

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): July 15, 2015

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Continental 315 Fund development, 2014-04065-MHK (Wetlands 3-9)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Kenosha** City: **Kenosha**

Center coordinates of site (lat/long in degree decimal format): Lat. **42.57169° N**, Long. **-87.96306° W**.

Universal Transverse Mercator: **16**

Name of nearest waterbody: **unnamed tributary to Root River**

Name of watershed or Hydrologic Unit Code (HUC): **Upper Mississippi Region (07120004)**

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: **May to July 2015**

Field Determination. Date(s): **May 6, 2015**

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.

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

Other: (explain, if not covered above): **Wetland 3 (0.03 acre), Wetland 4 (0.10 acre), Wetland 5 (0.01 acre), Wetland 6 (0.04 acre), Wetland 7 (0.02 acre), Wetland 8 (0.09 acre), and Wetland 9 (0.02 acre) are aquatic resources that were created in upland incidental to construction activities.**

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: **Hey and Associates, Inc.**

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:

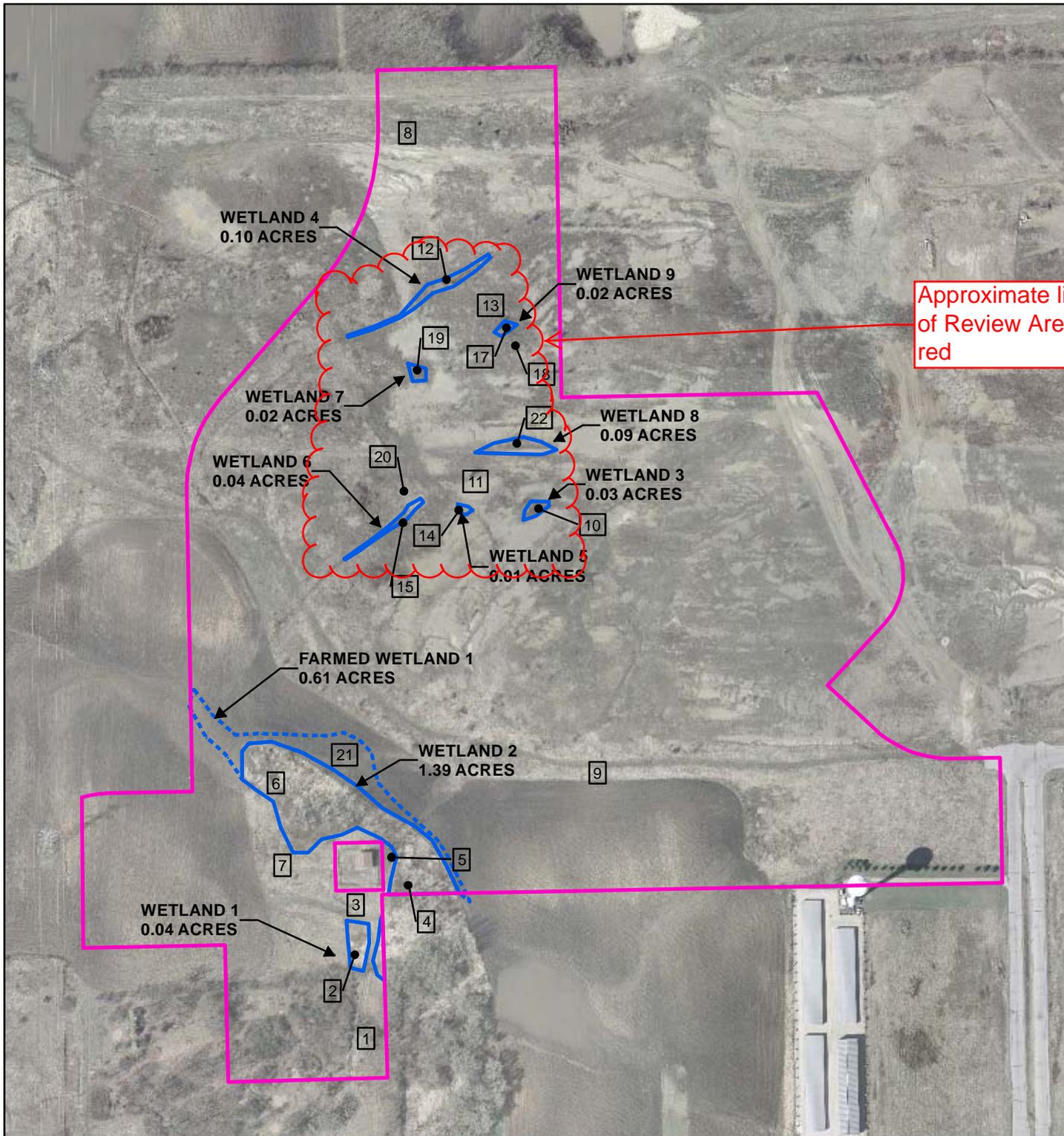
Corps navigable waters' study:

- 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 Quad WI-Pleasant Prairie
 - 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): 1985, 1990, 1995, 2005, 2010, and 2014; FSA slides 1998-2008
- Hey & Associates delineation report
 or Other (Name & Date):
- Previous determination(s). File no. and date of response letter: 2004-03209-DJP letter dated February 17, 2010, April 6, 2006, April 9, 2004
 - Applicable/supporting case law:
 - Applicable/supporting scientific literature:
 - Other information (please specify): Corps site visit May 5, 2015

B. ADDITIONAL COMMENTS TO SUPPORT JD: The review area contains nine aquatic resources. The unnamed tributary to the Root River, Wetland 1, and the Wetland 2/Farmed Wetland 1 are not discussed in this JD. Wetland 3 through Wetland 9 are the subject of this JD.

Wetland 3 through Wetland 9 can be generally characterized as water-filled depressions void of top soil with some areas of hydrophytic vegetation. The review area was previously examined under 2004-03209-DJP in April 2004 and February 2010. In 2004, the Corps determined land clearing activities between 1985 and 1990 had taken place which resulted in the removal of 2 to 3 feet of top soil and subsequent grading of the site. Three wetlands had been identified in the general vicinity of Wetland 3 through 9 and were determined to be non-jurisdictional. In 2006, a permit application was submitted to fill these non-jurisdictional aquatic resources. In February 2010, the wetland delineation was updated which confirmed that the three aquatic resources identified in 2004 were no longer present (as they had been filled). The wetland delineator stated that recent activities include using the site as a staging area for state transportation projects.

The preamble for 33 CFR 328 published in November 13, 1986 states that "waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of WOUS" are generally not considered to be waters of the U.S. Wetland 3 through Wetland 9 have developed in an area that was upland (as was delineated in 2010) and is the result of grading and construction activities and is still considered an active site. A new delineation was completed in 2014 in order for additional development to occur at the site. Wetland 3 through Wetland 9 are therefore not considered a WOUS and are not jurisdictional under Section 404 CWA.



Approximate limits of Review Area in red

Scale:



Project Number: 14-0316

Prepared by:

Orientation:



Latest Revision: 7/8/2015

Legend:

- x Data Point
- Surveyed Wetland Boundary
- Surveyed Farmed Wetland Boundary
- Site Boundary

Project Name:

Continental 315 Fund - Kenosha

Prepared for:

Continental Properties Company, Inc.

Aerial Date:

2010

Exhibit Title:

Wetland Boundary

Exhibit:

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