

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): 9/21/2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-01372-TKO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI** County/parish/borough: **Jefferson** City: **Johnson Creek**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.0880° N**, Long. **-88.7773° W**. Universal

Transverse Mercator: **16**

Name of nearest waterbody: **Rock River**

Name of watershed or Hydrologic Unit Code (HUC): **07090001**

☒ 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: **8/10/222**

☐ 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: **A wetland delineation was conducted by Stantec Consulting Services Inc. Five separate wetlands were identified in the delineation report totaling 0.99 acres. Of those five, four (0.13 acres) are in the review area.**

Wetland 1 (W1) is adjacent to the southern boundary of the review area. The wetland appears to continue off-site to the south and connects with the adjacent forested wetland. Review of the supplied materials from the applicant, along with historic aerial imagery and hillshade from LiDAR, show the wetland to be isolated from any WOTUS. It is an isolated depression separated from other wetlands by upland features. The depression transitions to uplands of higher elevation to the north, west and south. Additional wetlands lie to the east but are isolated and lack a connection to any downstream water. Review of Google Earth Street View show no culvert or ditch that would provide connectivity. W-1 is located 0.66 miles from the Rock River, which is the nearest tributary to any of the wetlands. There are no defined or discrete surface or subsurface connection to any downstream waters as identified in the project review.

Wetlands 3, 4, and 5 (W3, W4, and W5) are isolated fresh wet meadows located in shallow depressions within the central portion of the review area. Based on a review of recent aerial imagery, each of the three wetland areas show wet signatures in the growing season during multiple normal precipitation years. Review of the supplied materials from the applicant, along with historic aerial imagery and hillshade from LiDAR show the wetlands to be isolated. They are isolated depressions separated from other wetlands by delineated upland features. There are no defined or discrete surface or subsurface connections to any downstream waters as identified in the project review.

None of the wetlands in the review area border or are 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

¹ Supporting documentation is presented in Section III.F.

to existing and surrounding land use (residential 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 by industries in interstate commerce. Therefore, the Corps has determined that the above-mentioned wetlands 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: 0.13 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: June 2021 wetland delineation report by Stantec Consulting Services 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: 1:24,000 Johnson Creek

- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Jefferson County**
- ☒ National wetlands inventory map(s). Cite name: **Regulatory Viewer**
- ☒ State/Local wetland inventory map(s): **WI Wetland Inventory**
- ☒ FEMA/FIRM maps: **National Flood Hazard Layer**
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Google Earth photos (1996-2021)**
or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **Wisconsin DNR-DEM and Hillshade**

B. ADDITIONAL COMMENTS TO SUPPORT JD: