## 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, 2019
- B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2008-04854-RJH Wetlands 3-5
- C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Outagamie City: Grand Chute

Center coordinates of site (lat/long in degree decimal format): Lat. 44.2826629° N, Long. -88.4754988° W.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Mud Creek

Name of watershed or Hydrologic Unit Code (HUC): 04030204

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 29, 2019

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 3 aquatic features: Wetland 3 (0.018 acre), Wetland 4 (0.35 acre) and Wetland 5 (0.07 acre). Wetlands 3-5 were constructed in uplands for the purpose of stormwater management associated with a commercial facility. Wetlands 4 and 5 were constructed in the years between 2000 and 2005, while, Wetland 3 was constructed in the year 2007. These features are not waters of the US. The jurisdictional determination for these feature is in accordance with the pre-amble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be waters of the US; artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins or rice growing.

#### **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):  $\rm N\!/\!A$
- 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):

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

	□ ⊠ Cor	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): Wetlands 3-5 are not waters of the United States pursuant to the preamble to rps 1986 regulation (33 CFR Parts 320-330) and the Corps/EPA Memorandum Regarding CWA Jurisdiction ng Rapanos.				
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Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> potential basis of jurisdiction is the N factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best pro						
		gment (check all that apply):				
		Non-wetland waters (i.e., rivers, streams): linear feet width (ft).				
	H	Lakes/ponds: acres.  Other non-wetland waters: acres. List type of aquatic resource: .				
		Wetlands: acres.				
	Danar	wide consequentianates for man invitable tional vectors in the navious once that do not most the "Simifficent Navye" standard whom such				
		vide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such ading is required for jurisdiction (check all that apply):				
		Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).				
		Lakes/ponds: acres.				
	H	Other non-wetland waters: acres. List type of aquatic resource: .  Wetlands: acres.				
	_					
SF(	TIO	ON IV: DATA SOURCES.				
		PORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked				
		requested, appropriately reference sources below):				
		Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Davel Engineering & Environmental				
Inc.						
	Ш	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:				
	H	Corps navigable waters' study: U.S. Geological Survey Hydrologic Atlas:				
	ш	USGS NHD data.				
		USGS 8 and 12 digit HUC maps.				
	$\boxtimes$	U.S. Geological Survey map(s). Cite scale & quad name: 1:24K WI- Appleton				
	$\boxtimes$	USDA Natural Resources Conservation Service Soil Survey. Citation: National wetlands inventory map(s). Cite name:				
		State/Local wetland inventory map(s):				
		FEMA/FIRM maps:				
		100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)				
	$\boxtimes$	Photographs: Aerial (Name & Date): Applicant submitted photos				
		or \( \subseteq \text{ Other (Name & Date): Google Earth} \) Previous determination(s). File no. and date of response letter:				
	H	Applicable/supporting case law:				
		Applicable/supporting scientific literature:				
		Other information (please specify):				

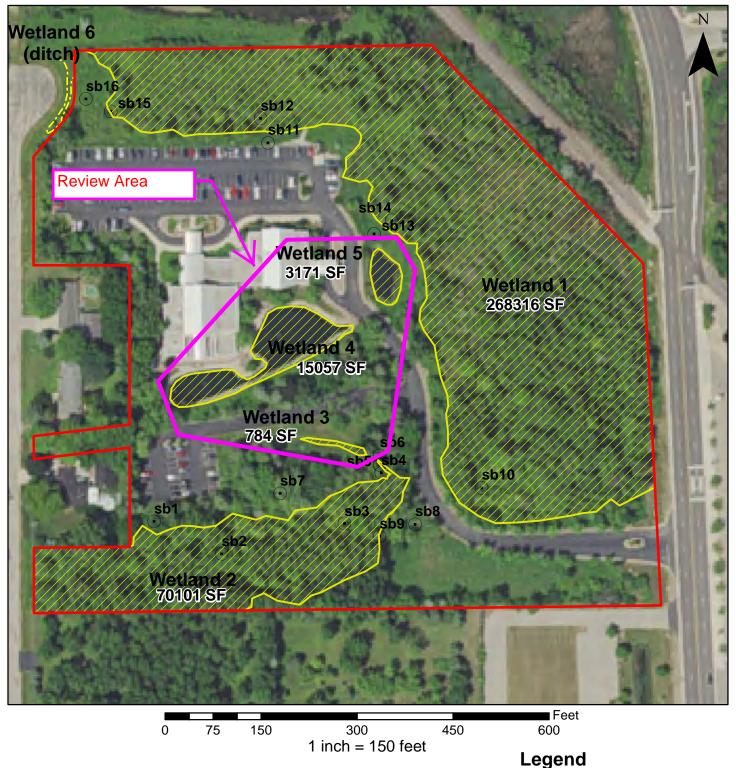
# B. ADDITIONAL COMMENTS TO SUPPORT JD:

MVP-2008-04854-RJH Page 1 of 2 **Surface Water Data Viewer Map/Wetland Inventory** Legend Map Intermittent Streams 24K Hydrography Streams and Rivers 24K Hydrography Lakes and Open Water Township Section West Capitol Dis Quarter-Quarter 13 County Boundary Cities, Towns & Villages City **Project Location** Village est st Avenue Civil Town leubert Road Municipality State Boundaries Greenville Drive **County Boundaries** Clairemont Drive We'l Glenpark Dn Major Roads Interstate Highway State Highway T21 R16E Outagamie US Highway County and Local Roads County HWY 24 West-Sand a-Drive Local Road Pleasant Way Railroads Tribal Lands Brookview Drive **Review Area** Rivers and Streams West Brewster S Intermittent Streams Lakes and Open water vvisconsiniAvenue -Integrity-Way-N\*ufuel-Way Michaels:Drive= **Notes** 0 0.8 Miles 8.0 0.38 DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this NAD\_1983\_HARN\_Wisconsin\_TM 1: 23,760 map. For more information, see the DNR Legal Notices web page: http://dnr.wi.gov/legal/

# Wetland Delineation Overview Map

2323 N Casaloma Drive- Hand to Shoulder Center of WI Part of Sec. 20, T21N, R17E, Grand Chute, Outagamie County, WI

For: Tina Sauer 2015 Aerial Image





Project Scope

Wetland Feature(s)

Out of Scope Wetland Feature(s)

Soil Boring

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL						
Applicant: Kim Kennedy		File No.: MVP-2008-04854-RJH	Date: September 6, 2019			
Attache	Attached is:					
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)			A		
	PROFFERED PERMIT (Standard Permit or Letter of permission)			В		
	PERMIT DENIAL			С		
X	APPROVED JURISDICTIONAL DETERMIN	NATION		D		
	PRELIMINARY JURISDICTIONAL DETER	MINATION		Е		

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <a href="http://usace.army.mil/inet/functions/cw/cecwo/reg">http://usace.army.mil/inet/functions/cw/cecwo/reg</a> or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.
- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit
- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.
- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT						
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)						
objections are addressed in the administrative record.)						
ADDITIONAL INFORMATION: The appeal is limited to a revie	w of the administrative record, the	Corps memorandum for the				
record of the appeal conference or meeting, and any supplemental						
clarify the administrative record. Neither the appellant nor the Co you may provide additional information to clarify the location of it						
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:		ministrative record.				
If you have questions regarding this decision and/or the appeal	If you only have questions regard	ding the appeal process you may				
process you may contact:	also contact the Division Engine	er through:				
U.S Army Corps of Engineers	Administrative Appeals Review	ew Officer				
Attn: Ryan Huber	Mississippi Valley Division					
211 North Broadway Street Ste. 221	P.O. Box 80 (1400 Walnut Street)					
Green Bay, Wisconsin 54303-2757						
	601-634-5820 FAX: 601-6	34-3816				
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government						
consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day						
notice of any site investigation, and will have the opportunity to pa	articipate in all site investigations.  Date:	Telephone number:				
	Daw.	relephone number.				
Signature of appellant or agent.						