

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): January 18, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-02118-MWM, 4620 South Loomis Road - DeGrave Farm, AW-1, W-2, and W-3.

C. PROJECT LOCATION AND BACKGROUND INFORMATION: State: Wisconsin County/parish/borough: Racine City: Town of Waterford

Center coordinates of site (lat/long in degree decimal format): Lat. 42.7774° N, Long. -88.2047° E.

Universal Transverse Mercator: 16

Name of nearest waterbody: Fox River (WBIC 742500).

Name of watershed or Hydrologic Unit Code (HUC): 0712000607.

☒ 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: December 20, 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):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area contains 3 aquatic resources (labeled as AW-1, W-2, and W-3 on figure) that are isolated wetlands with no surface or shallow subsurface connection to any waters of the U.S. including the nearest aquatic resource which is the Fox River located approximately 850 feet to the west. The AJD Review area consists of an agriculture field and abandoned sand and gravel pit, the highest elevation point is almost 100 feet higher than the lowest point.**

Wetland AW-1, 0.04 acres, is located in the southwestern portion of the AJD Review Area within the abandoned sand and gravel pit. The wetland is at the toe of the gravel/sand pit pile within a distinct depression, surrounded by gravel/sand on all sides. The first aerial photo that the wetland can be seen in is 2018, photos prior show gravel/sand within the wetland location with no vegetation or standing water, it is anticipated that the wetland formed after the pit was abandoned. Lidar accessed on the National Regulatory Viewer (NRV) also shows the depression, there is not a confined connection near the wetland that could offer a surface water connection to a downstream TNW. No culverts or similar structures are present.

Wetland 2, 0.05 acres, is located near the northern boundary of the site, adjacent to Kramer Drive. A wetness signature is not evident in recent aerial photos, the most recent year a wetness signature can be seen from aerial photos is 2002. Lidar images do not show a roadside ditch adjacent to Kramer Drive, or any other confined features, that could connect the wetland to a downstream TNW. There are no culverts or similar structures within or near the wetland.

¹ Supporting documentation is presented in Section III.F.

Wetland 3, 0.02 acres, is located near the southeastern boundary of the AJD Review Area and continues past the site boundary. The wetland abuts South Loomis Road, lidar images do not show a roadside ditch onsite to the north, but they do show features of a roadside ditch offsite to the south. Google Earth shows homogenous vegetation within the mapped wetland and as it leaves the site boundary for approximately 200 feet, lidar depicts this area as being within a minor depression. Aerial images do not show a roadside ditch continuing along South Loomis Road near the wetland. Wetness signatures within or near the wetland are not evident from aerial photos after 2002. There is not a confined feature (or culvert or similar structure) seen from desktop resources within the wetland that could offer a connection to a downstream TNW.

These wetlands do not border, neighbor, nor are 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 agriculture fields with residential development and minor commercial developments scattered in. Due to their size and position on the landscape, AW-1, W2, and W-3 provides 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.

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: AW-1 (0.04 acres), W-2 (0.05 acres), and W-3 (0.02 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 was completed by Heartland Ecological Group, Inc. November 17, 2022.
- ☒ 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 map and Wisconsin Wetland Inventory map included in referenced report.
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☐ Aerial (Name & Date): Aerial photos from 1991-2002, 2005, 2006, 2008, 2010, 2013, 2015, 2017, 2018, and 2020 included in referenced delineation report.
or ☒ Other (Name & Date): Ground level photos included in referenced report.
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): DNR DEM and Hillshade layers accessed on the National Regulatory Viewer (NRV) by the Corps December 20, 2022.

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A