

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): 7 February 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2016-03639-JMB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

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

Center coordinates of site (lat/long in degree decimal format): Lat. **42.55762° N**, Long. **-89.91494° W**.

Universal Transverse Mercator:

Name of nearest waterbody: **Unnamed stream**

Name of watershed or Hydrologic Unit Code (HUC): **07120004 (8-digit HUC)**

☒ 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: **31 January 2019**

☐ 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 4 wetlands (A, B, C, and I) totaling approximately 0.24 acres in size. Wetlands B (0.02 acres) and C (0.06 acres) have been determined to be isolated. This Jurisdictional Determination form is for Wetland A (approximately 0.15 acres) and Wetland I (approximately 0.01 acres) only. Wetlands A and I were determined to be stormwater conveyance features that were constructed in uplands sometime between 1970 and 1980, coinciding with construction of an adjacent industrial facility. Wetlands A and I formed on the bottom of man-made ditches and are not waters of the U.S. This was confirmed by reviewing aerial photography dated 1937, 1970, 1980, 2015, WWI, and NRCS web soil survey data. Wetlands A and I appear to have been constructed to convey water to the east, away from the site. Information provided within the permit application and the 2018 Wetland Delineation Report indicates that the subject ditches do not have a relatively permanent flow of water and 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

¹ Supporting documentation is presented in Section III.F.

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 identified on the enclosed figures contains four delineated wetlands. Of the four wetlands, two (Wetland B and C) have been determined to be isolated. Wetlands A (0.15 acres) and I (0.01 acres) for which this form has been prepared formed on the bottom of man-made ditches constructed onsite. While the ditches may hold water during storm events, they do not carry relatively permanent flows of water and do not drain a water of the United States. The ditch wetlands should not be considered Waters of the United States.**

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):

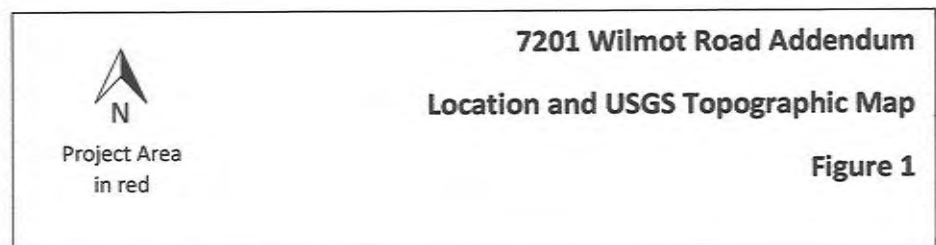
- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- ☐ Lakes/ponds: acres.
- ☐ Other non-wetland waters: acres. List type of aquatic resource: .
- ☒ Wetlands: 0.16 acres.

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:
- ☒ 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 - Pleasant Prairie
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: NRCS soils data
- ☐ 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):
or ☒ Other (Name & Date): Site photos from delineation report dated 25 June 2018
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): WDNR Exemption Letter dated 2 August 2018

B. ADDITIONAL COMMENTS TO SUPPORT JD: Per the Rapanos guidance, "ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water are not considered Waters of the United States." Wetlands A and I formed in upland constructed ditches onsite and do not have relatively permanent flows of water. Therefore, Wetlands A and I are not waters of the U.S. as detailed in Section II.B.2.





Project Area
outlined in red

Source: Kenosha County GIS
Website

7201 Wilmot Road Addendum

Contour Topography

Figure 3

