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): February 7, 2020

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Chateau Eau Plaines development, MVP-2019-00455-MHK (W-5, W-6)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Kenosha City: Pleasant Prairie

Center coordinates of site (lat/long in degree decimal format): Lat. 42.56459° **N**, Long. -87.940922° **W**.

Universal Transverse Mercator: Zone 16 (X 422767.381154, Y 4712894.087556)

Name of nearest waterbody: Kilbourn Road Ditch

Name of watershed or Hydrologic Unit Code (HUC): 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: December 19, 2019

☒ Field Determination. Date(s): July 8, 2013

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 2 intrastate wetlands: W-5 and W-6. A July 2013 site visit and a review of the updated 2019 OTIE wetland delineation report, 2015 RA Smith National wetland delineation report, 2013 Southeastern Wisconsin Regional Planning Commission (SEWRPC) wetland delineation report, NRCS soil survey, USGS topographic map, National Hydrography Dataset, Wisconsin Wetland Inventory, Kenosha County GIS 2-foot contour map, Google Earth Street View, and aerial photos from 1937 to present indicate that these are isolated waters with no surface or shallow subsurface connection to waters of the U.S. The Kilbourn Road Ditch is the closest waterway to W-6 which is approximately 897 feet to the west and an unnamed tributary is approximately 1012 feet to the north of W-5. There are no surface inlets/outlets observed in either wetlands. These wetlands do not border, neighbor nor are contiguous with another water of the U.S. The wetlands are not separated from other WOUS by man-made dikes, barriers, or berms. W-6 is surrounded by agricultural fields and W-5 is surrounded by agricultural field, residential development and access road. The disturbance of surrounding land uses precludes an ecological connection to a WOUS.**

These aquatic resources 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 W-5 and W-6 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

[1] Supporting documentation is presented in Section III.F.

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: W-5 is 0.17 acre and W-6 is 0.06 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: OTIE Wetland Delineation Report dated October 15, 2018 revised August 8 and September 27, 2019; RA Smith National Wetland Delineation Report dated October 27, 2015 revised December 1, 2016; SEWRPC Wetland Delineation Report dated December 10, 2013.
- ☒ 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-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 (Wisconsin DNR Surface Water Data Viewer)
- ☒ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): 1937, 1963, 1967, 1970, 1975, 1980, 1985, 1990, 1995, 2000, 2005, 2010, 2015 and FSA aerials 1981-82, 1984-2004, 2006, 2008, 2010, 2013, 2015, 2017 in delineation report; Google Earth street view

or ☒ Other (Name & Date):ground level photos in 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):Kenosha County GIS 2-foot contour map

B. ADDITIONAL COMMENTS TO SUPPORT JD: