

**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): 01/03/2023**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-00873-RJH**

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

State: Wisconsin

County/parish/borough: Calumet

City: Harrison

Center coordinates of site (lat/long in degree decimal format): Lat. 44.211721° N, Long. -88.332589° W. Universal

Transverse Mercator: Zone 16

Name of nearest waterbody: Lake Winnebago

Name of watershed or Hydrologic Unit Code (HUC): HUC 8: 04030203- De Neveu Creek-Frontal Lake Winnebago

☒ 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 8, 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: **Based on information provided in a recent preconstruction notification, wetland delineation report, LiDAR imaging, historic aerial photography review, and NRCS Soil mapping, the Corps has determined that the feature identified as Wetland 9 within the review area shown on MVP-2022-00873-RJH: Figure 2 of 2 is a ditch that was excavated wholly in and drains dry land only. Wetland 9 was created to convey excess water offsite from Wetland 100 Pond. Before the construction of Wetland 9, the review area was an agricultural field which lacked soil wetness signatures. Additionally, it has been determined that Wetland 9 does not have relatively permanent flow and lacks a bed, bank, and OHWM. In accordance with the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos, Wetland 9 is not a water of the United States pursuant to the preamble to the Corps 1986 regulation (33 CFR Parts 320-330) and the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos.**

**Based on information provided in a recent preconstruction notification, wetland delineation report, LiDAR imaging, historic aerial photography review, and NRCS Soil mapping, the Corps has determined that the feature identified as Wetland 100/Pond within the review area shown on MVP-2022-00873-RJH: Figure 2 of 2 is an artificial pond that has been excavated in dry land to retain water for aesthetic reasons. Wetland 100/Pond was created by excavation between 1986 and 1987. Before the construction of Wetland 100/Pond, the review area was an agricultural field which lacked soil wetness signatures. In accordance with the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos, Wetland 100/Pond is not a water of the United States pursuant to the preamble to the Corps 1986 regulation (33 CFR Parts 320-330) and the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos.**

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

### **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): **Wetland 9 and Wetland 100/pond are not waters of the United States pursuant to the preamble to the Corps 1986 regulation (33 CFR Parts 320-330) and the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos.**

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: 0.53 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: Davel Engineering Inc
- ☐ 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: **Soils Map**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **WDNR SWDV maps**

- ☐ FEMA/FIRM maps:  
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)  
☒ Photographs: ☒ Aerial (Name & Date): Google Earth Pro aerial images taken from 4/1992-6/2021  
(accessed by the Corps, 8/8/2022)  
or ☒ Other (Name & Date): Calumet County Historic Aerial Photo 1938  
☐ Previous determination(s). File no. and date of response letter:  
☐ Applicable/supporting case law:  
☐ Applicable/supporting scientific literature:  
☒ Other information (please specify): Regulatory Viewer LiDar, Hillshade, DEM

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