

**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):** July 12, 2022

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** 2022-00470-AJK

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

State: WI County/parish/borough: Milwaukee City: Oak Creek

Center coordinates of site (lat/long in degree decimal format): Lat. 42.9276° N, Long. -87.9138° W.

Universal Transverse Mercator: Zone 16N

Name of nearest waterbody: Unnamed to Oak Creek

Name of watershed or Hydrologic Unit Code (HUC): Oak Creek (040400020102)

☒ 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: June 21, 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):**<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 includes 8 wetlands, labeled Wetlands 1-8 (2.87 acres total). All of these wetlands are isolated, based on a review of the May 2022 wetland delineation report by Evergreen Consultants, which included USGS topography, 1-foot contours, NRCS hydric soil data, Wisconsin Wetland Inventory data, National Wetland Inventory data, aerial photos, and ground level site photos, as well as other desktop resources such as NHD water lines and hillshade/Digital Elevation Model (DEM) maps.**

**W-8 extends outside of the delineation boundary to the east, so that area was reviewed in detail. Based on a review of 1-foot contours and hillshade/DEM maps from the National Regulatory Viewer, W-8 is surrounded by upland and contains no inlets or outlets (culverts) that would connect it to a downstream water or across S. Howell Avenue to the east. W-4 is close to the MATC road to the west of the review area, however, there is no downstream connection across the road to any waters (a berm is present between the road and W-4, but it is not separating the wetland from other waters). The other wetlands are all shallow depressions surrounded by upland, based on the delineation report's sample points as well as a review of topographic contours and hillshade/DEM maps. W-2 is situated in a historic borrow pit which has since been abandoned. None of the wetlands have inlets/outlets that provide a downstream surface or shallow subsurface connection to other waters. The south end of W-5 and 6 slopes to the southeast, but based on 1-foot contours and hillshade/DEM maps, there is no confined channel that directs flow outside of the wetland. The closest tributary to any of the wetlands is unnamed to Oak Creek, approximately 900 feet to the southeast of W-6.**

**The 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 (fallow upland, residential development, transportation corridors) and proximity to**

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

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 Wetlands 1-8 are not regulated by the Corps under Section 404 of the Clean Water Act.

### **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):

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: 2.87 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: May 2022 wetland delineation report by Evergreen Consultants
- ☒ 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: Oak Creek Quadrangles
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Milwaukee County
- ☒ National wetlands inventory map(s). Cite name: Milwaukee County
- ☒ 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 (2000-2021)**  
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): **1-foot contours, DEM/hillshade maps**

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**