

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): February 16, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-02136-MWM 965 Cannon Gate Road, Oconomowoc. W-1/Pond 1, W-2, W-3/Pond 2, W-4, W-5, W-6, W-7, W-8, and W-9.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Waukesha City: Oconomowoc

Center coordinates of site (lat/long in degree decimal format): Lat. 43.0874° N, Long. -88.4815° E.

Universal Transverse Mercator: 16

Name of nearest waterbody: Silver Lake (WBIC 779800)

Name of watershed or Hydrologic Unit Code (HUC): 709000105

- ☒ 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: January 4, 2023
☐ 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 11 aquatic resources, labeled as W-1/Pond 1, W-2, W-3/Pond 2, W-4, W-5, W-6, W-7, W-8, W-9, Wetland 12/Pond 4, and Wetland 13/Pond 5 on figure. Wetland 1-9 (W-1/Pond 1, W-2, W-3/Pond 2, W-4, W-5, W-6, W-7, W-8, and W-9) are isolated wetlands with no surface or shallow subsurface connection to any waters of the U.S. including the nearest aquatic resource which is Silver Lake located approximately 0.5 miles to the southwest. The land use within the AJD Review Area is an abandoned golf course, constructed between 1970 and 1980. A large artificial hill is located in the central portion of the property that was utilized as a skiing hill. Overall, the topography within the AJD Review Area varies with the highest point being over 150 feet higher than the lowest point.**

Wetland 1/Pond 1 and Wetland 3/Pond 2 are associated with depressions on the landscape. A history of excavation cannot be identified, the earliest aerial photo, accessed on Waukesha County GIS, show the features in the same location and similar size to their current conditions. Both features are located in the southwest portion of the review area. These two features are mapped on the Wisconsin Wetland Inventory layer on Surface Water Data Viewer. Wetland 1/Pond 1 is contained within the review area and Wetland 3/Pond 2 continues offsite to the west, the wetlands have boundaries that transition into upland. A culvert is present in the southwest corner of Wetland 1/Pond 1 connecting to Wetland 2. Lidar images accessed on Waukesha County GIS identify a confined channelized feature from Wetland 1/Pond 1 to Wetland 2. Wetland 1/Pond 1 and Wetland 2 are located in a topographic depression, but Lidar images do not show a confined conveyance feature that could offer a surface water connection to a downstream TNW. Lidar images also show Wetland 3/Pond 2 in a defined topographic depression with no confined surface feature that could connect to a downstream TNW.

¹ Supporting documentation is presented in Section III.F.

Wetlands 4 through 9 are positioned within minor depressions on the landscape, Wetlands 4-7 are clustered near each other in the northeast portion of the site, and Wetland 8 and 9 are in the center of the site. There are no culverts within any feature, and all are contained within the boundary of the AJD Review Area, the wetlands have boundaries that transition into upland. Lidar images clearly show these minor depressions with the absence of a confined channelized feature within or near any of the features. Aerial images from Waukesha County (years referenced below) do not show consistent wetness signatures near these features.

These wetlands do not border, neighbor, nor are they contiguous with another water of the U.S. They are not separated from other waters of the United States (WOUS) by man-made dikes, barriers, or berms. The surrounding land use consists of commercial and residential development. Due to their size and position on the landscape, these wetlands provide limited habitat functions to WOUS and surrounding areas and provides no ecological connection.

These aquatic resources do not support a link to interstate 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 these aquatic features are not regulated by the Corps under Section 404 of the Clean Water Act.

Wetland 12/Pond 4 (1.41 acres) and Wetland 13/Pond 5 (0.06 acres) are located in the southern most portion of the site and are associated with manmade pond structures associated with the construction of the golf course. These features were cut between 1980 and 1995 in upland. Aerial photos prior to construction do not show a consistent wetness signature within or near the features.

In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following 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 such purposes 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):

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: Wetland 1/Pond 1 (1.15 acres), Wetland 2 (0.08 acres), Wetland 3/Pond 2 (1.46 acres), Wetland 4 (0.05 acres), Wetland 5 (0.05 acres), Wetland 6 (0.01), Wetland 7 (0.02 acres), Wetland 8 (0.04 acres), Wetland 9 (0.07 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 prepared October 12, 2022 by Heartland Ecological Group.
- ☒ 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: USGS Topography map included in referenced report.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Hydric Soils map included in referenced report.
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Surface Water Data Viewer, Wetland Indicators layer and Wisconsin Wetland Inventory layer included in the referenced report.
- ☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 1941, 1950, 1963, 1970, 1979, 1981, 1985, 1991, 1996, 2000, 2003, 2005, 2006, 2008, 2010, 2013, 2015, 2017, 2018, and 2020 included in the referenced report.
or ☒ Other (Name & Date): Ground level photos included in the referenced report.
- ☐ 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: N/A