

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): May 08, 2020

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2020-00594-AJK New Berlin Westminster Phase 2

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Waukesha City: New Berlin

Center coordinates of site (lat/long in degree decimal format): Lat. 42.93834° N, Long. -88.11961° W.

Universal Transverse Mercator: UTM Zone 16N

Name of nearest waterbody: Unnamed trib to Root River

Name of watershed or Hydrologic Unit Code (HUC): Pike River-Root River (04040002)

☒ 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: April 15, 2020

☐ 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 three aquatic features- W-3 (0.06 acre), W-4 (0.01 ac), and "constructed swale" (0.06 ac). These are all isolated wetlands, per review of the March 2020 Heartland Ecological Group Wetland Delineation Report, which contained USGS topographic map, Wisconsin Wetland Inventory map, NRCS hydric soil data, aerial photography, ground level site photographs, and wetland determination sheets. The DNR Surface Water Data Viewer was also reviewed. The closest tributary to any of these wetlands is an unnamed tributary to the Root River, approximately 1,800 feet to the east.**

W-3 is a wet meadow drainage swale. It drains to the southeast into a constructed stormwater pond. It is connected to the northwest by roadside drainage ditches. These ditches were created in upland to direct localized runoff and they drain only upland. None of these inlet/outlet features connect W-3 to another water of the U.S. (WOUS), and there is no surface or shallow subsurface connection to a WOUS. For these reasons, W-3 is isolated. W-4 is an excavated wet meadow depression surrounded by an agricultural field. There are no visible inlets, outlets, or surface or shallow subsurface connections to a WOUS. The "constructed swale" is a brushy drainage swale that has formed along a constructed rock wall. There are no visible inlets or outlets, and no surface or shallow subsurface connections to a WOUS.

These 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 (commercial, residential, and agricultural development) 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

¹ Supporting documentation is presented in Section III.F.

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 W-3, W-4, and "constructed swale" 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: 0.14 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: Heartland Ecological Group Wetland Delineation Report, March 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:
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Waukesha County
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Wisconsin Wetland Inventory
- ☒ FEMA/FIRM maps: from WI DNR Surface Water Data Viewer (SWDV)
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

- ☒ Photographs: ☒ Aerial (Name & Date): NAIP aerial photographs from delineation report and Google Earth
aerials (2000-2018)
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): USGS topographic map from delineation report

B. ADDITIONAL COMMENTS TO SUPPORT JD: