

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): December 15, 2021

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2021-02444-AJK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI**

County/parish/borough: **Waukesha** City: **Menomonee Falls**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.12537° N**, Long. **-88.17187° W**.

Universal Transverse Mercator: **Zone 16N**

Name of nearest waterbody: **Silver Meadows Creek/Fox River**

Name of watershed or Hydrologic Unit Code (HUC): **Pewaukee River-Fox River (0712000601)**

☒ 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: **December 10, 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 contains eight wetlands, labeled W-09 (0.02 acre), W-10 (0.51 acre), W-11 (0.17 acre), W-12 (0.10 acre), W-14 (1.13 acres), W-15 (0.77 acre), W-16 (0.20 acre), and W-18 (0.04 acre). Historic aerial photos and contours were reviewed, as well as materials provided by Hey and Associates which included a delineation map, USGS topography, NRCS hydric soils map, and a Wisconsin Wetland Inventory map. The site is currently a golf course constructed between 1990 and 1995, so many of the wetlands on site are artificially-constructed detention ponds around the greens. Most of the site was upland farmed agricultural fields before the golf course was constructed. Wetlands 10, 12, 15, and 16 are ponds that were constructed in non-hydric soils with a lack of wetland history based on historic aerial photos. Wetlands 11 and 14 are artificial ponds surrounded by hydric soil; however, historic aerial photos show a lack of wetland history as these areas were continuously farmed from at least 1941 until pond construction.**

Wetland 09 is part of a roadside ditch created by culvert installation, evidenced by Google Earth Street View showing the ditch parallel to Silver Spring Drive. Wetland 18 is a drainage ditch constructed in non-hydric soils that was created with golf course construction to direct runoff from one of the holes. Both of these ditches have no evidence of wetland history prior to construction, and do not carry relatively permanent flow based on Google Earth aerial photos.

In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following activities to be waters of the United States; 1) artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as settling basins, and 2) non-tidal drainage and irrigation ditches excavated on dry land. Further clarification is provided in the December 2, 2008 Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in *Rapanos v. U.S.* and *Carabell v. U.S.* issued jointly

¹ Supporting documentation is presented in Section III.F.

by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow are not 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): **See Section II.B.2 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: 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: **Materials provided by Hey and Associates on November 22, 2021**

- ☐ 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: **Menomonee Falls Quadrangles**

☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Waukesha 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): **Google Earth aerial photographs, historic aerial photos from Waukesha County (1941-present)**

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): Waukesha County 1-ft contours (current and historic)

B. ADDITIONAL COMMENTS TO SUPPORT JD: