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): September 7, 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha, NWO-2012-1922-BIS, NDDOT PCN 19931, Hwy 2 improvements

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Isolated wetlands #'s 1,2 and #'s 4-13
State: North Dakota County/parish/borough: Ward City: Minot
Center coordinates of site (lat/long in degree decimal format): Lat. See attached wetland tables N; Long. W
Universal Transverse Mercator:
Name of nearest waterbody: None
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: None
Name of watershed or Hydrologic Unit Code (HUC): Upper Souris - 9010001
☒ 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: August 3, 2012 by NDDOT; August 15, 2012 by NDRO
☐ 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. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

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. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):** [3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: The JD review area contains one (8) isolated depressional pothole wetlands. These wetlands are located within the NDDOT right of way and likely have been created as a result of runoff from roadway surfaces, and have no discernible surface outlets. Further, these wetlands: 1) are not used by interstate or foreign travelers for recreational or other purposes; 2) do not support fish or shellfish that could be taken and sold in interstate or foreign commerce; and 3) are not used for industrial purposes by industries in interstate commerce. Based upon these principle considerations, it is determined that the subject wetlands are isolated and nonjurisdictional under the auspices of Section 404 of the Clean Water Act.

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

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

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):[4] 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: 3.51 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: project information with wetland maps provided by NDDOT as part of jd request.
- ☐ 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: USGS 1:24k Quad - Burlington.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:NDHUB.SSURGO_Ward; NRCS.
- ☒ National wetlands inventory map(s). Cite name:NDHUB. Wetlands Feature Dataset; USFWS.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date):NAIP 2009, 2012 NRCS Orthophoto 2003, 2004, 2005, 2006.

[4] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

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):NAIP 2009, 2012 Color infrared photography, NDDOT OnRamp Video Road Log.

B. ADDITIONAL COMMENTS TO SUPPORT JD: See attched map and wetland tables.

The office wetland delineation for PCN 19931 was conducted on June 15 & 18, 2012 by Cory Lawson of the North Dakota Department of Transportation. An additional 3 sites were delineated August 17, 2012. The wetland delineations were conducted using a combination of NWI maps and aerial photography, NDDOT OnRamp Video Road Log, and previous field delineation data assuming a 100 - 700 foot buffer around the project area.

Wetland Number	Location	LONG / LAT (Dec. Deg.)	Cowardin Classification	Wetland Type	Wetland Size (acres)	Wetland Feature
10	Sec. 28,T155N, R82W	-101.228647W 48.222664N	PEMCx	Ditch	0.25	Artificial
11	Sec. 21,T155N, R82W	-101.222437W 48.227080N	PEMCx	Ditch	1.07	Artificial
12	Sec. 22,T155N, R82W	-101.207726W 48.228795N	PEMCx	Ditch	0.43	Artificial
13	Sec. 22,T155N, R82W	-101.204477W 48.228816N	PEMCx	Ditch	0.05	Artificial
				TOTAL	**1.80**	

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Wetland Table

Wetland ID	Lat/Long	Size (ac)
#1	48.252228 -101.404010	0.15
#2	48.241753 -101.389266	0.08
#4	48.229503 -101.368036	0.06
#5	48.213560 -101.327557	0.20
#6	48.212868 -101.324989	0.28
#7	48.219886 -101.231987	0.15
#8	48.222129 -101.230516	0.47
#9	48.229396 -101.211352	0.32
TOTAL		1.71