

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): 8/24/2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2005-04158-RJH Wetland 3 and Wetland 4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Outagamie** City: **Appleton**
Center coordinates of site (lat/long in degree decimal format): Lat. **44.291999° N**, Long. **-88.489589° E**.
Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **unnamed tributary to Mud Creek**

Name of watershed or Hydrologic Unit Code (HUC): **Plum Creek-Fox River (04030202)**

- ☒ 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: **April 27, 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 areas include two aquatic resources which are identified on the attached figure labeled: MVP-2005-04158-RJH Page 2 of 2. Based on a review of historic aerial photography, topographic maps, LiDAR information, and the wetland delineation report submitted by the requestor, we have determined that Wetland 3 is an isolated wetland depression with boundaries that transition into uplands and Wetland 4 is a ditch constructed in uplands. As depicted in aerial imagery, the wetland signatures observed within the delineated features do not extend outside of the wetland and are surrounded by vacant uplands and industrial development. The review area appears to have been vacant for the previous 10 years and there has been wet signatures within the delineated resource in those past years. In addition, the review area has minor changes in elevation, as shown in the Outagamie Co LiDAR maps.**

Wetland 3 does not abut and is not separated from any waters of the U.S. by natural or man-made features. The nearest mapped tributary is an unnamed tributary to Mud Creek located approximately 266 feet west of Wetland 3. Historical aerial photography depicts minor wet signatures in the immediate areas. However, no surface water or ecological connections are present that links this wetland to the tributary or other aquatic resources. Based on this information, the wetland within the review area is ecologically separated from all other aquatic resources.

Wetland 3 does not support a link to interstate foreign commerce; is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined this aquatic feature is not regulated by the Corps under Section 404 of the Clean Water Act.

¹ Supporting documentation is presented in Section III.F.

Based on information provided in a recent wetland delineation report, the Corps has determined that the wetland identified as Wetland 4 within the review area shown on MVP-2005-04158-RJH Figure 2 of 2 is a ditch that was excavated wholly in and drain dry land only. Wetland 4 was a constructed ditch lined with concrete to move animal waste from an animal farm operation. The animal farm had been abandoned and the concrete crushed, but never backfilled resulting in wetland conditions. Additionally, it has been determined that the subject ditch does not have relatively permanent flow. In accordance with the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos, Wetland 4 is not a waters of the United States.

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: 0.28 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: Davel Engineering
- ☒ 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: Outagamie 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): **Wetland Delineation Report & Google Earth**
or ☒ Other (Name & Date): **Ground level photos**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☐ Other information (please specify): **Outagamie County LiDAR**

B. ADDITIONAL COMMENTS TO SUPPORT JD: