

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): October 29, 2021

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2021-01706-SJW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Oconto City: Pulaski

Center coordinates of site (lat/long in degree decimal format): Lat. 44.726947° N, Long. -88.218439° E.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed Tributary

Name of watershed or Hydrologic Unit Code (HUC): 0403010302 - Suamico River - Frontal Green Bay

☒ 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: October 12, 2021

☐ 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 consists of one aquatic resource which is shown as "Wetland 2" on the attached figure labeled: MVP-2021-01706-SJW: Figure 1. Wetland 2 (0.07 acre) is an isolated depression surrounded entirely by uplands situated in the middle of an agricultural field. Lands located immediately north and south and east of Wetland 2 are comprised of forested parcels, while the lands to the west are comprised of a mix of agricultural fields and ponds associated with the Northeast Asphalt, Inc. mining operations. A review of the WWI indicates mapped wetlands are present within the delineated limits of Wetland 2, which extend to the east and north of Wetland 2 in the aforementioned wooded areas. However, a review of multiple years of aerial imagery suggests that Wetland 2 does not maintain a hydrologic connection to this wetland as there are no wetland signatures identified between these two wetlands. Aerial imagery (2008, 2013, 2015, and 2020) show a wetland signature within the delineated limits of Wetland 2. However, as previously stated, this wetland signature does not extend outside of the delineated limits of Wetland 2. Topographic maps indicate this area is relatively flat with little or no topographic relief throughout the landscape. However, surface water generally flows to the east towards a series of unnamed tributaries. There are no observable inlets or outlets which would suggest that Wetland 2 would maintain a hydrologic surface connection to a downstream TNW. In addition, there are no man-made dikes, barriers, or berms separating Wetland 2 from other WOUS. Given the existing site characteristics and the surrounding landscape characteristics, coupled with the proximity to the nearest waterbody, there is no hydrologic connection between Wetland 2 and other jurisdictional waters or wetlands. Wetland 2 does not support a link to interstate or foreign commerce, is not 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 that Wetland 2 is an isolated wetland feature that is not regulated by the Corps under Section 404 of the Clean Water Act.**

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):

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: 0.07 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 map submitted by applicant along with AJD request.**
- ☐ 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 Pulaski**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Wisconsin Surface Water Data Viewer (2008, 2013, 2015, 2020)**
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: