

**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):** 13 December 2018

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** MVP-2018-03256-EJI

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

State: Wisconsin County/parish/borough: Racine City: Burlington

Center coordinates of site (lat/long in degree decimal format): Lat. 42.71029220° N, Long. -88.24483720° E.

Universal Transverse Mercator: Zone 16 (X 398059, Y 4729395)

Name of nearest waterbody: Fox River

Name of watershed or Hydrologic Unit Code (HUC): 07120006

☒ 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: 13 NOV 2018

☐ 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 5 wetlands (W1-1, W1-2, W1-3, W1-4, and W1-5) totaling 0.35 acres that were created in dry land incidental to construction activity. The preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219 published 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.... (e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of Waters of the U.S." A wetland delineation report dated 23 JAN 2006 shows that the review area was upland prior to the construction activity and recent aerial imagery shows that the construction activity (residential development) is ongoing. Therefore wetlands W1-1, W1-2, W1-3, W1-4, and W1-5 are not considered to be waters of the U.S. and are not jurisdictional 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

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

**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): **Wetlands W1-1, W1-2, W1-3, W1-4, and W1-5 are non-jurisdictional**

**according to the preamble for 33 CFR 328, published in Federal Register Volume 51, Number 219 published November 13, 1986 (page 41217), that states "For clarification, it should be noted that we generally do not consider the following waters to be "Waters of the United States.... (e) Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of Waters of the U.S."**

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.

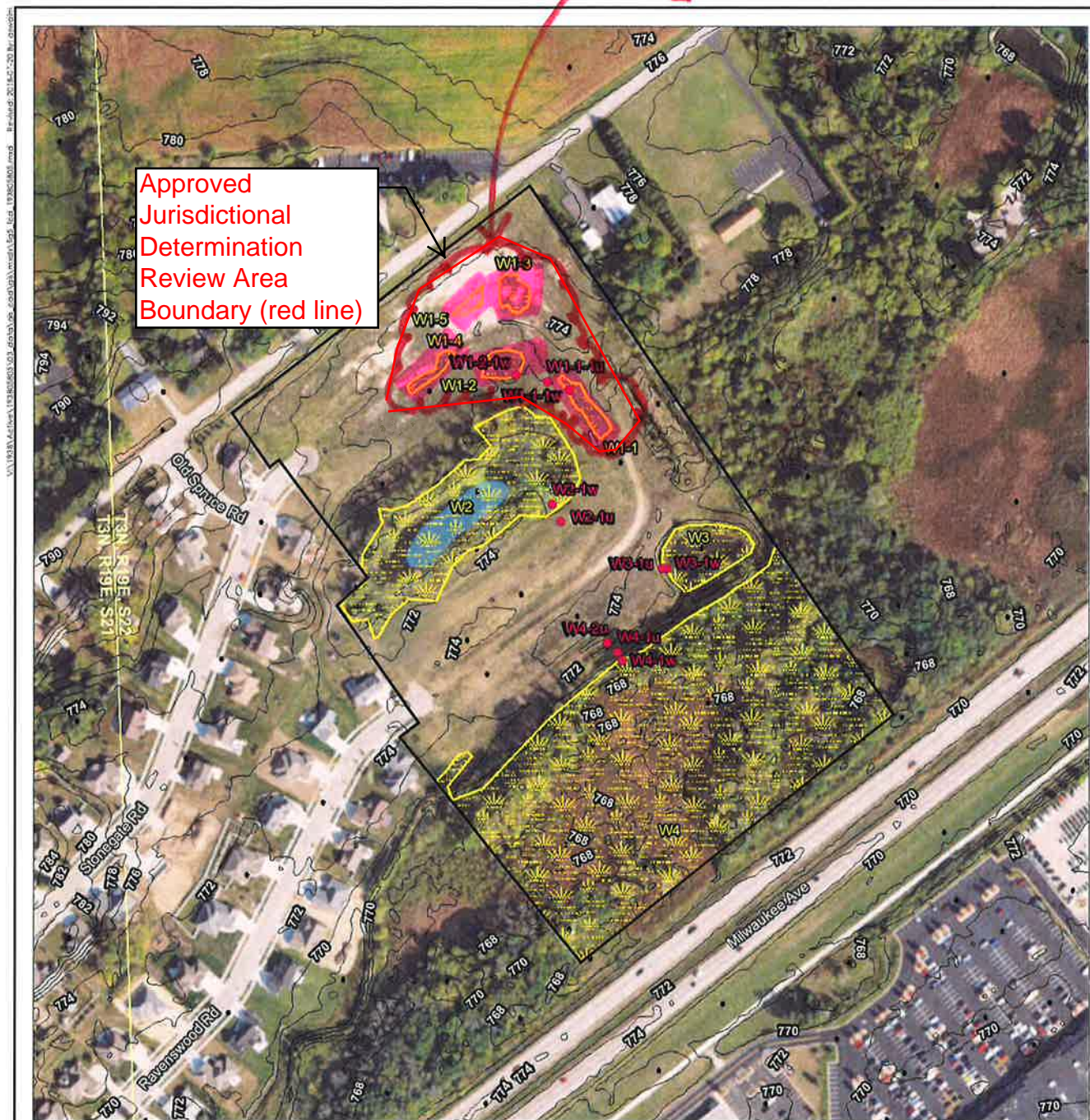
**SECTION IV: DATA SOURCES.**

**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:
- ☒ 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 WI-Burlington**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Racine County**
- ☒ National wetlands inventory map(s). Cite name: **USGS**
- ☒ 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): **Google Earth 2006, 2007, 2008, 2010, 2011, 2015, 2017, 2018**  
or ☒ Other (Name & Date): **2006 and 2017 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):

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

Wetlands to be Filled (0.35-ac)  
[W1-1 → W1-5]



#### Legend

- Approximate Project Boundary
- DNR 24k Hydrography
- 2ft Elevation Contour
- Perennial Stream
- Sample Point
- Intermittent Stream
- Field Delineated Wetland
- Waterbody

#### Notes

1. Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet
2. Data Sources Include: Stantec, WisDOT, WDNR
3. Orthophotography: NAPP 2017

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Figure No.

5

Site

#### Field Collected Data

Client/Project  
MC Home Builders LLC  
The Glen at Stonegate Additions Phase 2  
Wetland Delineation

Project Location  
193805803  
BN, R19E, S22,  
C. of Burlington,  
Racine Co., WI  
Prepared by AJS on 2018-05-21  
Technical Review by JH on 2018-05-21  
Independent Review by BSI on 2018-06-11

0 150 300 Feet  
1:3,600 (at original document size of 8.5x11)

