

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): 11/21/2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-01538-CJB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI** County/parish/borough: **Ozaukee** City: **Mequon**

Center coordinates of site (lat/long in degree decimal format): Lat. **43.2136° N**, Long. **-87.9543° W**.

Universal Transverse Mercator: **16N**

Name of nearest waterbody: **Milwaukee River**

Name of watershed or Hydrologic Unit Code (HUC): **Pigeon Creek-Milwaukee River (040400030604)**

☒ 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: **10/13/2022**

☐ 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 4 wetlands, W-2 (0.02 acre), W-3 (0.12 acre), W-4 (0.15 acre), and W-5 (0.02 acre). Wetlands W-3, W-4, and W-5 are isolated wetland depressions with boundaries that transition into upland, based on review of the wetland delineation report prepared by Heartland Ecological Group Inc, and other desktop resources including Digital Elevation and Hillshade Maps, NRCS hydric soil data, Ozaukee County 1-foot contours, Wisconsin Wetland Inventory, site photos, and aerial photos. The upland area surrounding wetlands W-3, W-4, and W-5 consist of residential properties and forested upland. Digital Elevation Map and NRCS hydric soil data do not exhibit W-3, W-4, or W-5 as having observable inlets or outlets that would provide these wetlands a connection to another aquatic resource. W-3, W-4, and W-5 do not have a confined surface or shallow subsurface connection to a downstream water, based on Hillshade and Ozaukee County 1-foot contours. Aerial photos show a tree line around the outside edge of the property, however, Hillshade and Ozaukee County 1-foot contours do not show the tree line as being a ditch that would direct flow off-site. Based on historic aerial photography, no wetland signatures were observed outside the wetland boundaries. The closest tributary, unnamed to the Milwaukee River, is located approximately 0.41 miles to the northeast.**

Wetlands W-3, W-4, and W-5 do not border, are not neighboring to or contiguous with another water of the US and are not separated from another water of the US by man-made barriers, dikes or berms. Due to existing and surrounding land use (single-home residential development and forested upland) and proximity to other waters, there are no ecological connections to other wetlands or waters. 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; does 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

¹ Supporting documentation is presented in Section III.F.

interstate commerce. Therefore, the Corps has determined that Wetlands W-3, W-4, and W-5, as depicted in the wetland boundary map, are not regulated by the Corps under Section 404 of the Clean Water Act.

Based on Ozaukee County historic photos showing a lack of wetness signatures in most years, and hydric soil data showing non-hydric soils in the area of W-2, the wetland labeled W-2 is a roadside ditch that was constructed in upland sometime prior to 1941 and drains only upland. The road adjacent to W-2 was abandoned around 1995, likely as a result of a nearby residential subdivision development. Historic photos from the delineation report also show W-2 does not carry relatively permanent flow. In accordance with the 2008 Rapanos guidance and the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following to be waters of the U.S.; non-tidal drainage and irrigation ditches excavated on dry land. Further clarification is provided in the December 2, 2008 Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in *Rapanos v. U.S.* and *Carabell v. U.S.* issued jointly by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow 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

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): **See Section II.B.2 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: 0.31 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: August 2022 Delineation report from Heartland Ecological Group Inc.
- ☒ 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 Thiensville
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☒ National wetlands inventory map(s). Cite name: Ozaukee County
- ☒ 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): Historic aerial photos from delineation report, Ozaukee County historic aerial photos (1941, 1990, 1995, 2000)
 - or ☒ Other (Name & Date): Ground level site photos from delineation report
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): DEM and Hillshade Maps, Ozaukee County 1-foot contours

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A