

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): November 22, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 3907 Pierce Lane Property, Town of Algoma (Wetlands W2, W4, W7, and W8) / 2011-02953-JLK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Winnebago** City: **Algoma**
Center coordinates of site (lat/long in degree decimal format): Lat. **44.03609° N**, Long. **-88.63295° E**.
Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Unnamed Tributary**

Name of watershed or Hydrologic Unit Code (HUC): **Lake Butte des Morts (04030201)**

- ☒ 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: **October 18, 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: **Based on a review of aerial photography, topographic maps, and the wetland delineation report submitted by the requestor, we have determined that Wetlands W2 and W4 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 the wetland boundaries and are surrounded entirely by uplands. Wetland W2 includes a grassy fallow field in all directions with an unnamed tributary and agricultural field further north/west and a forested area further east. The areas surrounding W4 include a grassy field and residential development to the north, a forested area to the west, an agricultural field to the south, and Braeburn Street to the east. In addition, there is no elevation change within the review areas, as shown with lidar data provided by the National Regulatory Viewer and USGS topo maps, suggesting water collects and remains within the wetland boundaries.**

Wetlands W2 and W4 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 an unnamed tributary located approximately 0.01 mile to the northwest of Wetland W4. A review of historical aerial photos indicates the review areas and most surrounding areas were in agricultural production since before 1980 with additional residential development moving in to the east of the review areas around 2006. Based on this information, Wetlands W2 and W4 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

¹ Supporting documentation is presented in Section III.F.

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.

The review area also includes two aquatic resources (labeled as Wetlands W7 and W8 on 2011-02953-JLK Figure 2 of 2) that are ditches constructed in uplands. A review of historical aerial photos demonstrates the ditches were constructed along with Rasmussen Road sometime before 2006. Aerial photos taken prior to 2006 show a lack of wet signatures within the boundaries of W7 and W8 suggesting no hydrology was present. Additionally, site photos provided in the delineation report illustrate an obvious topographic increase on either sides of the ditches, indicating the ditches drain only uplands. The Surface Water Data Viewer shows the unnamed tributary previously mentioned flows through Wetland W7 however, further review of aerial photos shows this tributary is located approximately 0.04 mile to the southeast where it has been previously rerouted and channelized towards the southwest further away from W7. This indicates the tributary is outside of all AJD review areas. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following waters to be waters of the United States; non-tidal drainage 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. Based on this information, Wetlands W7 and W8 are non-WOUS which is not subject to Corps jurisdiction under Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors 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): **The review area includes two ditches (totaling approximately 0.04 acre) constructed in uplands that drain only uplands and do not convey a relatively permanent flow. These features are described in 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: Wetlands W2 and W4: Totaling 0.05 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: **Davel Engineering & Environmental, 2022 Wetland Delineation**
- ☒ 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: **Winnebago County**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ 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): **2022 Wetland Delineaton Report**
or ☒ Other (Name & Date): **Ground level photos**
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): **National Regulatory Viewer-Lidar**

B. ADDITIONAL COMMENTS TO SUPPORT JD: