

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): October 29, 2021

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2021-02049-SJW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin**

County/parish/borough: **Dane**

City: **Verona**

Center coordinates of site (lat/long in degree decimal format): Lat. **42.975968° N**, Long. **-89.499546° E**.

Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Badger Mill Creek**

Name of watershed or Hydrologic Unit Code (HUC): **07090004 - Upper Mississippi Region**

☒ 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: **October 22, 2021**

☐ 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 wetland features which are identified on the attached figures as W-1 and W-2 on the attached figures labeled MVP-2021-02049-SJW: Page 1 of 2 through 2 of 2. W-1 (0.64-acre) is described as an isolated wetland feature situated within an agricultural field in the northernmost portion of the site. As stated in the wetland delineation report which was submitted as part of the AJD request, the boundaries of W-1 correlate with the observed wetland signatures which are visible on multiple years of aerial photography. This wetland was plowed and planted annually, with a partial success rate of row-cropping over the 21 years of aerial imagery that were evaluated as part of the off-site analysis. W-2 (0.13 acre) is described as an isolated kettle pond consisting of open water with estimated depths ranging from two to four feet. W-1 and W-2 are both surrounded entirely by uplands and do not maintain a hydrologic connection to a downstream TNW. A review of the Wisconsin Wetland Inventory mapping shows no mapped wetlands within the review area. However, as indicated in the wetland delineation report, W-1 and W-2 both meet wetland criteria and are situated in hydric or partially hydric soil units. The nearest RPW (unnamed tributary) is located approximately 0.6 miles to the northeast of the review area, and these wetlands do not maintain a hydrologic connection to this waterway. A review of USGS topo mapping further suggests that these features are isolated wetland features which do not maintain a hydrologic connection to an RPW. Given the existing and surrounding landscape characteristics and proximity to other waters, there is no hydrologic connection between W-1 and W-2 and other jurisdictional wetlands or waters. These wetlands do not support a link to interstate or foreign commerce, are not used by interstate or foreign travelers for recreation or other purposes, do not produce fish or shellfish that could be taken and sold in 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-1 and W-2 are isolated wetland features that are 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: 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: 0.76 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 submitted by Heartland Ecological Group.
- ☒ 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 WI-Verona
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Dane County
- ☐ National wetlands inventory map(s). Cite name:
- ☒ State/Local wetland inventory map(s): Wisconsin Wetlands Inventory
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth
 - or ☐ Other (Name & Date):
- ☐ 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: