

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): 4 March 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2018-03442-JMB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Waukesha** City: **Pewaukee**
Center coordinates of site (lat/long in degree decimal format): Lat. **43.04419° N**, Long. **-88.19818° W**.
Universal Transverse Mercator:

Name of nearest waterbody: **Fox River**

Name of watershed or Hydrologic Unit Code (HUC): **07120006 (8-digit HUC)**

- ☒ 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: **31 January 2019**
☐ 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: **Wetland 1 (0.01 acres), wetland 2A (0.13 acres), and wetland 2B (0.04 acres) are located in closed depressions surrounded by previously developed commercial property. All three wetlands were artificially created through past land disturbances. Interstate 94 is located immediately adjacent to the northern boundary of the property. The wetlands are located approximately 0.15 miles from the Fox River, with previously developed property situated between the project site and the river. All three wetlands appear to be artificially created as a result of past land use activities, and were likely areas of borrow when roads were constructed through the project site. Although Wetland 1 extends outside of the review area, it is completely isolated hydrologically due to the presence/location of adjacent trails; it was confirmed that no culverts are present that would provide a hydrologic connection offsite. The wetlands do not have any unbroken surface or shallow subsurface connections to the Fox River and are not mapped within the 100-year flood plain (located within area of minimal flood hazard - Zone X). The wetlands are not adjacent (bordering, contiguous, or neighboring) to any other WOUS and are not separated from other WOUS by man-made dikes or barriers, natural river berms, or beach dunes. Due to the distance between these wetlands and the nearest tributary there is no science-based inference (ex. does not support life cycles of amphibians or anadromous and catadromous fish) that supports an ecological connection. Additionally, there is no link to interstate or foreign commerce and they are not used by interstate or foreign travelers for recreation or other purposes. These wetlands 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 Wetland 1, Wetland 2A, and Wetland 2B are hydrologically isolated and 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

¹ Supporting documentation is presented in Section III.F.

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: 0.17 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):

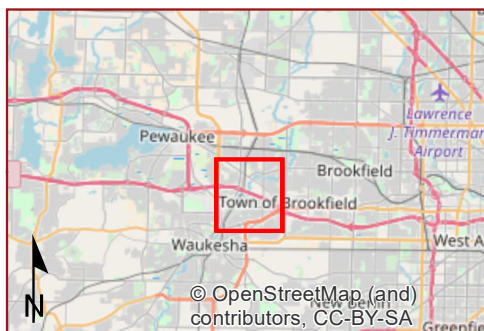
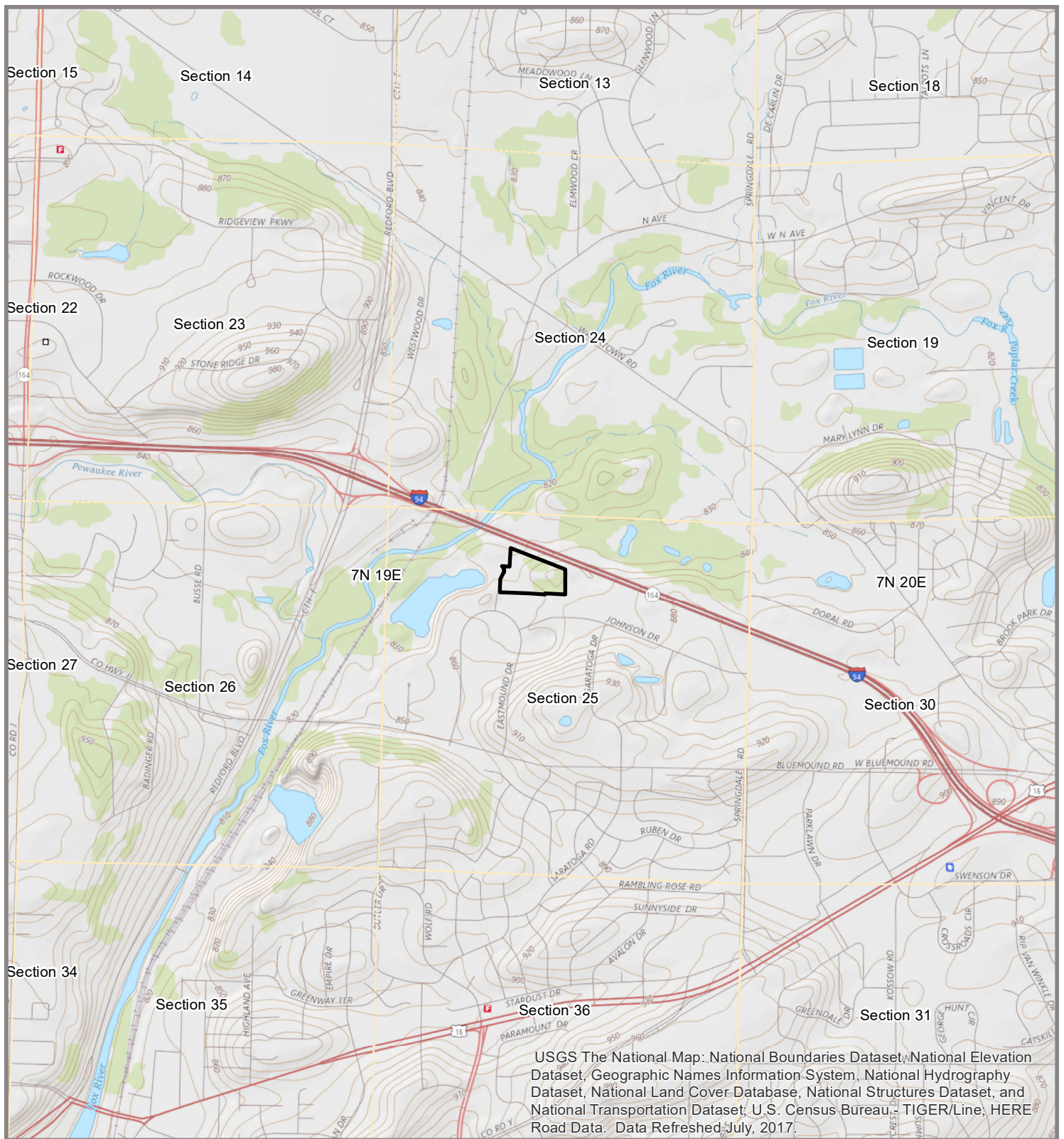
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☐ Wetlands: acres.

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: Delineation report with site maps and figures submitted by Heartland Ecological Group, Inc. 22 October 2018
- ☒ 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 - Brookfield
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS Soils Data
- ☐ 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):
or ☒ Other (Name & Date): Site photos included in delineation report dated 22 October 2018
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): AJD request and narrative submitted by consultant 22 October 2018

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Corps has determined that the wetlands 1, 2A, and 2B onsite are hydrologically isolated, and are therefore not regulated by the Corps under Section 404 of the Clean Water Act.



 Study Area (10.7 ac)

0 1,000 2,000
Ft

Heartland
ECOLOGICAL GROUP INC

Figure 2. USGS

Topography

Northbrook

Project #20180099

T7N, R19E, S25

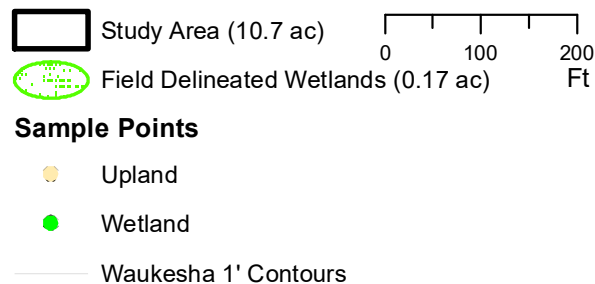
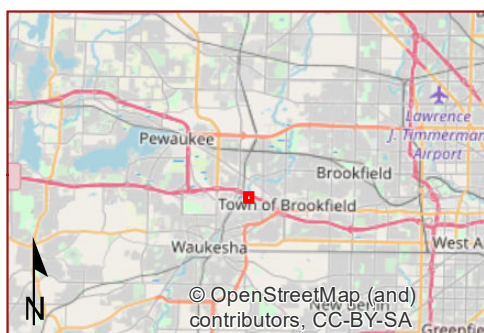
C Pewaukee,

Waukesha Co., WI

USGSTopo

Data: USGS, HEG

8/17/2018



Heartland
ECOLOGICAL GROUP INC

Figure 5. Field Delineated Wetlands
 Northmound
 Project #20180099
 T7N, R19E, S25
 C Pewaukee,
 Waukesha Co., WI

NAIP Year 2017
 Data: Waukesha Co., HEG 10/22/2018