

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): 19 JAN 2023

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-02064-CJB

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Dodge** City: **Emmet**
Center coordinates of site (lat/long in degree decimal format): Lat. **43.2182° N**, Long. **-88.7672° W**.
Universal Transverse Mercator: **16N**

Name of nearest waterbody: **Unnammed Tributary to Rock River**

Name of watershed or Hydrologic Unit Code (HUC): **Beaver Dam River (070900010909)**

- ☒ 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: **09 JAN 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 includes two aquatic features labeled W-1 (0.12 acre) and W-1A (0.06 acre). Based on the delineation report and Dodge County historic aerial photos, wetlands W-1 and W-1A are drainage ditches that were constructed in upland, drain only upland, and are not relocated tributaries. As stated in the wetland delineation report that was submitted as part of the AJD request, general water flow at the site is to the north toward the ditch along Provimi Road and off-site to the west. The nearest waterbody is an unnamed tributary of Rock River located approximately 0.74 miles to the west of W-1A. Aerial photos from the delineation report depict current land use surrounding W-1 and W-1A predominately consisting of row-crop agriculture and single-family homes scattered throughout the landscape. However, a commercial facility is immediately adjacent to the north of W-1 and to the east of W-1A. Dodge County historic aerial photos indicate W-1 and the portion of W-1A that runs from north to south were constructed sometime between 1937 and 1964 as part of the construction of the previously mentioned commercial facility. The portion of W-1A that runs from east to west is part of a roadside ditch that was constructed in upland and drains only upland, evidenced by historic aerial photos and NRCS hydric soil data. Historic aerial photos from the delineation report do not show W-1 or W-1A as having relatively permanent flow. Review of the WWI indicates there are no wetland features within or immediately adjacent to the review area. Additionally, a review of Dodge County historic aerial photos does not indicate any wet signatures within the delineated boundaries of W-1 or W-1A prior to construction.**

In accordance with the 2008 Rapanos guidance and the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following to be waters of the U.S.; non-tidal drainage and irrigation 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

¹ Supporting documentation is presented in Section III.F.

wholly in and draining only uplands and do not carry a relatively permanent flow are not waters of the United States. Therefore, wetland W-1 and wetland W-1A are not considered waters of the U.S. and are not subject to Corps jurisdiction under Section 404 of the Clean Water Act, or Section 10 of the Rivers and Harbors 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): **See Section II.B.2 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: 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: **Delineation report provided by Heartland Ecological Group, Inc.**
- ☒ 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-Richwood**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Dodge 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): **Dodge County historic aerials (1937,1964)**

- 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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: N/A