

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 20, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2004-160861-MWM Susan Lane Quarry Site, Wetland A-J.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

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

Center coordinates of site (lat/long in degree decimal format): Lat. 43.314519° N, Long. -87.992351° W.

Universal Transverse Mercator: 16

Name of nearest waterbody: Cedar Creek (WBIC 21300)

Name of watershed or Hydrologic Unit Code (HUC): 0404000303

- ☒ 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 1, 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 10 aquatic resource (labeled as Wetland A-J on Figures) 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 Cedar Creek located approximately half a mile to the east. 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. The surrounding land use consists residential development and scattered agriculture fields. Due to their sizes and position on the landscape, Wetland A-J provide limited habitat functions to WOUS and surrounding areas and provides no ecological connection.**
The boundary of Wetland B, E, F, G, I and J are contained within the site and completely surrounded by upland. Wetland E is on the southern edge of an old quarry (Wetland J), the quarry is over 50 feet lower than the wetland. Wetland J is associated with the old quarry which has retained water and become an aquatic resource. There are no inlet or outlets within the quarry.
Wetland A is located in the northwest corner of the site and continues past the review area to the northwest into a forested area. The forested area continues to the west of the review area approximately 700 feet. Wisconsin Wetland Indicators on Surface Water Data show there is a transition to a non-hydric soil outside of the forested area. In most years, including 1941, 1950, 1963, 1970, 1980, 1990, 2007, 2015, and 2020, aerial photos do not show wetness signatures outside of the forested area. To the west of the forested area, a linear tree line continues, in non-hydric soil, to Washington Avenue and under through a culvert. Residential homes are on the west side of Washington Avenue and a surface water connection to the nearest feature, an unnamed tributary to Cedar Creek, cannot be traced. To the north of the forested area connected to Wetland A, a linear tree line continues in non-hydric soil. Aerial photos do not show flowing water nor a bed and bank within the linear tree line. Additionally, the topography to the north of the site

¹ Supporting documentation is presented in Section III.F.

would not create a surface water connection to the nearest feature, Cedar Creek, since there is a minor elevation decrease before the elevation returns to the same elevation as the review area.

Wetland C and D are located on the northern/northeastern boundary of the site and continue past the review area. Wetland C and D are located in topographic depressions. Wisconsin Wetland Indicators on Surface Water Data show a transition to a non-hydric soil immediately after the site boundary as the elevations increase. In most years, including 1941, 1950, 1963, 1970, 1980, 1990, 2000, 2007, 2015, 2020, aerial photos do not show wetness signatures outside of the depressions Wetland C and D are in.

Additionally, to the northeast, a gravel pit/quarry is present and has ongoing grading activities limiting a connection downstream.

Wetland H is located in the southwestern corner of the site and continues past the review area to the west and south. A manmade "L" shaped pond is located directly west past the review area, the pond was constructed between 2000 and 2007 and is approximately 28,000 square feet. The pond was constructed in upland and does not have any inlets or outlets that would connect the pond to downstream WOTUS. Wetland H abuts the west side of the entry driveway off of Susan Lane, the opposite side of the entry driveway is within the review area and no wetland indicators were identified. A culvert is present in the southeast corner of Wetland H which goes under Susan Lane directly to a manmade pond south of Susan Lane. The pond was constructed between 2015 and 2017, the pond has an outlet in the northeast corner going north under Susan Lane. The culvert is approximately 400 feet south of the southern boundary of the review area. Neither Wisconsin Wetland Indicators on Surface Water Data nor aerial photos show any hydric soil indicators or wetness signatures near the culvert under Susan Lane. A surface water connection to the nearest feature, Cedar Creek, cannot be traced.

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

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 A (1.267 acres), Wetland B (0.064 acres), Wetland C (0.196 acres), Wetland D (0.069 acres), Wetland E (0.123 acres), Wetland F (0.016 acres), Wetland G (0.098 acres), Wetland H (0.392 acres), Wetland I (0.013), and Wetland J (12.17 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 November 12, 2021 by Helianthus LLC.**
- ☒ 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:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Included in Wetland Delineation**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Ozaukee County topography map included in Wetland Delineation, SWDV Wisconsin Wetland Indicators map included in Wetland Delineation and accessed by USACE March 3, 2022.**
- ☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Historic Aerial photos from 1941, 1950, 1963, 1970, 1980, 1990, 2000, 2007, 2015, and 2020 included in the Wetland Delineation**
 or ☒ Other (Name & Date): **Site photos included in the Wetland Delineation**
- ☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A