

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 14, 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-02187-MWM W271 S 3016
Merrill Hills Road, Wetland D.

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Waukesha City: Waukesha

Center coordinates of site (lat/long in degree decimal format): Lat. 42.9919° N, Long. -88.2848° W.

Universal Transverse Mercator: 16

Name of nearest waterbody: Pebble Creek (WBIC 771300)

Name of watershed or Hydrologic Unit Code (HUC): 0712000601

- ☒ 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 7, 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 contains one aquatic resource (labeled as Wetland D on figure) that is an isolated wetland with no surface or shallow subsurface connection to any waters of the U.S. including the nearest aquatic resource which is Pebble Creek located approximately 700 feet to the east.**

Wetland D, 4,350 square feet, is located in the center of a farm field. The wetland is completely surrounded by upland, within a minor depression. Overall, the elevation onsite slopes to the northeast. Lidar images accessed on the National Regulatory Viewer (NRV) do not show a confined path from Wetland D that could offer a surface water connection. Aerial photos from Waukesha County do not show evidence of Wetland D until 2007. No wetness signatures in 2013, 2017, nor 2020 continue past the wetland boundary.

This wetland does not border, neighbor, nor is contiguous with another water of the U.S. It is not separated from other waters of the United States (WOUS) by man-made dikes, barriers, or berms. The surrounding land use consists of residential and commercial development. Due to its size and position on the landscape, Wetland D provides limited habitat functions to WOUS and surrounding areas and provides no ecological connection.

This aquatic resource does not support a link to interstate foreign commerce; is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined this aquatic feature is not regulated by the Corps under Section 404 of the Clean Water Act.

¹ Supporting documentation is presented in Section III.F.

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: **Wetland D: 0.1** 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 completed by Thompson & Associates on April 24 and 28, 2020.**
- ☒ 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: **Topographic map included in the referenced report.**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **NRCS Soil Survey included in the referenced report.**
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): **Waukesha County GIS contour map and Wisconsin Wetland Inventory layer on Surface Water Data Viewer (SWDV) map included in the referenced report.**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Aerial photos from 1963, 1990, 2010, and 2015 included in the referenced report. Aerial photos from 1941, 1950, 1963, 1970, 1980, 1990, 1995, 2000, 2005, 2007, 2008, 2010, 2013, 2015, 2017, and 2020 access by the Corps on December 13, 2022.**

- or ☒ Other (Name & Date): Ground level photos included in the referenced report.
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Wisconsin DNR Hillshade and DEM layers accessed on National Regulatory Viewer (NRV) on December 13, 2022.

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A