

**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): 02/23/2023**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2020-02051-LAH**

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

State: **Wisconsin**

County/parish/borough: **Ozaukee**

City: **Mequon**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.25112° N**, Long. **-87.92677° W**.

Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Unnamed Tributary of the Milwaukee River**

Name of watershed or Hydrologic Unit Code (HUC): **Pigeon Creek-Milwaukee River (040400030604)**

☒ 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 17, 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):<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 contains wetlands W-1A (0.11 acres) and W-1B (0.06 acres). Based on a review of the aerial photography, topographic maps, and the wetland delineation report submitted by the requestor, we have determined that W-1A and W-1B are isolated wetland depressions. As depicted in current and historical aerial imagery, as well as the data drawn from the delineation, the wetland signatures observed within the W-1A and W-1B features do not extend outside of these wetlands. As stated in the delineation report, W-1A and W-1B appear to be the result of "farmed wet meadow areas that are positioned in a swale." Through review of the historic photos, this swale has not made any observable connections to the ditch located south of feature W-1A. In addition, the review areas are predominantly flat in elevation near the wetland boundaries, as shown in the USGS topography, WI DNR Digital Elevation Model and Hillshade maps.**

**The nearest tributary is an unnamed tributary to the Milwaukee River, located approximately 0.07 miles northeast of the delineated wetland features W-1A and W-1B. Aerial photos and DEM/hillshade/topography maps do not show a confined surface water connection from wetland features W-1A and W-1B to any downstream waters. Based on the delineation report and a review of aerial photos, there are no observable inlets or outlets associated with the wetlands other than overland sheet flow. A review of historical aerial photos indicates the wetland areas were mostly level farmland since at least 1985. A topographic map shows little change in elevation in the immediate neighboring areas. 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 (farmed meadow) and proximity to other waters, there are no ecological connections to other wetlands or waters. The above-mentioned 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**

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

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.

### **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: W-1A (0.11) & W-1B (0.06) = 0.17 total 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: Heartland, 2022 Wetland Delineation
- ☒ 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:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Ozaukee County
- ☐ 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): 2022 Wetland Delineation aerials, Google Earth aerial photos (2000-2021), historic aerial photos (1992-2020)  
or ☒ Other (Name & Date): Ground level 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): WI DNR Digital Elevation Model and Hillshade accessed from NRV

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