

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): January 22, 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Uline - Kenosha, MVP-2015-02585-DJM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin

County/parish/borough: Kenosha County

City: Kenosha

Center coordinates of site (lat/long in degree decimal format): Lat. 42.61350° N, Long. -87.95979° W.

Universal Transverse Mercator: 16

Name of nearest waterbody: Root River

Name of watershed or Hydrologic Unit Code (HUC): 07120004

☒ 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: December 31, 2018

☐ 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:

A delineation report was submitted to the Corps documenting the presence of aquatic resources on a 247-acre property located in Kenosha County, WI. An office review of the delineation report for the subject site was conducted on December 31, 2018 to review the potentially jurisdictional aquatic resources: Wetland A (0.99-acre), Wetland C (0.49-acre), Wetland D (0.14-acre), Wetland E (0.09-acre), and Wetland F (0.18-acre) as requested by Todd Mueller (Pinnacle Engineering Group), acting on behalf of the property owner. Although, Wetland G (2.69-acres), Wetland H (0.23-acre), and Wetland I (0.13-acre) were included as part of the delineation report, the applicant has withdrawn their request for an AJD for those wetlands. The Review Area for this Jurisdictional Determination is limited to the boundaries of Wetland A and Wetlands C-F within the 2018 project area only. No JD is requested for the remainder of the project area; nor is a JD requested for the 2015 project area shown on the figure (an AJD was completed in October 2015 for Wetlands K, N, R, S, T and U which were determined to be non-jurisdictional isolated wetlands).

A thorough desktop review was conducted to identify any culverts and/or other hydrologic connections within and adjacent to project site, including both sides of State Trunk Highway 142 and the frontage road paralleling Interstate 94. The closest surface water found was an intermittent stream flowing north and east off the site toward Interstate 94 as identified on the USGS topo map. However, Wetlands A and C-F are located in small depressional areas that do not have a surface or shallow subsurface connection to that intermittent stream. Based upon information gathered as a result of the desktop review and the wetland delineation report, Corps staff determined that the five wetlands (Wetlands A and C-F) are wholly surrounded by uplands and lack an unbroken surface or shallow sub-surface connection to a water of the United States. Wetlands A and C-F have no physical separations by man-made dikes or barriers, natural river berms, beach dunes, and the like from jurisdictional waters. The surrounding land use comprised of

¹ Supporting documentation is presented in Section III.F.

agricultural, commercial, and transportation uses do not provide cover or habitat between the wetlands and other aquatic resources. These wetlands do not have an ecological connection to a WOUS due to the lack of ecological resources and distance between the wetlands and the nearest tributary.

The waterbodies described above, Wetland A and Wetlands C-F do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. Wetlands A and C-F have been determined to be non-jurisdictional under the Clean Water Act because the wetlands lack connections and/or relationships sufficient to serve as a basis for jurisdiction.

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: 1.89 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: July 2016 Wetland Delineation Report prepared by Dave Meyer of Wetland & Waterway Consulting.
- ☒ 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, Pleasant Prairie

- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Kenosha County Web Soil Survey
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth Aerial Maps 13-APR-2000, 28-FEB-2002, 29-APR-2005, 3-AUG-2005, 20-AUG-2005, 13-SEP-2006, 10-OCT-2007, 8-SEP-2008, 27-MAY-2010, 8-NOV-2010, 2-APR-2013, 2-JUN-2015, 26-JUN-2016, 6-APR-2017, and 6-JUL-2018
- or ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Wisconsin Wetland Inventory map

B. ADDITIONAL COMMENTS TO SUPPORT JD: