

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): March 16, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-02283-TKO

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Waukesha City: Pewaukee

Center coordinates of site (lat/long in degree decimal format): Lat. 43.0545° N, Long. -88.3294° W.

Universal Transverse Mercator: Zone 16N

Name of nearest waterbody: Unnamed Tributary to Pewaukee Lake

Name of watershed or Hydrologic Unit Code (HUC): 071200060103 Pewaukee River

☒ 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: February 15, 2023

☐ 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 two wetlands, labeled Wetland 3 (0.29 acre) and 4 (0.33 acre) totaling 0.62 acres. These wetlands are isolated, per review of the December 2022 Heartland Ecological Group delineation report and other desktop resources, including NRCS hydric soils data, USGS topography, WI Wetland Inventory, historic aerial photos, ground level site photos, Digital Elevation Modeling (DEM), and hillshade. W-3 sits in a slight depression with boundaries transitioning to delineated uplands on the north, south, east, and west based on review of DEM, hillshade, and contour layers. Slightly elevated tree lines bound W-3 on the south and east, severing any surface connectivity. There are no ditches associated with these tree lines. From the tree line, topography gradually slopes down to the east, though no defined flow path exists exiting the wetland. This is supported by an upland sample point which sits in an area mapped as containing entirely non-hydric soils downslope to the east. Based on review of contours, DEM and hillshade layers, W-4 sits on a north facing slope described, in the delineation report, as having a seasonally high water table. Boundaries slope up to the south and east, transitioning to uplands. Topography gradually slopes down to the north and west of the wetland, though no defined flow path exists exiting the wetland. The wetland sits within, and is surrounded by, soils mapped as non-hydric, supported by an upland sample point. Wetland borders are supported by historic aerials showing repeated crop stress and lack of wet signature outside of the delineated wetland boundaries. Based on recent aerial photographs, neither of the wetlands contain any inlets/outlets, or culverts, and they do not have a surface or shallow subsurface connection to any downstream waters. The nearest downstream water to any of the wetlands is an unnamed tributary to Pewaukee Lake, approximately 0.15 miles to the west.**

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 (residential development and upland agricultural field) and proximity to other

¹ Supporting documentation is presented in Section III.F.

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 3 and 4 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: 0.62 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: Wetland delineation report by Heartland Ecological Group , December 2022
- ☐ 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 Waukesha Quadrangles
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Waukesha County
- ☒ National wetlands inventory map(s). Cite name: National Wetland Inventory

- ☒ 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): Waukesha County GIS (1941, 50, 70, 80, 90, 2000, 05, 10, 13, 17, 20, and 22), Google Earth (2000-23)
- 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): Waukesha County 1-foot contours, WI DNR Digital Elevation Model and Hillshade accessed from National Regulatory Viewer

B. ADDITIONAL COMMENTS TO SUPPORT JD: