

**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): June 02, 2020**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2020-00378-AJK Dairyland Greyhound Park**

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

State: **WI** County/parish/borough: **Kenosha** City: **Kenosha**  
Center coordinates of site (lat/long in degree decimal format): Lat. **42.58561° N**, Long. **-87.94275° W**.  
Universal Transverse Mercator: **UTM Zone 16N**

Name of nearest waterbody: **Killbourn Ditch**

Name of watershed or Hydrologic Unit Code (HUC): **Headwaters Des Plaines River (0712000401)**

- ☒ 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: **March 04, 2020**  
☒ Field Determination. Date(s): **May 07, 2020**

**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):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **The review area consists of 12 wetlands, labeled A (0.11 ac), B (0.02 ac), C (0.32 ac), D (0.04 ac), E (0.05 ac), F (0.11 ac), G (0.06 ac), I (4.82 ac), J (11.58 ac) ( K (0.13 ac), L (24.40 ac), and M (2.65 ac). Wetlands A through L are isolated and non-jurisdictional, based on review of the January 2017 wetland delineation report by Wetland and Waterway Consulting, LLC and a field site visit on May 7, 2020. The report included NRCS soil survey, WDNR Surface Water Data Viewer, Wisconsin Wetland Inventory map, topographic map, aerial photography, precipitation data, and ground level site photographs. Site photos were also taken during the field visit on May 7, 2020.**

**Wetlands A, B, C, D, E, F, G, and I are small depressional basins with no visible inlets or outlets to a water of the U.S. (WOUS). Wetland J is a large wetland complex with no visible inlets or outlets to a WOUS. Based on the field visit, Wetland J does not connect to the road ditch along STH 158. Wetland K is a disturbed fresh wet meadow situated in a grass area between two roads. It is connected to Wetland L by a culvert. Wetland L is a wetland complex with a large surface water pond in the middle that discharges to Wetland K during overflow events. Wetland L does not connect to the road ditch along STH 158. The closest tributary to any of the wetlands is Killbourn Ditch, approximately 200 feet to the west of Wetland G and 400 feet west of Wetland J.**

**None of these wetlands have a surface or shallow subsurface connection to another water of the U.S. These wetlands do not border, are not neighboring to or contiguous with another water of the US. They are not separated from another water of the US by man-made barriers, dikes or berms. Due to existing and surrounding land use (commercial development) and proximity to other waters, there is no ecological**

<sup>1</sup> Supporting documentation is presented in Section III.F.

connection to other wetlands or waters. The 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 wetlands A, B, C, D, E, F, G, I, J, K, and L are not regulated by the Corps under Section 404 of the Clean Water Act.

Wetland M is a stormwater pond that was constructed in upland. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following waters to be waters of the United States; "artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for purposes such as...settling basins."

### **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): **See Section II.B.2 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: **41.64** 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: **Wetland & Waterways Consulting wetland delineation report, January 2017**
- ☒ 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: **Kenosha County**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☒ FEMA/FIRM maps: **from WI DNR Surface Water Data Viewer**
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Google Earth aerial photography (2000-2018)**  
or ☒ Other (Name & Date): **ground level site photos from delineation report and site photos from field visit on May 07, 2020**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **Kenosha County 1-ft topographic contours, site visit on May 07, 2020**

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The site visit was conducted in order to better evaluate Wetlands E, F, and G, in particular. These wetlands do not have surface or shallow subsurface connections to wetlands abutting Killbourn Ditch. There is no channelized feature connecting them to Killbourn Ditch, and they are perched on a higher elevation than the wetlands abutting Killbourn Ditch (and they are outside the floodplain). Wetland J was also examined and does not connect to the road ditch along STH 158.