

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): December 17, 2021

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2015-03296-KME

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Chippewa City: Delmar

Center coordinates of site (lat/long in degree decimal format): Lat. 44.969204° N, Long. -90.977749° W.

Universal Transverse Mercator: Zone 15N

Name of nearest waterbody: Wolf River

Name of watershed or Hydrologic Unit Code (HUC): Hay Creek-Eau Claire River (0705000603)

☒ 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: December 6, 2021

☐ 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 one wetland, labeled Wetland Area 1 (2,865 square feet). The wetland is a constructed drainage ditch, based on a review of delineation map, Chippewa County Topographic Map 2-ft contours, Wisconsin Wetland Inventory map, NRCS soil survey, USDA -NRCS WETS Tables, aerial photos, and ground level photos. Aerial photos show the site history and the appearance of the ditch when a new barn was built in 2017. An aerial photo from 1938 confirms that there were no wetland features in the site where the drainage occurs today. The 2020 aerial photo shows the defined ditch along the northern portion of the barn that becomes an upland washout gully to west of the downslope. Onsite photos show the areas of the graded ditch. Soils throughout the site and in the drainageway are highly disturbed showing evidence of grading and filling and would be considered either Udorthents, loamy, an upland man-altered soil or Udorthents, wet, a man-altered or disturbed soil that has hydric soil indicators as a result of continued wetness since construction. Naturally, the Withee silt loam and Loyal silt loam, both non-hydric soils are mapped in this area.**

As stated in the preamble for 33 CFR 328, published in the Federal National Register Volume 51, Number 219, November 13, 1986 (page 41217), we do not consider non-tidal drainage and irrigation ditches excavated on dry land to be jurisdictional (waters of the United States). The linear ditch feature was constructed in uplands, does not convey relatively permanent flow, and does not laterally drain a wetland or another water of the United States. This ditch is not part of a re-located stream and was constructed along a new barn to convey stormwater. Per Rapanos guidance these types of drainage ditch features are not waters of the United States”.

¹ 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: 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: 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 Delineation Report by Star Environmental, Inc., June 7, 2021**
- ☐ 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: **Stanley Quadrangles**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Chippewa County**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Wisconsin Wetland Inventory**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Historic aerial photos (1938-2020)**
or ☒ Other (Name & Date): **Ground level site photos from delineation report**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **2010 2-ft contours**

B. ADDITIONAL COMMENTS TO SUPPORT JD: