

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): April 19, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-00064-MWM Bonniwell Farms, Wetland 3 and 4

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Ozaukee City: Mequon

Center coordinates of site (lat/long in degree decimal format): Lat. 43.266223° N, Long. -87.981377° W. Universal

Transverse Mercator: 16

Name of nearest waterbody: Unnamed tributary to Pigeon Creek (WBIC 20700)

Name of watershed or Hydrologic Unit Code (HUC): 0404000306

- ☒ 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 17, 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 area contains 2 aquatic resources (labeled as W3 and W4 on Figure) that are isolated wetlands with no surface or shallow subsurface connection to any waters of the U.S. including the nearest aquatic resource which is an unnamed tributary to Pigeon Creek located approximately 300 feet to the northwest. A gravel road intersects Wetland 3 and 4.. Wetland 3 is east and adjacent to gravel access road within a topographic depression on the landscape and Wetland 4 is west of the gravel road in a minor topographic depression. The wetland boundary is contained within the review area and completely surrounded by upland. The review area is generally flat with a minor slope to the northwest. Aerial photos from most years do not show a wetness signature beyond the wetland boundaries. A sewer grate is present in the northern-most point of Wetland 4, a subsurface connection to an aquatic resource cannot be traced. These wetlands do not border, neighbor, nor are contiguous with another water of the U.S. They are not separated from other waters of the United States (WOUS) by man-made dikes, barriers, or berms. No inlet or outlet structures are located within Wetland 3. The surrounding land use consists of agriculture fields. Due to the size and position on the landscape, Wetland 3 and 4 provide limited habitat functions to WOUS and surrounding areas and provides no ecological connection.**

These 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.

SECTION III: CWA ANALYSIS

¹ Supporting documentation is presented in Section III.F.

- 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: Wetland 3 (0.58 acres) Wetland 4 0.06 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: Wetland delineation completed by Stantec Consulting services on November 30, 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: Topography map: USGS 7.5' Topographic Quadrangles included in the wetland delineation
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey and Drainage Classification Data: NAIP 2020 included in the wetland delineation
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Wisconsin Wetland Inventory, included in wetland delineation
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Aerial photos from 2006, 2008, 2010, 2013, 2016, 2017, 2018, and 2020 included in wetland delineation
- or ☒ Other (Name & Date): Site photos included in wetland delineation
- ☐ Previous determination(s). File no. and date of response letter:

- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Wisconsin Historic Aerial Imagery Finder, aerial photos from 1937

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A