

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 6, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-01241-RJH

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin

County/parish/borough: Kewaunee City: Town of Montpelier

Center coordinates of site (lat/long in degree decimal format): Lat. 44.4410571° N, Long. -87.6885317° E.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed tributary of the East Twin River

Name of watershed or Hydrologic Unit Code (HUC): HUC 8: 04030101, East Twin River-Frontal Lake Michigan

☒ 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 10, 2022

☐ 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 contains two aquatic features, Wetland 1 and Wetland 2 (shown on MVP-2022-01241-RJH: Figure 2 of 2). Based on a review of historic aerial photography, topographic maps, LiDar, and the wetland delineation report submitted by the requestor, we have determined Wetland 1 and Wetland 2 are isolated depressions with boundaries that transition into uplands. The nearest waterbody is an unnamed tributary of the East Twin River, approximately 711 feet southeast of Wetland 1 and 424 feet southeast of Wetland 2. As depicted in aerial imagery, the wetland signatures observed within the delineated features do not extend outside of the wetland areas and are surrounded by uplands. Although 2019 aerial images appear to show a man-made drainage ditch from Wetland 2, the ditch was subsequently filled and was not present during the recent May 2022 wetland delineation.**

Based on information provided in historical aerial photography, NRCS soil mapping, and a wetland delineation report, the wetlands do not border, are not neighboring to, or contiguous with, another water of the United States (WOTUS). They are not separated from another WOTUS by man-made barriers, dikes, or berms. Due to existing and surrounding land use and proximity to other waters, there are no ecological connections to other wetlands or waters. These aquatic resources do not support a link to interstate or foreign commerce; 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 commerce. Therefore, the Corps has determined that the two aquatic features identified as Wetland 1 and Wetland 2 within the review area (shown on MVP-2022-01241-RJH: Figure 1 of 2) are isolated wetlands and not regulated by the Corps under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

¹ Supporting documentation is presented in Section III.F.

- 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: 0.72 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: Evergreen Consultants, LLC
- ☒ 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: NRCS County Soil Survey Report
- ☐ National wetlands inventory map(s). Cite name:
- ☐ 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 Pro and Kewaunee County ArcGIS, August 10, 2022
or ☒ Other (Name & Date): Consultant ground photos, approximately May, 2022
- ☐ 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:**