

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): May 10, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: 2022-00435-MMG

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Milwaukee City: Oak Creek
Center coordinates of site (lat/long in degree decimal format): Lat. 42.871540° N, Long. -87.915406° E.
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Oak Creek

Name of watershed or Hydrologic Unit Code (HUC): 0404000201

- ☒ 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 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:

The review area contains two intrastate wetlands (Wetland 1 and Wetland 2) that according to the 175 W. Ryan Road Wetland Delineation Report dated January 27, 2022 by raSmith are isolated wetland basins.

These wetlands are surrounded by uplands and do not have a direct hydrologic surface connection to downstream waters. This was confirmed by reviewing the supporting information in III(A) below. There are no inlets or outlets to these wetland basins including no culvert connecting Wetland 1 to the other side of Ryan Road. The nearest waterway is Oak Creek approximately 0.28 miles to the north, there are no hydric soils within the review area, the WWI map does not include Wetland 2 but does include Wetland 1 surrounded by uplands, and aerial imagery shows the areas surrounded by an upland field with no wetland hydrology or vegetation signatures connecting the wetlands to downstream jurisdictional waters. They are not separated from other WOUS by man-made dikes, barriers, or berms. The surrounding land use is a mixed development consisting of residential, commercial and municipal development along with some agriculture. The mixed use development disturbance and Ryan Road directly to the north of these wetland basins precludes an ecological connection to a WOUS.

These aquatic resource 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 taken and sold in interstate or foreign commerce; are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetland 1 and Wetland 2, as shown of attached figures, are not regulated by the Corps under Section 404 of the Clean Water Act.

SECTION III: CWA ANALYSIS

¹ Supporting documentation is presented in Section III.F.

- 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: Wetland 1 is 0.05 and Wetland 2 is 0.01 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: 175 W. Ryan Road Wetland Delineation Report dated January 27, 2022 by raSmith
- ☐ 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: USGS Topographic Quads (USA Topo Maps)
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Milwaukee 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): Aerial Imagery in delineation report (2000-2020)
- or ☒ Other (Name & Date): Ground level photos in delineation report
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): 1-foot contours

B. ADDITIONAL COMMENTS TO SUPPORT JD: