

**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):** October 20, 2021

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** MVP-2016-00518-AJK

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

State: **WI** County/parish/borough: **Milwaukee** City: **Franklin**  
Center coordinates of site (lat/long in degree decimal format): Lat. **42.85460° N**, Long. **-87.95451° W**.  
Universal Transverse Mercator: **Zone 16N**  
Name of nearest waterbody: **Root River**

Name of watershed or Hydrologic Unit Code (HUC): **Husher Creek-Root River (040400020303)**

- ☒ 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: **September 24, 2021**  
☐ 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 three wetlands, labeled W-1 (0.37 acre), W-2 (0.09 ac), and W-4 (0.14 ac). These wetlands are isolated, per review of the July 2019 wetland delineation report by raSmith, which included a USGS topographic map, NRCS web soil survey, 1-ft contours, WWI map, historic aerial photos, and ground level site photos. Wetlands 1 and 2 are connected by a linear ditch. There are no inlets/outlets associated with W-1 or W-2 other than the ditch that connects them; however, they are separated from Wetland 4 only by a gravel farm road. W-4 is a long narrow ditch on the southern edge of the property that may have been constructed in wetland, so the western and eastern extent of the ditch were reviewed in detail. The ditch is constrained on the west by a transition to upland, evidenced by 1) aerial photos showing a lack of surface flow continuing west and 2) topographic contours showing a gradual gain in elevation. To the east, the ditch transitions to a wider wetland swale and is constrained by upland and the gravel farm road. This transition to upland is evidenced by 1) the delineation report documenting upland sample points, and 2) a lack of visible flow or culvert features that would allow surface water to continue to the east. The gravel road does not separate W-4 from any other aquatic resource, other than Wetlands 1 and 2 mentioned above (and both are isolated themselves). There are no visible inlets/outlets associated with W-4 that would provide a surface water flow path outside of the review area.**

**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 (see discussion of gravel road above). Due to existing and surrounding land use (agriculture and commercial development) 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**

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

by industries in interstate commerce. Therefore, the Corps has determined that W-1, W-2, and W-4 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: 0.60 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 by raSmith, July 2019
- ☐ 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: Franklin Quadrangles
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Milwaukee 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 (2000, 2005, 2010, 2013, 2015, 2018)  
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): Milwaukee County 1-ft contours

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