

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): March 13, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-02176-MWM 128th Avenue & STH 50 site, Wetland 1, Ditch 1, and Pond 1.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Kenosha City: Village of Bristol

Center coordinates of site (lat/long in degree decimal format): Lat. 42.5661 °N, Long. -87.9611° W.

Universal Transverse Mercator: 16

Name of nearest waterbody: Unnamed tributary to the Root River (WBIC 0)

Name of watershed or Hydrologic Unit Code (HUC): 0712000401

- ☒ 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: February 3, 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 one aquatic resource (labeled as W-1 on the figure) that is an isolated wetland with no surface or shallow** **The review area contains three aquatic resources, Wetland 1 (2,418 square feet), Ditch 1 (6,307 square feet), and Pond 1 (1.7 acres) that are non-jurisdictional features.**

Wetland 1 is an isolated wetland with no surface or shallow subsurface connection to any waters of the U.S. including the nearest aquatic resource which is an unnamed tributary to the Root River located approximately 1,100 feet to the west. Wetland 1 (2,418 square feet) is located along the edge of an agriculture field and an upland tree line, a portion of the wetland is farmed with soybean crop. The wetland is positioned within a shallow depression with a gradual rise, there is a definite transition to upland. According to an NRCS Soil Survey of Kenosha County, the soil type within the wetland is described as Beecher silt loam, which is considered a poorly drained, partially hydric soil. There are no inlet or outlet structures within the wetland. Additionally, Lidar images accessed on the National Regulatory Viewer (NRV) do not identify a confined path that could offer a surface water connection to a downstream waterway.

This wetland does not border, neighbor, nor is contiguous with another water of the U.S. It is not separated from other waters of the United States (WOUS) by man-made dikes, barriers, or berms. The surrounding land use consists of residential, commercial and transportation development. Due to it's size and position on the landscape, Wetland 1 provides limited habitat functions to WOUS and surrounding areas and provides no ecological connection.

¹ Supporting documentation is presented in Section III.F.

Ditch 1 is a linear non-tidal ditch located in the northwest corner of the site that was constructed in upland and drains only upland. A wetland delineation conducted in 2003 by Wetland and Waterway Consulting (referenced in the 2022 wetland delineation report) did not identify hydric soil within the current ditch area. The ditch was cut as part of stormwater management activities, water within the ditch is conveyed west along STH 50 and south along 130th Avenue. Additionally, Ditch 1 is positioned in a topographic depression and does not have relatively permanent flow based on site photos include in the wetland delineation.

In accordance with the 2008 Rapanos guidance and 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 U.S.; non-tidal drainage and irrigation ditches excavated on dry land. Further clarification is provided in the December 2, 2008, Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in Rapanos v. U.S. and Carabell v. U.S. issued jointly by the Corps and EPA which indicates that ditches excavated wholly in uplands and do not carry a relatively permanent flow are not waters of the United States.

Pond 1 (1.70 acres) was constructed as a storm water retention basin between 2008 and 2010. An exhibit from a 2003 wetland delineation included in the AJD request does not identify any aquatic resources within the current location of the pond, the pond was cut in upland. Historic aerial images accessed from Kenosha County GIS from 1937, 1963, 1967, 1975, and 1980 support that the area was upland. Additionally, Lidar images accessed on NRV show the depression, as a result of excavation, aligning with the boundary mapped in the wetland delineation report.

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): **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: Wetland 1: 0.056 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 by raSmith November 30, 2022 and wetland delineation map prepared by raSmith.
- ☒ 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: Topography maps included in the referenced delineation report.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soil map included in the referenced delineation report.
- ☐ National wetlands inventory map(s). Cite name:
☒ State/Local wetland inventory map(s): Wisconsin Wetland Inventory map included in the referenced delineation report.
- ☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Aerial photos from 2000, 2005, 2010, 2013, 2015, 2017, 2020, and 2022 included in the referenced delineation report.
Aerial photos from 1937, 1963, 1967, 1970, 1975, 1980, 1985, 1995 accessed from Kenosha County GIS by the Corps on December 13, 2022.
or ☒ Other (Name & Date): Ground level photos included in the referenced delineation report.
- ☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): A 2003 wetland delineation exhibit pulled from the April 24, 2003 wetland delineation report prepared by Wetland and Waterway Consulting. Wisconsin DNR DEM and Hillshade Lidar layers accessed via National Regulatory Viewer (NRV by the Corps December 13, 2022.

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A