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): 8-7-2007

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:MVP 2007-3184-LMK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Wisconsin County/parish/borough: Brown City:
Center coordinates of site (lat/long in degree decimal format): Lat. 44.4494239123076° **N**, Long. -88.0995680351755° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Ashwaubenon Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River
Name of watershed or Hydrologic Unit Code (HUC): Lower Fox. Wisconsin
☒ 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: 6-21-07
☒ Field Determination. Date(s): 7-13-2006

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. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   ☐ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   ☒ Non-RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   ☐ Impoundments of jurisdictional waters
   ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 1000 linear feet: 2 width (ft) and/or acres.
   Wetlands: 0.4 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Established by OHWM.**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: .

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 113 **square miles**
Drainage area: 70 **acres**
Average annual rainfall: 28 inches
Average annual snowfall: 41.7 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **1** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **2-5** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW[5]: The unnamed intermittent stream flows into Ashwaubenon Creek, which flows into the Fox River, a TNW.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: 1.

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
Average width: 3 feet
Average depth: 1.5 feet
Average side slopes: **Vertical (1:1 or less).**

Primary tributary substrate composition (check all that apply):

☒ Silts	☒ Sands	☐ Concrete
☒ Cobbles	☐ Gravel	☐ Muck
☐ Bedrock	☐ Vegetation. Type/% cover:	
☐ Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Flashy conditions cause slooughing banks, but existing wooded root system is present to hold banks in place.
Presence of run/riffle/pool complexes. Explain: unknown.
Tributary geometry: **Meandering**
Tributary gradient (approximate average slope): 8 %

(c) Flow:
Tributary provides for: **Intermittent but not seasonal flow**
Estimate average number of flow events in review area/year: **11-20**
Describe flow regime: Tributary is fed by ground water seepages and also by storm events. Flow occurs when it rains, which can occur possibly 20 or more days in the summer. There is enough flow to create a defined bed and bank. Flow volume depends on the amount of rain per storm event and also the ground water recharge rate.
Other information on duration and volume: .

Surface flow is: **Discrete and confined**. Characteristics: A bed and bank are present throughout most of the reach.

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):

☒ clear, natural line impressed on the bank	☐ the presence of litter and debris
☐ changes in the character of soil	☒ destruction of terrestrial vegetation
☒ shelving	☐ the presence of wrack line
☐ vegetation matted down, bent, or absent	☐ sediment sorting
☐ leaf litter disturbed or washed away	☒ scour
☐ sediment deposition	☐ multiple observed or predicted flow events
☐ water staining	☒ abrupt change in plant community
☐ other (list):	

☒ Discontinuous OHWM.[7] Explain:As one travels upstream from the project area with the relevant reach, the bed and bank narrows and become discreet as they grade into increased elevation and support wetland vegetation.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:	☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects	☐ survey to available datum;
☐ fine shell or debris deposits (foreshore)	☐ physical markings;
☐ physical markings/characteristics	☐ vegetation lines/changes in vegetation types.
☐ tidal gauges	
☐ other (list):	

(iii) Chemical Characteristics:

[6]A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7]Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Generally clear, but can become cloudy with the deposition of silt which occurs in heavy storm events that inundate the floodplain.

Identify specific pollutants, if known: silt.

(iv) Biological Characteristics. Channel supports (check all that apply):

☒ Riparian corridor. Characteristics (type, average width): In addition to upland hardwoods and meadow growing in a ravine, the corridor contains narrow abutting wet-meadow, shrub-scrub and wooded wetlands approx. 30 feet wide.

☒ Wetland fringe. Characteristics: narrow abutting wet-meadow, shrub-scrub and wooded wetlands approx. 30 feet wide.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: There is the potential for northern pike or other game fish and minnows to swim into the reach for spawning.

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: Floodplain forests support small mammals, amphibians, snakes, song sparrows, cardinals and a variety of plant life that houses insects associated with the aquatic environment Larger mammals such as deer and raccoon also use the area.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size:0.007 acres

Wetland type. Explain:The project site contains a Palustrine; forested; broad-leaved deciduous wetland with floodplain forest plant community.

Wetland quality. Explain:medium quality for floral diversity, wildlife habitat, flood/stormwater attenuation, water quality protection functions, and fishery habitat; low quality for groundwater and aesthetics/recreation/education functions.

Project wetlands cross or serve as state boundaries. No. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: Indicators such as flow lines on vegetation indicate that flow in the wetland occurs only during flooded conditions.

Surface flow is**: Overland sheetflow**

Characteristics: The wetland occasionally floods and floodwaters flow via the non-RPW tributary toward Ashwaubenon Creek.

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☒ Directly abutting

☐ Not directly abutting

☐ Discrete wetland hydrologic connection. Explain: .

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **2-5** river miles from TNW.

Project waters are **2-5** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters.**

Estimate approximate location of wetland as within the **5 - 10-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetland is usually a saturated soil condition and therefore has no color to observe except when it is in a flooded state. Then, the water appears to be clear to brown depending on the amount of silt dislodged in the storm event . Storm water from upstream development is outlet (after being treated in a stormwater pond) into the ravine area and the untrapped sediment can flow into the wetland during storm events.

Identify specific pollutants, if known: silts.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width):30 feet wide wooded floodplain .

☒ Vegetation type/percent cover. Explain: Floodplain forest - herbaceous plants and trees including sedges, asters, avens, Kentucky bluegrass, honey locust, american elm, and silky dogwood,100% cover.

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings:Floodplain forests support small mammals, amphibians, snakes, song sparrows, cardinals and a variety of plant life that houses insects associated with the aquatic environment. Larger mammals such as deer and raccoon also use the area.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **3**

Approximately (0.4) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
W1 Y	0.104		
W2 Y	0.21		
W3 Y (project/This JD)	0.007		

Summarize overall biological, chemical and physical functions being performed: The wetlands along the relevant reach function cumulatively to provide medium quality value for physical functions of floral diversity and wildlife habitat because the wetlands provide wet-meadow, shrub-carr and floodplain forest vegetative structure and diversity. Flood/Stormwater attenuation and soil stability is medium value due to the physical nature of the interconnected root system formed by the vegetation along the reach. This root system is critical in maintaining soil stability because the soils are fine silts and clays on relatively steep ravine-type slopes and are highly erodible. Extensive land clearing for development is occuring upslope adding additional strain on soil stability and flood attenuation. Therefore, the cumulative value of these small wetlands along the relative reach is very important. Chemical and biological processes take place in and between the soil and vegetation to filter sediments and remove contaminants and cycle nutrients such as nitrogen and phosphorous in order to protect water quality. Phosphorus is listed on the 303(d) list for the segment of the Fox River (a TNW) in which the non-RPW flows via Ashwaubenon Creek. It is a major contributor to high levels of algae growth. Wetlands along the relative reach in combination with other tributary wetlands are important in recycling phosphorus and keeping it out of the Fox River and beyond. Cumulatively, the wetlands along the reach are valued as low quality for groundwater and aesthetics/recreation/education functions. The wetlands along the reach have little effect on ground water due to their small size and physical nature of silt and clay soil particles. The wetlands are situated in a ravine-type topographical landscape position and offer little aesthetic/recreation/and educational functions and therefore, are considered low value for these functions.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: The presence of a significant nexus is evidenced by the existing capacity to carry pollutants or flood waters from the area of relevant reach (the non-RPW and adjacent wetlands to Ashwaubenon Creek) to TNW's via Ashwaubenon Creek, a perennial stream. The abutting wetlands reduce the amount of pollutants and slow the flow rate of flood waters reaching the TNW due to their nutrient trapping and flood attenuation properties. The project wetlands are abutting the non-RPW. The wetland soils in combination with the vegetative root system, trap nutrients from upstream development and farming practices and thus contribute to water quality protection in the TNW. The wetlands and the non-RPW provide a diversity of vegetation that aids in biological activity to break down plant material (detritus) which serves as food sources and shelter for amphibians, and herptiles. A floodplain forest, which includes a portion of the non-RPW tributary and project site wetland (but not

the other two known wetlands further upstream) extends to Ashwaubenon Creek, and provides browse and shelter for small mammals such as raccoons, fox, skunks, squirrels, and deer. It is unknown whether the relevant reach area supports fish or crustaceans, but due to the stream bed frequently becoming dry, it is unlikely. Habitat in the relevant reach is not likely to directly affect fish in the TNW, but likely plays a part in nutrient cyling, which can indirectly protect fish habitat in the TNW. Neither the non-RPW nor Ashwaubenon Creek are on the 303 (d) (impared waters) list. However, Fox River, (the TNW) is on the 303 (d) list for phosphorus. As mentioned above, phosphorus is a major contributor to high levels of algae growth. Phosphorus levels can affect levels of dissolved oxygen, which in turn affect fish. Wetlands along the relevant reach in combination with other tributary wetlands are important in recycling phosphorus and keeping it out of the Fox River and beyond. No known endangered or threatened species exist in the relevant reach, nor is it likely activities in the relevant reach would affect any potentially endangered species in the TNW's. The non-RPW, although intermittent, flows on a relatively frequent basis, often enough and strong enough to transport pollutants directly into the TNW via an unimpeded connection to Ashwaubenon Creek. Therefore, biological, chemical and physical functions already described above in Section III B. are evidence that this wetland has a significant nexus to the TNW. The project wetland is 0.007-acre and abuts the intermittent stream..

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   ☐ TNWs: linear feet width (ft), Or, acres.
   ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   ☐ Tributary waters: linear feet width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   ☒ Tributary waters: **1000** linear feet **3** width (ft).
   ☐ Other non-wetland waters: acres.
   Identify type(s) of waters: **.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **.**

   ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

[8] See Footnote # 3.

☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

☒ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: **0.4**acres.

7. Impoundments of jurisdictional waters.[9]

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

☐ Demonstrate that impoundment was created from "waters of the U.S.," or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: **.**
☐ Wetlands: acres.

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: 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).

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[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ 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:2006-2851-LMK and 2007-3184-LMK.
☒ 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:1:50,000 De Pere quadrangle.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Brown County Soil Survey (GIS).
☐ 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 Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date):2005 Brown County NRCS air photo and 2005 Brown County Land Information Office.
  or ☒ Other (Name & Date):Site photos provided by consultants.
☒ Previous determination(s). File no. and date of response letter:2006-2851-LMK October 18, 2006 for upstream wetlands 1 and 2 in the relavant reach.
☒ Applicable/supporting case law:Rapanos.
☐ Applicable/supporting scientific literature: .
☒ Other information (please specify):Ashwaubenon Community profile - rainfall and snowfall data.
  http://dnr.wi.gov/org/gmu/sidebar/watersheds.html - watershed area

B. ADDITIONAL COMMENTS TO SUPPORT JD: A permit has already been issued (2006-2851-LMK) for filling a portion of the two wetlands that are upstream from this new project request. At the time of site visit on that project, there was water flowing in the intermittent stream. They may actually be relatively permanent waters. However, I was not there over a three month period and cannot confirm that. The topographical map indicates a drainage area based on the shape of the contour lines, although it does not show a blue line. .