

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): 01/22/2020

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: May Property AJD
2019-01039-AJK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Waukesha County City: City of Muskego

Center coordinates of site (lat/long in degree decimal format): Lat. 42.88750° N, Long. -88.08091° W.

Universal Transverse Mercator: 16; x: 411735.77, y: 4748889.08

Name of nearest waterbody: Ryan Creek

Name of watershed or Hydrologic Unit Code (HUC): Upper Fox (07120006)

☒ 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: October 10, 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 approximately 33 acre review area for this JD includes three aquatic features identified as Wetland 1 (0.36 acre), Wetland 3 (0.12 acre), and Wetland 4 (0.10 acre), which are located within depressions on the property. There is no natural or man-made discrete and/or confined surface water connection between the wetlands and any jurisdictional waters, nor is there a shallow subsurface connection to any other jurisdictional water. The wetlands do not border, neighbor, nor are they contiguous with another water of the U.S., nor are they separated from other waters of the U.S. by man-made dikes, barriers, or berms. These wetlands are surrounded by land that is in agricultural crop production and commercial development, precluding an ecological connection to jurisdictional waters. The wetlands are not located in the mapped 100 year floodplain of a jurisdictional water. Therefore, during times of heavy precipitation there is a very low probability that floodwater would reach an elevation necessary for water to flow from other jurisdictional waters into the wetlands. Based on a review of the USGS Quadrangle Sheet, the wetlands based on their landscape position do not appear to be part of a recognizable hydrologic system. The wetlands do not cross any state boundary and do not have a use which would associate it with interstate commerce. The wetlands do not support a link to interstate or foreign commerce because they are not known to be used by interstate travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes in interstate or foreign commerce. Therefore, the Corps has determined that Wetland 1, Wetland 3, and Wetland 4, are not regulated by the Corps under Section 404 of the CWA.**

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A

¹ Supporting documentation is presented in Section III.F.

- 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: 0.58 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: raSmith - Tina Myers
- ☒ 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: 1:24k Quad WI - Hales Corners
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Web Soil Survey
- ☐ 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): Google Earth 2018, 2017, 2015, 2014, 2011, 2010, 2008, 2007, 2006, 2005, & 2000
 - or ☒ Other (Name & Date): Wisconsin Historic Aerial Imagery Finder 1937
- ☐ 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: