

**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 31, 2022

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** 2022-00262-AJK

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

State: **WI** County/parish/borough: **Kenosha** City: **Pleasant Prairie**

Center coordinates of site (lat/long in degree decimal format): Lat. **42.5417° N**, Long. **-87.9029° W**.

Universal Transverse Mercator: **Zone 16N**

Name of nearest waterbody: **Jerome Creek**

Name of watershed or Hydrologic Unit Code (HUC): **Jerome Creek-Des Plaines River (071200040104)**

☒ 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: **March 31, 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: **The review area contains 15 aquatic resources.**

**Isolated: W-3 (0.05 acre) is a wet depression created in 2005 incidental to road construction. The road and adjacent grading was abandoned and the wetland is now an isolated feature. W-5 (0.48 acre) was created in upland from construction grading in 2013/14. The site was abandoned and the wetland is now an isolated feature. There are no inlets/outlets associated with either wetland and they are surrounded by previously disturbed upland based on aerial photo review. The nearest tributary is Jerome Creek, approximately 1,400 feet to the north of W-3 and 650 feet west of W-5. 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 (disturbed power plant grounds) 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 W-3 and W-5 are not regulated by the Corps under Section 404 of the Clean Water Act.**

**Settling Basins: AW-1 (0.71 acre) is a constructed settling basin created around 2000 as part of power plant expansion. AW-3 (0.23 acre) is a storm water pond constructed in 2005. Both of these features are described as excavated ponds on Wisconsin Wetland Inventory. Aerial photos from pre-construction show that both of these ponds were constructed in upland (no wet signatures, non-hydric soils in AW-3). 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**

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

diking dry land to collect and retain water and which are used exclusively for such purposes as settling basins.

Ditches: AW-2 (0.43 acre), AW-5 (0.17 acre), AW-5A (0.11 acre), AW-5B (0.40 acre), AW-5C (0.47 acre), and W-4 (0.02 acre) are railroad ditches constructed in upland with the railroad completion around 1980. Aerial photos show upland cropland with no signs of wet signatures prior to construction of the railroad. AW-4 (0.60 acre) and AW-7 (0.01 acre) are ditches constructed in upland around 1980. Aerial photos show heavy disturbance around AW-7 prior to ditch construction and no wet signatures pre-construction. W-2 (0.03 acre) and W-2A (0.01 acre) are ditches constructed in upland in 1990 as part of site grading. Aerial photos show heavy disturbance prior to their construction. AW-6 (0.73 acre) was constructed in upland as a settling basin in 1980, based on aerial photo review and lack of wet signatures. In 2019, the basin was removed and a ditch was created in its place. The feature is described as excavated on Wisconsin Wetland Inventory. None of these ditches have relatively permanent flow and all of them drain only upland (from the power plant grounds or from railroad runoff). 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.

### **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: 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: **November 2021 wetland delineation report by Heartland Ecological Group**
- ☐ 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: **Pleasant Prairie Quadrangles**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Kenosha 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): **Historic aerial photos (1967-2021) from Google Earth and Kenosha County**  
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): **1-foot contours**

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