

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): June 16, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Mills Fleet Farm Distribution Center, South Lynndale Drive, City of Appleton (Wetlands 1 and 2) / 2012-05599-JLK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Outagamie** City: **Appleton**
Center coordinates of site (lat/long in degree decimal format): Lat. **44.246832° N**, Long. **-88.450470° E**.
Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Fox River**

Name of watershed or Hydrologic Unit Code (HUC): **Northwestern Lake Michigan (04030204)**

- ☒ 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: **May 19, 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 includes two isolated wetland features which are identified as Wetland 1 (0.58 acre) and Wetland 2 (0.40 acre) on the attached figures labeled MVP-2012-05599-JLK: Figure 1 of 2 through 2 of 2. Based on a review of aerial photography, topographic maps, the 2013 wetland delineation report, and 2022 updated field data submitted by the requestor, we have determined that Wetlands 1 and 2 are isolated wetland depressions with boundaries that transition into uplands. As depicted in current and historical aerial imagery, the wetland signatures observed within the delineated wetland features do not extend outside of these wetlands and they are surrounded entirely by uplands involving commercial development to the southwest, northeast, and east, railroad tracks to the south/southeast, and a grassy upland field with a forested area beyond to the north. The review area also includes a roadway associated with the commercial development that was constructed sometime between 2000 and 2005 that bisects the two wetlands. In addition, the majority of the review area has minor changes in elevation, as shown in the USGS topo maps.**

Generally, the Corps considers wetland delineations to be outdated once they exceed 5 years old. The wetland delineation submitted to the Corps was completed in 2013. Consequently, the Corps requested updated field data, and the AJD requestor submitted the requested information on May 19th, 2022 demonstrating the wetland areas previously delineated in 2013 have remained relatively the same. Wetlands 1 and 2 do not abut and are not separated from any waters of the U.S. by natural or man-made features. The nearest mapped aquatic resource is the Fox River located approximately 0.29 mile to the south/southeast of the review area. A review of historical aerial photos indicates the review area and most surrounding areas with the exception of the railroad track to the southeast were in agricultural production since before 1938. Then in the 1970's, commercial development moved in southwest and northeast of the

¹ Supporting documentation is presented in Section III.F.

review area. In the following years, agricultural production in the area diminished while various types of development increased. Uplands involving a railroad track, residential development, and paved roadways separate these wetlands from the Fox River to the south/southeast. Based on this information, Wetlands 1 and 2 are ecologically separated from all other aquatic resources.

The above mentioned 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: Wetlands 1 and 2: Totaling 1.00 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: Widseth Smith Nolting, Mills Fleet Farm Distribution Center, 2013 and 2022 Updated Field Data
- ☒ 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:

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B. ADDITIONAL COMMENTS TO SUPPORT JD: