

**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): May 4, 2022**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** BEST Enterprises, Michaels Drive Property, Town of Grand Chute (Wetlands WL1, WL2, WL4 & WL5, Ditches 1, 2, 3, & 4) / 2022-00061-JLK

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

State: **Wisconsin** County/parish/borough: **Outagamie** City: **Grand Chute**

Center coordinates of site (lat/long in degree decimal format): Lat. **44.2657° N**, Long. **-88.4901° E**.

Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Unnamed Tributary of Mud Creek**

Name of watershed or Hydrologic Unit Code (HUC): **Plum Creek-Fox River (04030204)**

☒ 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 6, 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: **Based on a review of aerial photography, topographic maps, and the wetland delineation report submitted by the requestor, we have determined that Wetlands WL1, WL2, WL4 and WL5 are isolated wetland depressions with boundaries that transition into uplands. As depicted in current and historical aerial imagery, the wetland signatures observed within the delineated wetland features do not extend outside of these wetlands and are surrounded entirely by uplands involving a fallow field, commercial development to the northeast, west, and southwest, and paved roadways in all directions. In addition, the review area has minor changes in elevation, as shown in the USGS topo maps.**

**Wetlands WL1, WL2, WL4 & WL5 do not abut and are 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 0.16 mile to the south of Wetland WL5. A review of historical aerial photos indicates the review area and all surrounding areas were in agricultural production since before 1938. Then in the early 1990's, surrounding areas transitioned to various types of development and agricultural production stopped within the review area. Sometime before 2005 the field was left fallow. Upland grassy areas effectively surround all four wetlands to the ditches on site and adjoining wetlands within the central portion of the field. Additionally, uplands involving grassy areas, paved roadways, and commercial development separate these wetlands from the unnamed tributary to the south. The delineation map shows Wetland WL4 extends outside of the review area to the northeast, however site level and aerial photos show this wetland is immediately adjacent to commercial development to the northeast just outside of the wetland boundary. Based on this information, Wetlands WL1, WL2, WL4, and WL5 are ecologically separated from all other aquatic resources.**

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

The above mentioned aquatic resources do not support a link to interstate 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 Corps has determined these aquatic features are not regulated by the Corps under Section 404 of the Clean Water Act.

The review area also includes four aquatic resources (labeled as Ditches 1, 2, 3, and 4 on 2022-00061-JLK Figure 2 of 2) that are ditches constructed in uplands sometime before 1938. Review of site photos indicates these ditches do not convey a relatively permanent flow and drain only uplands. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following waters to be waters of the United States; non-tidal drainage 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. Based on this information, Ditches 1, 2, 3, and 4 are non-WOUS which is not subject to Corps jurisdiction under Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors Act.

### **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): **The review area includes four ditches (totaling approximately 0.58 acre) constructed in uplands that drain only uplands and do not convey a relatively permanent flow. These features are described in 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: Wetlands WL1, WL2, WL4 & WL5: Totaling 2.12 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: **George & Holdt, LLC, BEST Enterprises 2021 Wetland Delineation**
- ☒ 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:
- ☒ 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): **2021 Wetland Delineaton Report**  
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):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**