

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): June 06, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-00673-SJW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Outagamie City: Town of Grand Chute

Center coordinates of site (lat/long in degree decimal format): Lat. 44.249243° N, Long. -88.493319° E.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed Tributary

Name of watershed or Hydrologic Unit Code (HUC): 0403020402 - Plum Creek - Fox River

☒ 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: June 02, 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 area includes one delineated aquatic resource feature which is identified as Wetland 3 (4,535 square feet) on the attached figure labeled MVP-2022-00673-SJW: Figure 1. As stated in the wetland delineation report which was submitted as part of the AJD request, Wetland 3 is a ruderal wet meadow depression located near the end of a cul-de-sac on Consolidated Court. Based on a review of aerial imagery from the Outagamie County GIS website, it appears that Wetland 3 is an upland constructed stormwater feature which was created at some point between the year 2000 and 2005. The 2005 aerial image clearly shows a berm/mound surrounding the entire wetland feature and there are no other wetlands that directly abut this feature. The Wisconsin Wetland Inventory mapping has this feature situated in the middle of a mapped wetland. However, based on the data presented within the wetland delineation report, there are no wetlands situated in the same location or immediately adjacent to Wetland 3, which further suggests that this wetland was constructed entirely in uplands. There are no wetlands that directly abut this feature, and this feature does not appear to maintain a hydrologic connection to the nearest waterbody (unnamed tributary) which is located approximately 0.02 miles to the south.**

Based on this information, the Corps has determined that Wetland 3 is an upland constructed stormwater feature. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219, November 13, 1986 (page 41217) states "For clarification, it should be noted that we generally do not consider the following waters to be Waters of the United States....(b)(10) Stormwater control features constructed or excavated in upland or in non-jurisdictional waters to convey, treat, infiltrate, or store stormwater runoff." Based on these factors and the site specific details, it has been determined that Wetland 3 is not a water of the U.S. and is not jurisdictional under Section 404 of the Clean Water Act as defined by 33 CFT Part 328.3(b).

¹ Supporting documentation is presented in Section III.F.

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 B.2.**

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: 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 completed by McMahon Associates, 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: **1:24K Appleton**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ 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): **Outagamie County GIS 2000-Current**
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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: