

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): JAN 10 2017

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2016-02704-RMM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: MN County/parish/borough: Dakota City: South St. Paul

Center coordinates of site (lat/long in degree decimal format): Lat. 44.87717° N, Long. 93.02104° W.
Universal Transverse Mercator:

Name of nearest waterbody: Mississippi River

Name of watershed or Hydrologic Unit Code (HUC): 07010206

☒ 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: December 7, 2016

☐ 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: The review area for this AJD includes 3 aquatic resources: Wetland (0.35 acre), Sediment Basin (0.15 acre), and Stormwater Pond (0.44 acre), these resources were named by the agent and are included because that is how they are referenced in the delineation report.

Wetland (0.35 acre) sits approximately 200 feet west of the Mississippi River. The project site the wetland is located in has a long history of disturbance. Historically this area may have been wetland but in 1964 it was converted into a sewage treatment pond (See enclosed figures labeled MVP-2016-02704-RMM Page 2 of 21 through 6 of 21). The sewage treatment pond was converted to upland in the late 1990's. The 2015 National Wetland Inventory update does not include this wetland (see figure labeled MVP-2016-02704-RMM Page 7 of 21). The NRCS Soil survey maps the area as water. The wetland sits approximately 10-12 feet higher than the elevation of the Mississippi River. There is also a large dike between the wetland and river that was constructed when the sewage lagoon was present to prevent any discharges into the river. The wetland appears to be the result of site disturbance activities and appears around 2013. The wetland does not have any surface or subsurface connection to the Mississippi River. The dike cuts off any surface connection with the river.

The waterbody described above 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; it does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and it is not known to be used for industrial purposes for interstate or foreign commerce. The waterbody does not have an ecological connection to other waters within or outside of the review area. The waterbody has been determined to be non-jurisdictional under the Clean Water Act because the wetland lacks a connection and/or relationship sufficient to serve as a basis for jurisdiction.

¹ Supporting documentation is presented in Section III.F.

The review area also includes two stormwater ponds: Sediment Basin (0.15 acre) and Stormwater Pond (0.44 acre). These ponds were constructed in upland for the purpose of collecting sediment from the adjacent sand/gravel operation. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, published November 13, 1986 (page 41217), states "For clarification, it should be noted that we generally do not consider the following waters to be "Waters of the United States....(c) 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." These basins were constructed in uplands to prevent sediment from washing into the Mississippi River. Therefore, Sediment Basin and Stormwater Pond are not considered to be waters of the U.S. and are not jurisdictional 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: 0.35 acre, Sediment Basin: 0.15 acre, Stormwater Pond: 0.44 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.

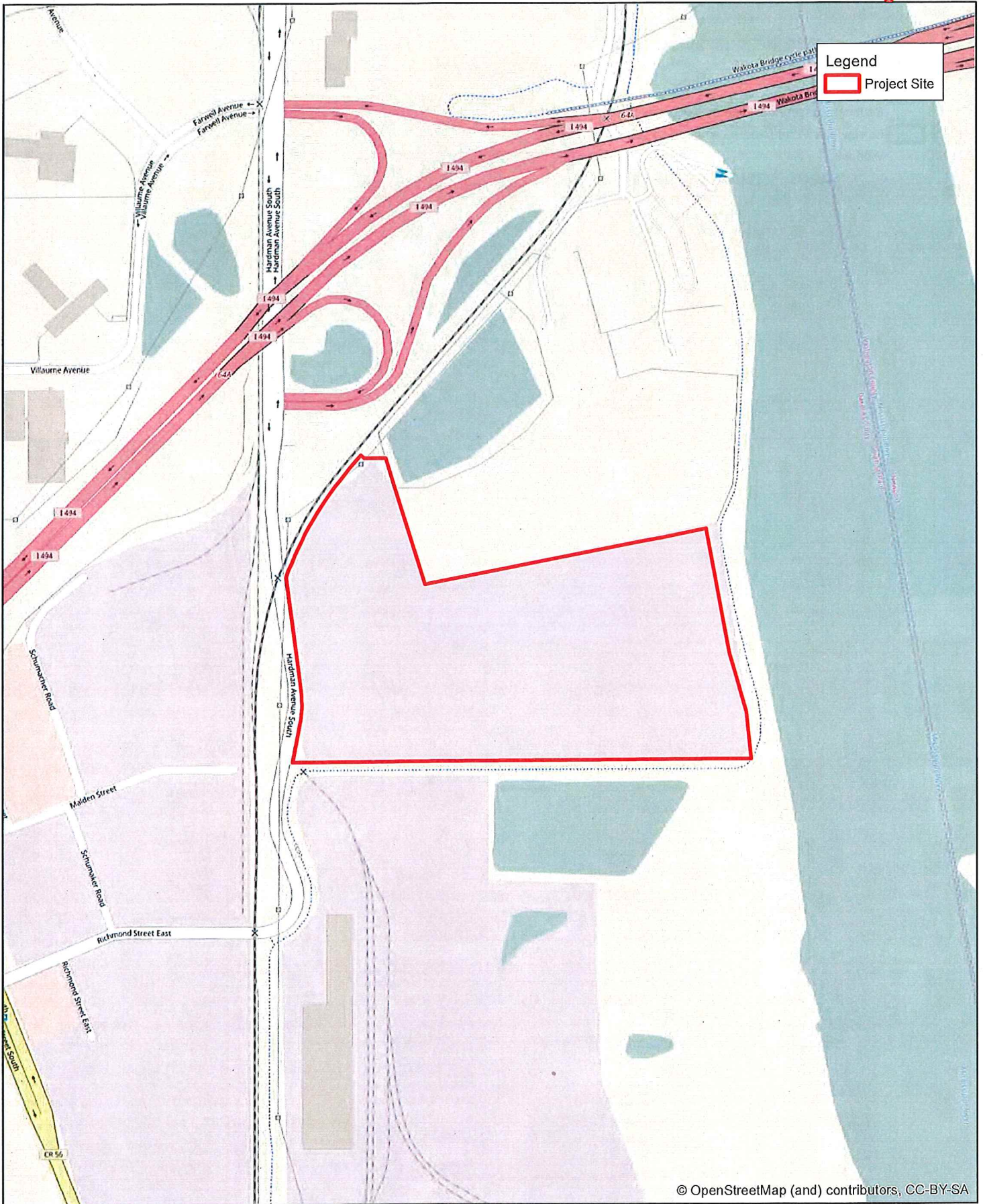
SECTION IV: DATA SOURCES.

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:
- ☒ 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: Dakota County SSURGO

- ☒ National wetlands inventory map(s). Cite name: 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): 1927, 1937, 1951, 1964, 2003, 2005, 2006, 2008, 2009, 2010, 2011, 2013, 2014, and 2015
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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: The 32 acre review area contains 3 aquatic resources identified in the delineation report as Wetland, Stormwater Pond, and Sediment Basin. These 3 resources have been found to be non-jurisdictional under the Clean Water Act. Impacts to these resources are not regulated by the Corps of Engineers.



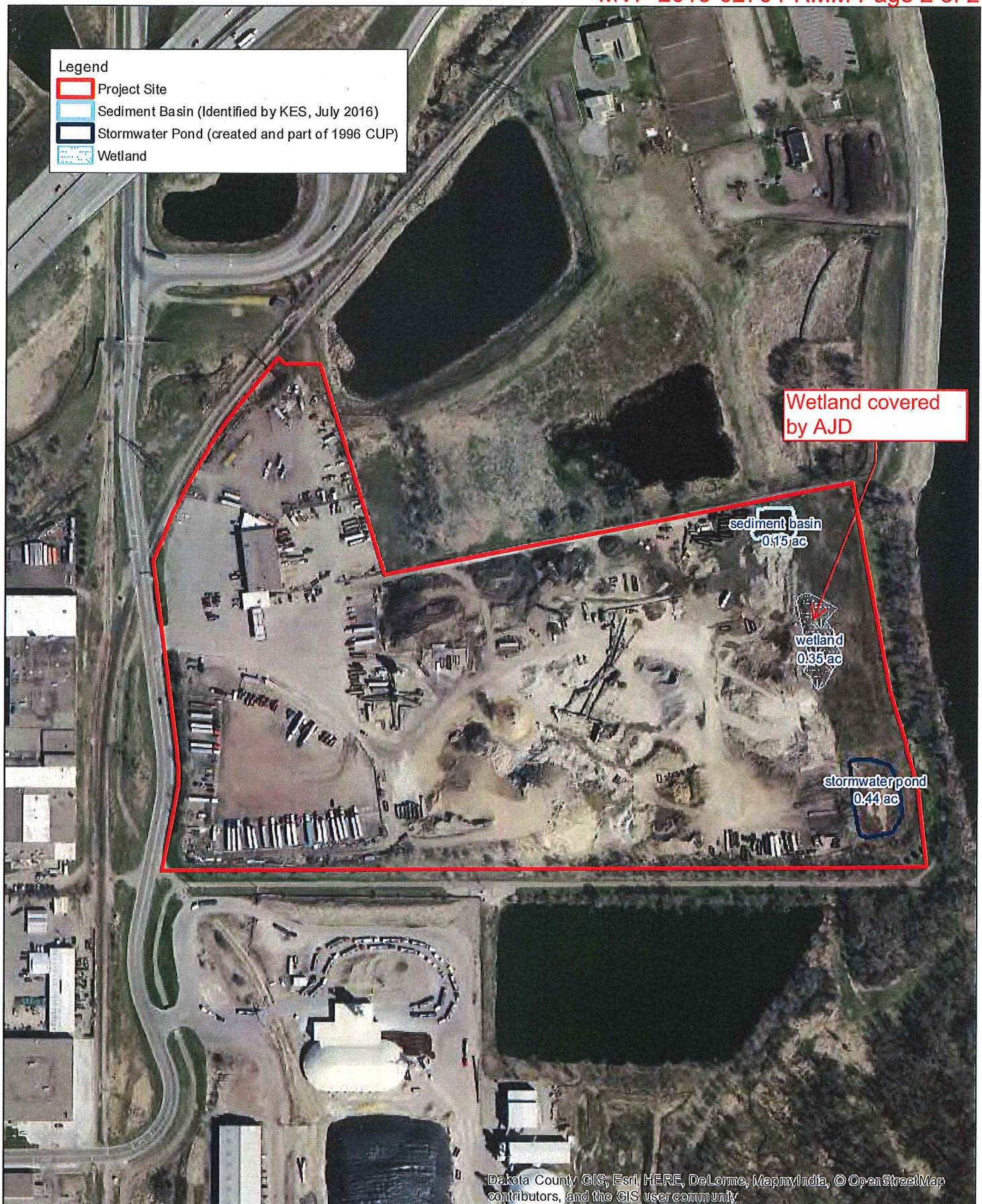


Figure 2. Identified Aquatic Resources