meet the definition of a depleted matrix.



