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): JUN 29 2016

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2015-04276-PRH

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: MN  County/parish/borough: Dakota  City: Inver Grove Heights
Center coordinates of site (lat/long in degree decimal format): Lat. 44.84047° N, Long. -93.09894° W.
Universal Transverse Mercator:

Name of nearest waterbody: Hornbean Lake
Name of watershed or Hydrologic Unit Code (HUC): 07020012
☐ 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: May 31, 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 includes four aquatic resources. This AJD only covers the following aquatic resources: Wetlands 1 through 3 and the stormwater pond that were identified in the November 2015, CSAH 63/CSAH 28 Reconstruction - Wetland Delineation Report conducted by Kimley-Horn and Associates, Inc. The wetland boundaries follow a change in topography. The LiDAR map has two foot contour lines and shows the wetland mostly conforming to a single elevation within contours. Only wetland 3 was identified on the updated DNR NWI maps, and is the only wetland located within a hydric/predominantly soil map unit based on the Dakota County NRCS soil survey. Wetlands 1, 2, and 3 do not have a surface or shallow subsurface, hydrologic connection to any of the waters in the review area, nor to any navigable waters or their tributaries.

The stormwater pond identified in the report was constructed in upland location based on 2004 pre-construction and post-construction aerial photos. 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 digging dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.” This basin was constructed in upland to accommodate surface flow and stormwater surge into this area to prevent the flooding of nearby structures and overtopping of adjacent roadways. Therefore, the stormwater pond identified in the November 2015, CSAH 63/CSAH 28 Reconstruction - Wetland Delineation Report is not considered to be waters of the U.S. and are not jurisdictional under Section 404 of the Clean Water Act.

¹ Supporting documentation is presented in Section III.F.
The waterbodies wetlands 1, 2, 3, and the stormpond described above, 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; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce.

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 1 (0.02 acre), Wetland 2 (0.13 acre), Wetland 3 (0.96 acre), Stormwater pond (1.2) 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:
   - ☒ 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: US Dept. of Agriculture, Web Soil Survey
   - ☒ National wetlands inventory map(s). Cite name: MnDNR Updated NWI shapefile. Accessed October 2015
   - ☒ FEMA/FIRM maps:
   - ☒ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
   - ☒ Photographs: ☒ Aerial (Name & Date): FSA 2013
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): Dakota County LiDAR data

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands 1, 2, and 3 described above, 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; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. The waterbodies have been determined to be non-jurisdictional under the Clean Water Act because the wetlands and stormpond lack connections and/or relationships sufficient to serve as a basis for jurisdiction.

The stormpond is not considered a water of the U.S. as described in Section II.B.2.
Figure 1: Project Vicinity
CSAH 28/CSAH 63 Reconstruction
Wetland Delineation Report

Legend
- Study Area
- Lakes
- Municipalities

Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community
Figure 2: Project Location
CSAH 28/CSAH 63 Reconstruction
Wetland Delineation Report