



## Regulatory Program

### **APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in the Approved Jurisdictional Determination Form User Manual.

#### **SECTION I: BACKGROUND INFORMATION**

**A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** July 03, 2019

**B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ):** MVP-2018-03685-BGO

#### **C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Minnesota County/parish/borough: Hennepin City: Maple Grove, Dayton, Rogers

Center coordinates of site (lat/long in degree decimal format): Lat. 45.087391, Long. -93.45158.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are:  attached  in report/map titled .

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

#### **D. REVIEW PERFORMED FOR SITE EVALUATION:**

Office (Desk) Determination Only. Date: June 6, 2019.

Office (Desk) and Field Determination. Office/Desk Date(s): . Field Date(s): .

#### **SECTION II: DATA SOURCES**

Check all that were used to aid in the determination and attach data/maps to this JD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: MnDOT SP 2780-99/I-94 UBOL Joint Application Form, March 4, 2019.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.. Title/Date: MnDOT SP 2780-99/I-94 UBOL Wetland Delineation Report, October 26, 2018.

Office does not concur with data sheets/delineation report. Summarize rationale and include information on revised data sheets/delineation report that this JD form has relied upon: . Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: .

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: NHD – High Resolution – MN, 2015.

USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

USGS maps. Scale & quad name and date: 1:24k DRG – Osseo, 2003.

USDA NRCS Soil Survey. Citation: Hennepin County Soil Survey.

USFWS National Wetlands Inventory maps. Citation: USFWS NWI of MN, 1974-1978.

State/Local wetland inventory maps. Citation: .

FEMA/FIRM maps. Citation: .

Photographs:  Aerial. Citation: 2017 FSA and MN Historical Aerial Photographs from 1960, 1962, 1967, and 1971. or  Other. Citation: .

LiDAR data/maps. Citation: .

Previous determinations. File no. and date of jurisdictional determination letter: 2014-00483-MMJ, June, 13, 2014 and 1998-02693-JJY, March 31, 1998.

Applicable/supporting case law: .

Applicable/supporting scientific literature: .

Other information (please specify): .

### **SECTION III: SUMMARY OF FINDINGS**

#### Complete Spreadsheet Tab “Aquatic Resources” – Required for All AJDs

##### A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

“navigable waters of the U.S.” within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **List water(s) and area/length within review area – Required:**

*NOTE:* If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Section 10 navigable waters list, **DO NOT USE THIS FORM TO MAKE THE DETERMINATION.** The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

##### B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: “waters of the U.S.” within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

- (a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters or TNW).
- **Complete Spreadsheet Tab “(a)(1)” - Required**
- This JD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.
- (a)(2): All interstate waters, including interstate wetlands.
- **Complete Spreadsheet Tab “(a)(2)” - Required**
- (a)(3): The territorial seas.
- **Complete Spreadsheet Tab “(a)(3)” - Required**
- (a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(4)” - Required**
- (a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(5)” - Required**
- (a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.
- **Complete Spreadsheet Tab “(a)(6)” - Required**
- Bordering/Contiguous.  
Neighboring:
- (c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.
- (c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.
- (c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.
- (a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(7)” for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.
- (a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “(a)(8)” for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

##### C. NON-WATERS OF THE U.S. FINDINGS:

###### **Check all that apply.**

- The review area is comprised entirely of dry land.

- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Spreadsheet Tab “NonWaters-Excluded” - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.<sup>1</sup>
- (b)(4)(iv): Small ornamental waters created in dry land.<sup>1</sup>
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.<sup>1</sup>
- (b)(4)(vii): Puddles.<sup>1</sup>
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.<sup>1</sup>
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.<sup>1</sup>
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Spreadsheet Tab “NonWaters-Other” - Required**

**D. ADDITIONAL COMMENTS TO SUPPORT JD:** The review area for this determination is limited to the boundaries of 24 roadside ditches labeled as Wet Ditch (WD) 1-WD 5, WD 7-WD 18, and WD 21-WD 27 and six stormwater control features labeled as Storm Pond No. 1, W-20-W-23, and Storm Pond No. 6 on the attached figures and tables labeled MVP-2018-03685-BGO MnDOT SP 2780-99/I-94 UBOL AJD Attachments, Page 1-35 of 35. All of the labels for these aquatic resources are also highlighted in yellow on the attached figures. The total area of non-jurisdictional waters/features is approximately 21.91 acres.

The ditches are constructed features that are not relocated tributaries, are not excavated in a tributary, and do not convey perennial or intermittent flow. This was confirmed by reviewing aerial photography, national hydrography data, and the wetland delineation report dated October 28, 2018. Based on this review, the evaluated ditches are not jurisdictional under the 2015 Clean Water Rule because they meet the terms of paragraph (b)(3)(i).

Storm Pond No. 1, W-20, W-21, W-22, and W-23 are located within the interchange ramps of Interstate 94 (I-94) and Trunk Highway (TH) 101, and were constructed in dry land by the Minnesota Department of Transportation to convey,

<sup>1</sup> In many cases these excluded features will not be specifically identified on the approved JD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

treat, or store stormwater within the interchange. This was confirmed by reviewing historic aerial photography, topographic maps, and soil survey data which shows the stormwater control features were constructed in dry land and areas that were previously disturbed by the construction of I-94 and TH 101. Storm Pond No. 1 and W-22 were also evaluated in a separate approved jurisdictional determination completed on June 13, 2014 for MVP-2014-00483-MMJ and determined to be non-WoUS. Based on this review, the evaluated stormwater control features are not jurisdictional under the 2015 Clean Water Rule because they meet the terms of paragraph (b)(6).

Storm Pond No. 6 is located within the loop exit ramp from Weaver Lake Road to I-94 and was constructed in dry land by the City of Maple Grove to convey, treat, or store stormwater within the interchange. This was confirmed by reviewing historic aerial photography, topographic maps, and soil survey data which shows the stormwater control feature was constructed in dry land and areas that were previously disturbed by the construction of I-94. A wetland delineation was also completed in 1998 for this area as part of the I-94/Weaver Lake Road Interchange Improvement Project (MVP-1998-02693-JJY). Based on information found in the administrative record for 1998-02693-JJY, the location of Storm Pond No. 6 was comprised entirely of dry land at the time of the delineation. Based on this review, the evaluated stormwater control feature is not jurisdictional under the 2015 Clean Water Rule because it meets the terms of paragraph (b)(6).