

**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):** **NOV 21 2018**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Veridian Germantown, MVP-2018-02077-ANM

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

State: **WI** County/parish/borough: **Washington** City: **Germantown**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.207739° N**, Long. **-88.094763° W**

Universal Transverse Mercator: **Zone 16 (X 411068.524484, Y 4784466.014745)**

Name of nearest waterbody: **Menomonee River**

Name of watershed or Hydrologic Unit Code (HUC): **Great Lakes Region (04040003)**

☒ 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: **October 4, 2018**

☐ 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 four intrastate wetlands (Wetlands 2, 3, 4, and 5) that are not waters of the U.S. This was confirmed by reviewing the Surface Water Data Viewer (SWDV), Washington County topographic map, the 2018 Evergreen Consultants LLC wetland delineation report, and aerial photographs from 1985, 1995, 2000, 2005, 2015, 2017, and 2018. The wetlands are located in an area that was actively farmed until sometime between 1995 and 2000, when the farmstead was removed and Preserve Parkway was constructed. A rock lined ditch approximately 140 feet north of Wetland 4 was also constructed during that time. Wetlands 3, 4, and 5 are described as depressions in the delineation report. A drain tile system once connected Wetland 2 to Wetlands 4 and 5, but the tile is broken and has collapsed within Wetland 2. The collapsed tile outlet is located within Wetland 4, but no other inlets or outlets to Wetlands 2, 3, 4, and 5 are visible in any of the aerial photos reviewed from 1985-2018. The nearest waterbody is an unnamed tributary of the Menomonee River located approximately 2,850 feet away.**

**Wetlands 2, 3, 4, and 5 are isolated with no surface or shallow surface connection to jurisdictional waters. They are not bordering, neighboring or contiguous with another water of the U.S. and are not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding land use is dominated by residential development. The disturbance of surrounding land uses precludes an ecological connection to a WOUS. These wetlands 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 Corps has determined that Wetlands 2, 3, 4, and 5 are not regulated by the Corps under Section 404 of the Clean Water Act.**

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

### **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):

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 2 (0.07 acre), Wetland 3 (0.10 acre), Wetland 4 (0.09 acre), Wetland 5 (0.04 acre)  
Total is 0.29 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: 2018 Evergreen Consultants LLC  
Wetland Delineation Report
- ☒ 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 WI-Menomonee Falls
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): SWDV
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 1985, 1995, 2000, 2005, 2015, 2017 Washington County aerials  
or ☒ Other (Name & Date): Ground level photos from Google Earth and 2018 delineation report
- ☒ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:

- ☐ Applicable/supporting scientific literature:  
☒ Other information (please specify): Washington County topographic map

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