

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): September 6, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 3568 Miner's Way, Town of Lawrence (Wetlands 1-2022, 2-2022, B, C, E, F, & G) / 2015-01422-JLK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Brown City: Lawrence
Center coordinates of site (lat/long in degree decimal format): Lat. 44.36600° N, Long. -88.17276° E.
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed Tributary of Ashwaubenon Creek

Name of watershed or Hydrologic Unit Code (HUC): Northwestern Lake Michigan (04030204)

- ☒ 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: July 28, 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 Wetland 1-2022 is an isolated wetland depression with boundaries that transition into uplands. As depicted in current and historical aerial imagery, the wetland signatures observed within the delineated wetland feature does not extend outside of Wetland 1-2022 which is surrounded entirely by uplands involving agricultural fields in all directions. In addition, the majority of the review area has minor changes in elevation, as shown in the USGS topo maps.**

Wetland 1-2022 does not abut and is not separated from any waters of the U.S. by natural or man-made features. The nearest mapped tributary is an unnamed tributary to Ashwaubenon Creek located approximately 0.87 mile to the northeast. A review of historical aerial photos indicates the review area and all surrounding areas were in agricultural production since before 1938. Then in 2008, Miner's Way was constructed along with commercial development to the northeast. Uplands involving agricultural fields separate this wetland from the unnamed tributary to the northeast. The delineation map also shows Wetland 1-2022 extends outside of the review area to the south, however site level and aerial photos show this wetland is immediately adjacent to uplands involving an additional agricultural field to the south just outside of the wetland boundary. Based on this information, Wetland 1-2022 is ecologically separated from all other aquatic resources.

The above mentioned 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

¹ Supporting documentation is presented in Section III.F.

industrial purposes by industries in interstate commerce. Therefore, the Corps has determined Wetland 1-2022 is not regulated by the Corps under Section 404 of the Clean Water Act.

The review area also includes five aquatic resources (labeled as Wetlands 2-2022, B, C, E, and F on 2015-01422-JLK Figure 2 of 2) that are ditches constructed in uplands. Wetlands C and F were constructed sometime before 1938 and serve as drainage ditches between property boundaries of adjacent agricultural fields. Wetland E was constructed in 2008 along with the construction of Miner's Way and a stormwater pond in the southeast corner of the review area. This ditch acts as a drainage system from the roadway into the pond. Wetland 2-2022 was constructed along the west side of Miner's Way to also act as a drainage system for the roadway while Wetland B (also constructed in 2008) acts as a drainage system for the commercial development constructed that same year northeast of the review area. The Wisconsin Surface Water Data Viewer shows there are no mapped wetlands within the review area and a review of site photos indicates these ditches drain only uplands. 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 2-2022, B, C, E, and F are non-WOUS which are not subject to Corps jurisdiction under Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors Act.

Aquatic feature Wetland G is a 1.18 acre stormwater pond that was constructed in uplands in 2008 and is not a water of the US. The Wisconsin Surface Water Data Viewer demonstrates no hydric soils within the pond footprint. The non-jurisdictional determination for this pond is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be waters of the US; artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins or rice growing.

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 five ditches (totaling approximately 0.61 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. The review area also includes a stormwater pond that is not a water of the US pursuant to the preamble to the Corps 1986 regulations (33 CFR Parts 320-330).**

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 1-2022: Totaling 0.12 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, Parcel # L-1592, 2015 & 2022 Wetland Delineations
- ☒ 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: Brown 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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: