

**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):** March 11, 2022

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** 2022-00055-AJK

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

State: WI County/parish/borough: Kenosha City: Somers

Center coordinates of site (lat/long in degree decimal format): Lat. 42.6387° N, Long. -87.9621° W.

Universal Transverse Mercator: Zone 16N

Name of nearest waterbody: Kilbourn Road Ditch

Name of watershed or Hydrologic Unit Code (HUC): Kilbourn Road Ditch (071200040102)

☒ 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: March 7, 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):<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 six wetlands, W-1 (0.07 acre), W-1B (0.02 acre), W-3A (0.04 acre), W-1C (0.01 acre), W-1D (0.05 acre), W-2A (0.07 acre). W-1D and W-2A are isolated, per review of the Heartland Ecological Group delineation report which included USGS topography, NRCS hydric soil lines, Wisconsin Wetland Inventory (WWI), Kenosha County 1-foot contours, aerial photos, and ground level site photos. W-1D appears to have formed by drainage running out of a road ditch from a road culvert and into a portion of the farm field. The ditches do not provide a connection to a downstream water as they are sloped towards the wetland and are broken by upland. The wetland slopes to the southeast, but there is no confined flow continuing through the farm field to the south. W-2A is located in a shallow depression and is constrained to the north by the commercial facility, to the south and west by steep slopes, and to the east by upland agricultural field. There are no visible inlets/outlets associated with the wetland. The nearest tributary to any of these wetlands is unnamed to Kilbourn Road Ditch approximately 1,300 feet to the southeast of W-2A. USGS topography and WWI label the tributary line extending all the way through the farm field just east of W-2A; however, this tributary does not exist on the ground (based on historic aerial photos) as all of the historic flow is funneled through drain tile. Therefore, there are no surface or shallow subsurface connections to a downstream water from any of these wetlands.**

**These wetlands do not border, are not neighboring to or contiguous with another water of the US. They are not separated from another water of the US by man-made barriers, dikes, or berms. Due to existing and surrounding land use (upland agriculture) and proximity to other waters, there are no ecological connections to other wetlands or waters. These aquatic resources do not support a link to interstate or foreign commerce; are not known to be used by interstate or foreign travelers for recreation or other purposes; 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**

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

Corps has determined that W-1D and W-2A are not regulated by the Corps under Section 404 of the Clean Water Act.

Wetlands W-1C, W-1B, W-1, and W-3A are roadside ditches constructed in upland in 2010 when 120th Avenue was constructed and Somers Road was widened. Prior to 2010, these areas were upland crop field based on historic aerial photos. The ditches drain only upland (based on the delineation report) and do not carry relatively permanent flow (based on aerial and ground level photos). In accordance with the 2008 Rapanos guidance and the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following to be waters of the U.S.; 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 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: 0.13 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: December 2021 wetland delineation report by Heartland Ecological Group
- ☐ 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: **Somers Quadrangles**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Kenosha 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 photos (2000-2021)**  
                                   or ☒ Other (Name & Date): **Ground level 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): **Kenosha County 1-foot contours**

**B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A**