

**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): April 19, 2022**

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-00185-SJW**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: **Wisconsin**

County/parish/borough: **Brown**

City: **De Pere**

Center coordinates of site (lat/long in degree decimal format): Lat. **44.4087691° N**, Long. **-88.1071422° E**

Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Fox River**

Name of watershed or Hydrologic Unit Code (HUC): **0403020404 - Fox River - Frontal Green Bay**

☒ 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: **March 23, 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):<sup>1</sup>**

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area includes two delineated wetland features which are identified as Wetland 2 (3,595 square feet) and Wetland 4 (886 square feet) on the attached figures labeled MVP-2022-00185-SJW: Page 1 of 2 through 2 of 2. These wetlands are best described as isolated wetland features which are situated in the middle of an agricultural field and do not maintain a hydrologic connection to a downstream TNW. A review of field data presented in the wetland delineation report which was completed by Evergreen Consultants, LLC, dated October 15, 2021 indicates that Wetland 2 and Wetland 4 are classified as wet meadow wetlands situated in isolated depressions in the middle of a cultivated field. Further, these wetlands are surrounded entirely by uplands, with boundaries that transition into uplands, and they do not maintain an ecological connection to any other WoUS. These wetlands are situated in an Oshkosh silty clay loam soil unit which is non-hydric. The Wisconsin Wetland Inventory does not have any wetlands mapped within or immediately adjacent to these delineated wetland features, and the nearest waterway (unnamed tributary) is located approximately 0.16 miles to the west of these features. The USGS topo maps indicate that the review area is extremely flat, with a slight decrease in elevation towards the Fox River, which is 0.30 miles to the east of the review area. Lastly, multiple years of aerial imagery dating back to 2008 show wetland features within the delineated limits of Wetland 2 and 4. However, these features do not appear to extend outside of their delineated limits, and neither of these wetland features maintain any type of hydrologic or ecological connection to other WoUS.**

**Based on these factors, the Corps has determined that Wetland 2 and Wetland 4 are isolated wetland features that do not maintain a downstream hydrologic or ecological connection to a Navigable water of the United States. These features 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 interstate or foreign commerce, and are not known to be used for industrial**

<sup>1</sup> Supporting documentation is presented in Section III.F.

**purposes by industries in interstate commerce. Therefore, Wetland 2 and Wetland 4, as identified on the attached figures labeled MVP-2022-00185-SJW: Page 1 of 2 through 2 of 2 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: 0.10 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: Wetland delineation report completed by Evergreen Consultants, LLC, dated October 15, 2021.
- ☐ 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 - De Pere
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Brown County, Wisconsin
- ☐ 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): Google Earth, and Aerial Photos provided by Wisconsin Surface Water Data Viewer.
- 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:**