



**U.S. ARMY CORPS OF ENGINEERS  
REGULATORY PROGRAM  
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)  
NAVIGABLE WATERS PROTECTION RULE**

**I. ADMINISTRATIVE INFORMATION**

Completion Date of Approved Jurisdictional Determination (AJD): 8/13/2021

ORM Number: MVP-2021-01248-RJH

Associated JDs: N/A

Review Area Location<sup>1</sup>: State/Territory: WI City: Little Chute County/Parish/Borough: Outagamie

Center Coordinates of Review Area: Latitude 44.289394 Longitude -88.300622

**II. FINDINGS**

**A. Summary:** Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- ☐ The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- ☐ There are "navigable waters of the United States" within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- ☐ There are "waters of the United States" within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- ☒ There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

**B. Rivers and Harbors Act of 1899 Section 10 (§ 10)<sup>2</sup>**

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

**C. Clean Water Act Section 404**

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): <sup>3</sup>				
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination	
N/A.	N/A.	N/A.	N/A.	

Tributaries ((a)(2) waters):				
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination	
N/A.	N/A.	N/A.	N/A.	

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):				
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination	
N/A.	N/A.	N/A.	N/A.	

Adjacent wetlands ((a)(4) waters):				
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination	
N/A.	N/A.	N/A.	N/A.	

<sup>1</sup> Map(s)/figure(s) are attached to the AJD provided to the requestor.

<sup>2</sup> If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

<sup>3</sup> A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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**D. Excluded Waters or Features**

Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>				
Exclusion Name	Exclusion Size		Exclusion <sup>5</sup>	Rationale for Exclusion Determination
W01	0.04	acre(s)	(b)(1) Non-adjacent wetland.	<p>Based on a review of aerial photography, topographic maps, and the wetland delineation report submitted by the requestor, we have determined that these features are isolated wetland depressions with boundaries that transition into uplands. As evidenced on aerial imagery, the wetland signatures observed within the delineated wetland features do not extend outside of the limits of these wetlands and are surrounded entirely by uplands. In addition, the review area has minor changes in elevation, as shown on the USGS topo maps. W02 appears to extend outside of the review, but after evaluating elevation contours and the provided photographs in the delineation report, we have determined that this feature transitions into uplands along the north and east border of the feature and does not connect to another aquatic feature.</p> <p>W01-W03 do not abut any a(1)-a(3) waters and are not separated from one by a natural or man-made feature. The nearest mapped tributary from the review area (unnamed tributary to the Apple Creek) is located 455 linear feet northeast of W01, with an elevation difference of approximately 4.9 feet, eliminating the likelihood of these features being flooded in a typical year by an a(1)-a(3) water. In addition, all wetland features within the review area are located outside of the FEMA mapped flood zone of the tributary to Apple Creek.</p> <p>Based on this information, we have determined that W01-W03 are (b)(1) Non-adjacent wetlands, which are not regulated under Section 404 of the Clean Water Act.</p>
W02	0.11			
W03	0.03			

<sup>4</sup> Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

<sup>5</sup> Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): <sup>4</sup>			
Exclusion Name	Exclusion Size	Exclusion <sup>5</sup>	Rationale for Exclusion Determination
W04	0.02	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	<p>Based on the submitted delineation report, aerial photos, and the location of the features, we have determined this wetland feature is a ditch that was constructed in uplands between two businesses along E North Ave for stormwater management. The area where W04 was constructed lacked wet soil indicators and sufficient hydrology to support wetland conditions prior to construction and it is not part of a relocated tributary. Therefore, this ditch was constructed in uplands. The review area is situated within a predominantly non-hydric soil series (GrB).</p> <p>Based on the topography and geometry of the review area, the boundaries of this feature transition into upland areas along the north, east, and west border within the review area and connect to the roadside ditch along E North Ave. We have determined that the roadside ditch along the north side of E North Ave was also constructed in uplands based a review of the aerial photos, Google Earth road side photos, and lack of wetland features.</p> <p>Based on the information stated above, we have determined that W04 is a (b)(5) excluded waters and is therefore not regulated by the Corps of Engineers under Section 404 of the Clean Water Act.</p>

### III. SUPPORTING INFORMATION

**A. Select/enter all resources** that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

☒ Information submitted by, or on behalf of, the applicant/consultant: [AJD request submitted by Merjent Inc. on 6/28/2021.](#)

This information **is** sufficient for purposes of this AJD.

Rationale: [N/A](#)

☐ Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\).](#)

☒ Photographs: [Aerial and Other: Photos submitted in the AJD request. Google Earth and Outagamie historic imagery.](#)

☐ Corps site visit(s) conducted on: [Date\(s\).](#)

☐ Previous Jurisdictional Determinations (AJDs or PJDs): [ORM Number\(s\) and date\(s\).](#)

☐ Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

☒ USDA NRCS Soil Survey: [SoilWeb](#)

☐ USFWS NWI maps: [Title\(s\) and/or date\(s\).](#)



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☒ USGS topographic maps: [1:24K- Kaukauna](#)

**Other data sources used to aid in this determination:**

Data Source (select)	Name and/or date and other relevant information
<a href="#">USGS Sources</a>	<a href="#">N/A.</a>
<a href="#">USDA Sources</a>	<a href="#">N/A.</a>
<a href="#">NOAA Sources</a>	<a href="#">N/A.</a>
<a href="#">USACE Sources</a>	<a href="#">N/A.</a>
<a href="#">State/Local/Tribal Sources</a>	<a href="#">N/A.</a>
<a href="#">Other Sources</a>	<a href="#">N/A.</a>

**B. Typical year assessment(s):** [N/A](#)

**C. Additional comments to support AJD:** [N/A](#)