



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 2/25/2021

ORM Number: MVP-2020-01877-MWM

Associated JDs: MVP-2020-01877-MWM Completed October 23, 2020

Review Area Location¹: State/Territory: WI City: New Berlin County/Parish/Borough: Waukesha

Center Coordinates of Review Area: Latitude 42.933632 Longitude -88.171763

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
N/A.	N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Pond 1 Pond 2	7.55 12.58	acre(s)	(b)(8) Artificial lake/pond constructed or excavated in upland or a non-jurisdictional water, so long as the artificial lake or pond is not an impoundment of a jurisdictional water that meets (c)(6).	Ponds do not contribute surface water flow to an a(1)-(3) water in a typical year therefore do not impound a jurisdictional water. Pond 1 is completely surrounded by upland and the nearest jurisdictional feature is approximately 2,000 feet east. Pond 2 is surrounded by Wetlands 3, 3A, and 3B, they are not jurisdictional features. Aerial photos from 1941 and 1950 do not show any disturbance in the area of Pond 1 and 2 before excavation occurred. Aerial photos from 1963, 1970, 1980, and 1990 do not show disturbance before excavation in the area of Pond 1. These aerial photos do not show any wetness signatures or wetland indicators; therefore, the area was upland before excavation.
Waterway 1 Waterway 2 Waterway 3	60 190 150	linear feet	(b)(3) Ephemeral feature, including an ephemeral stream, swale, gully, rill, or pool.	Based on the ground photos in the delineation and a review of topographic maps, there is not sufficient evidence to suggest the feature carries intermittent or perennial flow. The photos do not show a bed, bank, or Ordinary High Water Mark in any of the features. The features cannot be identified in aerial photos. Waterway 1 and 2 leave the review area boundary. Waterway 1 continues south to a manmade ditch adjacent to I-43. Aerial photos show I-43 was constructed between 1963 and 1980, before construction of I-43 there is not any wetness signatures. Waterway 2 leaves the review area to the southeast, the delineator noted the feature continues about 40 feet before losing all definition. There is not another feature the waterway connects to. All the features act as drainage swales for the adjacent wetlands in response to rain events based on manipulated topography associated with mining activities.

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Wetland 3 Wetland-3A Wetland-3B Wetland-4 Wetland-5	2.49 .02 .06 1.02 1.24	acre(s)	(b)(1) Non-adjacent wetland.	<p>Wetlands do not abut an a(1)-(3) water nor are they inundated by flooding from an a(1)-(3) water in a typical year. The review area is not within a FEMA flood zone, the nearest area within a flood zone is over 3,000 feet to the east. Wetlands are not separated from an a(1)-(3) water by a natural or artificial feature nor do they have direct hydrological surface connection in a typical year. Surface Water Data Viewer, National Wetlands Inventory, and Waukesha County GIS maps show an unnamed tributary east of the permit area and east of the boundary of the wetlands. Although these resources all map the tributary crossing under the entrance ramp of I-43, they do not show a consistent path as the feature approaches the review area. A review of aerial photos from 1941, 1950, 1963, 1980, 1990, 2000, and 2005 show where the tributary is and where it begins. These aerial photos show the tributary approximately 640 feet east of the review area. The wetlands are about 40-50 feet higher in elevation than the nearest tributary. Ephemeral features found to be non-jurisdictional abut the wetlands, this does not alter jurisdiction.</p> <p>Wetlands 3, 3A, and 3B surround a manmade pond, which it is non-jurisdictional.</p> <p>Wetland 4 sits in a topographic depression and its boundary is adjacent to old fill material associated with mining operations. Wetland 4 continues off the review area to the south with the counter at the bottom of the hill about 600 feet. Aerial photos do not show the feature continuing to another aquatic resource. The topography in this area has been extremely manipulated in association with mining activities. Before mining activities, there was little elevation change on the land.</p> <p>Wetland 5 leaves the review area to the east and continues on NE, it does not have connection to a jurisdictional feature. The National Wetland Inventory and aerial photos show Wetland 5 continuing through a forested area to an agriculture field approximately 1,500 feet NE, the boundary of the wetland ends in the field and does not connect to an aquatic resource.</p>

III. SUPPORTING INFORMATION



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A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: [Eric Parker, Heartland Ecological Group, 9/4/2020, 12/4/2020, 1/26/2021](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

☐ Data sheets prepared by the Corps: [N/A](#)

☒ Photographs: [Other: Site photos included in the AJD request](#)

☐ Corps site visit(s) conducted on: [N/A](#)

☒ Previous Jurisdictional Determinations (AJDs or PJDs): [MVP-2020-01877-MWM completed west of the AJD Review area 10/26/2020](#)

☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☒ USDA NRCS Soil Survey: [Included in the AJD request. NRCS USDA Farm Service Agency \(FSA\), Waukesha County.](#)

☐ USFWS NWI maps: [N/A](#)

☒ USGS topographic maps: [Included in the AJD request. USGS The National Map, 3DEP Elevation Program. Data refreshed February 2020](#)

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Surface Water Data Viewer National Flood Hazards Layer. FWS National Wetlands Inventory. Waukesha County GIS, FEMA Floodplains Layer and Aerial Photos.
Other Sources	Google Earth Pro. Aerial years: 1941, 1950, 1963, 1970, 1980, 1990, 1995 2000, 2005, 2006, 2007, 2008, 2010, and 2014

B. Typical year assessment(s): [N/A](#)

C. Additional comments to support AJD: [Jurisdictional determination was completed on Wetland 1 and 2 on the SW corner of the review area, they were found to be non-jurisdictional features.](#)