

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): May 18, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-00578-AJK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Racine City: Mt. Pleasant

Center coordinates of site (lat/long in degree decimal format): Lat. 42.6877° N, Long. -87.9308° W.

Universal Transverse Mercator: Zone 16N

Name of nearest waterbody: Kilbourn Ditch (west), unnamed tributary to Pike River (east)

Name of watershed or Hydrologic Unit Code (HUC): West half- Kilbourn Road Ditch (071200040102), east half- Pike River (040400020403)

☒ 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: April 21, 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 areas contain 68 aquatic resources, described in the November 2021 wetland delineation report by Kapur, which included USGS topography, 2-foot contours, Wisconsin Wetland Inventory, NRCS hydric soils data, aerial photography, ground level site photos, and previous delineation report maps.**

Isolated: 35 aquatic resources in the review areas are isolated wetlands (shown in table form on attached page). All of these wetlands are located in wet depressions surrounded by active farmland, as shown by the 2-foot topographic contour map. W-29 has a surface connection to W-30, but W-30 is still an isolated feature. W-51 is associated with a culvert that leads under Wisconsin Valley Way to the west and into a constructed storm water pond; however, a downstream surface connection to a water of the US cannot be traced. Wetlands 50, 52, and 53 all abut Wisconsin Valley Way; however, the road does not separate them from waters of the US and there are no outlets connecting them to the west side of the road. Wetlands 30 and 57 abut STH 11; however, the road does not separate them from waters of the US and there are no outlets connecting them to the north side of the road. A north-south linear feature visible on aerial photos abuts Wetlands 64-67, however, this feature is not a drainage ditch, rather it is a dirt access road between farm fields and does not separate the wetlands from waters of the US.

Unless described in detail above, none of these wetlands contain culvert inlets or outlets that connect them to a downstream water (confirmed by reviewing the delineation report and aerial photos), and none of the wetlands have a surface or shallow subsurface connection connecting them to downstream waters. This was confirmed by reviewing historic aerial photos and wetness signatures. Some of the wetlands on the east half of the review areas were previously determined to be isolated under AJDs MVP-2017-03856-MHK and

¹ Supporting documentation is presented in Section III.F.

MVP-2018-01475-MHK (see Section IV.B below for details). The nearest tributary to wetlands on the west side of the review areas is Kilbourn Ditch, approximately 280 feet north of W-50 and 300 feet west of W-69. The nearest tributary to wetlands on the east side of the review areas is an unnamed tributary to the Pike River, approximately 630 feet north of W-1.

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 (agricultural fields and road infrastructure) and proximity to other waters, there are no ecological connections to other wetlands or waters. These aquatic resources do not support a link to interstate or 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 that these wetlands are not regulated by the Corps under Section 404 of the Clean Water Act.

Ditches: 18 aquatic resources in the review areas are linear ditches constructed in upland (shown in attached table).

Ditches W-37-41 and 43-45 are all associated with Wheaton Lane, which was a subdivision road built in the late 1990's to early 2000's. The soils within these areas are all non-hydric, and the area was farmed as land with no wetness signatures prior to road construction, according to the Kapur delineation. Ditches W-5, 21, 35, 36, 54, 55, and 56 were constructed in upland along with the expansion of STH 11 and Braun Road and construction of Wisconn Valley Way in 2019. Ditches W-3, 4, and 9 are associated with County Road H. None of these ditches carry relatively permanent flow, confirmed by reviewing aerial photographs and delineation site photos, and all of the ditches drain only upland, confirmed by the delineation report's wetland boundaries and aerial photographs. 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 and draining only uplands and do not carry a relatively permanent flow are not waters of the United States.

Water-filled depressions: 15 aquatic resources in the review areas are water-filled depressions created incidental to construction activity (shown in attached table). W-47 is a depressional feature on the edge of Wisconn Valley Way, a road constructed in 2019/2020. The wetland did not exist prior to 2019, as shown in aerial photographs which show no evidence of wet signatures before 2019. The area is also predominately non-hydric soils within and around W-47. Aerial photography shows grading within the wetland boundary from 2019 and continuing through 2020. Wetlands 10-13, 17-20, 22-26, and 31 are all associated with an area of mass grading in the NE corner of the review areas (the wetland sizes were combined due to their small individual sizes and close proximity). Aerial photography shows none of these wetlands existing prior to 2019 based on a lack of visible wet signatures and predominately non-hydric soils. The area was actively farmed around a farmhouse from at least 2000 to 2019. Beginning in 2019, mass grading has occurred within these wetland locations, along with removal of the farmhouse, and created small depressions where the wetlands formed. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following activities to be waters of the United States: water-filled depressions created in dry land incidental to construction activities.

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: **17.23** 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: **November 2021 wetland delineation report by Kapur**
- ☐ 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: **Mt. Pleasant Quadrangles**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Racine 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): **Google Earth aerial photographs (2000-2021)**
or ☒ Other (Name & Date): **Ground level site 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): **2-foot contours, previous TRC wetland delineation report**

B. ADDITIONAL COMMENTS TO SUPPORT JD: Two AJDs were previously completed on some of the wetlands on the east half of the review areas on December 8, 2017 (MVP-2017-03856-MHK) and on one wetland in December 3, 2018 (MVP-2018-01475-MHK). These wetland areas were reviewed again as part of this AJD to account for any changes in site history since 2017/2018 (a different consultant delineated the current wetlands associated with this AJD so boundaries have shifted slightly) and because AJDs are generally only valid for a period of five years.

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Isolated Wetlands

Name	Size		Name	Size		Name	Size
W-1	0.45		W-50	1.43		W-65	0.66
W-14	0.28		W-51	0.02		W-66	0.11
W-15	0.01		W-52	0.34		W-67	0.02
W-16	0.21		W-53	0.16		W-68	0.02
W-27	0.02		W-57	0.39		W-69	0.04
W-28	2.0		W-58	0.86		W-70	0.10
W-29	1.1		W-59	0.10		W-71	0.01
W-30	0.76		W-60	0.09		W-72	0.22
W-32	2.59		W-61	0.64		W-73	0.63
W-33	0.85		W-62	0.04		W-74	1.25
W-42	0.01		W-63	0.11		W-75	0.43
W-48	0.59		W-64	0.69			

Ditches

Name	Size		Name	Size		Name	Size
W-3 ditch	0.01		W-21	0.10		W-54	0.007
W-4	0.004		W-35	0.01		W-55	0.02
W-5	0.06		W-36	0.01		W-56	0.003
W-9	0.01		W-37-41, 43-45	0.09			

Water-filled Depressions

Name	Size
W-10-13, 17-20, 22-26, 31	2.10 (total)
W-47	0.16