

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): 12/23/2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-01558-TKO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI** County/parish/borough: **Ozaukee** City: **Port Washington**
Center coordinates of site (lat/long in degree decimal format): Lat. **43.4211° N**, Long. **-87.9069° E**.
Universal Transverse Mercator: **16**

Name of nearest waterbody: **Unnamed tributary to Sauk Creek**

Name of watershed or Hydrologic Unit Code (HUC): **04030101**

- ☒ 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: **11/23/2022**
☐ 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 wetlands, labeled Wetland 2 (0.123 ac) and Wetland 3 (0.081 ac), totaling 0.204 acres. These wetlands are isolated based on a review of the June 2022 Evergreen Consultants, LLC delineation report and other materials including USGS soils, county contour map, National and Wisconsin Wetland Inventory, WI DEM and Hillshade layers, Google Earth aerial photos, ground level photos, and historic aerial imagery. Wetland boundaries are evident by repeated crop stress based off years of historical imagery. NRCS soil data shows both wetlands sitting within an area mapped as predominantly non-hydric. Based on the delineation report and topographic contours, each of these wetlands are located in depressional features, surrounded by upland (confirmed by sample points and review of imagery showing a lack of wet signatures), and do not have any inlets or outlets. There are no other surface or shallow subsurface connections to downstream waters, confirmed by reviewing recent and historic aerial photos.**

Wetland 2 is a wet meadow depression located in the northeastern quarter of the review area in an agricultural field. Its’ boundaries transition into uplands with elevations sloping up on the north, south, east, and west. This is evident while viewing the WI hillshade layer, county topographic contours, and is supported by a sample point and ground level photos from the delineation report.

Wetland 3 is a wet meadow located within the field just northeast of W-2. It sits in a slight concave depression with elevation sloping up on the north, south, east, and west boundaries. This is evident while viewing the WI hillshade layer, county topographic contours, and is supported by a sample point and ground level photos from the delineation report. The delineation report states the wetland is impounded by fill material, noting gravel up to 24 inches of soil depth in sample points outside the delineated boundary.

¹ Supporting documentation is presented in Section III.F.

There are no discrete surface or subsurface connections from the above-mentioned wetlands to any other waters. The nearest downstream tributary is an unnamed tributary to Sauk Creek, which is located about 2,000 feet to the southeast.

The wetlands do not border, are not neighboring to or contiguous with another water of the US. They are not separated from another water of the US by man-made barriers, dikes or berms. Due to existing and surrounding land use (agricultural use) and proximity to other waters, there are no ecological connections to other wetlands or waters. 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 Wetlands 2 and 3 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: 0.204 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: June 2022 Evergreen Consultants, LLC Delineation Report
- ☒ 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: 1:24,000 Ozaukee County Quad
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Ozaukee County
☒ National wetlands inventory map(s). Cite name: Surface Waters and Wetlands
☒ State/Local wetland inventory map(s): WI Wetland Inventory
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth 2000-2022
 Ozaukee County Aerials (1941, 50, 63, 70, 80, 90, 95, and 2000, 05, 07, 10, 15, 20)
- or ☒ Other (Name & Date): Applicant provided ground level June 2022
- ☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting case law:
☐ Applicable/supporting scientific literature:
☒ Other information (please specify): WI DNR DEM and Hillshade viewed on NRV
 Ozaukee County Mapping, 1ft contours

B. ADDITIONAL COMMENTS TO SUPPORT JD: