

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 23, 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Menards, Inc. Extrusion Plant and Distribution Center Expansion, MVP-2013-02663-DJM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin** County/parish/borough: **Eau Claire County** City: **Eau Claire**
Center coordinates of site (lat/long in degree decimal format): Lat. **44.852576° N**, Long. **-91.573239° W**.
Universal Transverse Mercator: **15**

Name of nearest waterbody: **Sherman Creek**

Name of watershed or Hydrologic Unit Code (HUC): **07050005**

- 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: **April 2, 2019**
 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:

A delineation report was submitted to the Corps documenting the presence of aquatic resources on a 15-acre property located in the City of Eau Claire, Eau Claire County, WI. An office review of the delineation report for the subject site was conducted on March 7, 2019 to review the potentially jurisdictional aquatic resources: Wetland 1 (5.78-acres) and Wetland 2 (0.04-acre), as requested by Nicholas Haus of Wisconsin Environmental Restorations, LLC (WER), acting on behalf of the property owner Paul Mahler of Menards, Inc. The Review Area for this Jurisdictional Determination is limited to the boundaries of Wetlands 1 and 2. An approved jurisdictional determination (AJD) was provided to the property owner August 15, 2013 for the same review area, which included the same two wetlands (Wetlands 1 and 2). To date, no work has been completed on site as was proposed in 2013. Currently, the existing 2013 AJD is more than 5 years old, and as a result, the property owner is seeking a new AJD for the same review area.

A thorough desktop review was conducted to identify any culverts and/or other hydrologic connections within and adjacent to the project site. The closest surface water found was an intermittent stream (Sherman Creeek) flowing south about 0.4 miles to the east of the review area as identified on the USGS topo map. Immediately adjacent to, but outside the reivev area is a man made storm water pond constructed in uplands in about 2005 according to the historical aerial photographs reviewed in Google earth. Additional storm water drainage features were constructed around the review area in 2008 and 2016 as the surrounding land use changed from agricultural to commercial. Heavy commercial development took place around the review area between 2004 and 2015 with several commerical buildings and associated roadway infrastructure being built during that time. Wetlands 1 and 2 are located in depressional areas that do not have a surface or shallow subsurface connection to the intermittent stream

¹ Supporting documentation is presented in Section III.F.

(Sherman Creek). Based upon information gathered as a result of the desktop review and the wetland delineation report, Corps staff determined that the two wetlands (Wetlands 1 and 2) are wholly surrounded by uplands and lack an unbroken surface or shallow sub-surface connection to a water of the United States. Wetlands 1 and 2 have no physical separations by man-made dikes or barriers, natural river berms, beach dunes, and the like from jurisdictional waters. The surrounding land use comprised of commercial and transportation uses do not provide cover or habitat between the wetlands and other aquatic resources. These wetlands do not have an ecological connection to a WOUS due to the lack of ecological resources and distance between the wetlands and the nearest tributary.

The waterbodies described above, Wetlands 1 and 2 do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. Wetlands 1 and 2 have been determined to be non-jurisdictional under the Clean Water Act because the wetlands lack connections and/or relationships sufficient to serve as a basis for jurisdiction.

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: 5.82 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: June 2018 Wetland Delineation Report prepared by Nicholas Haus of WER
- 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, Eau Claire West
- USDA Natural Resources Conservation Service Soil Survey. Citation: Eau Claire County Web Soil Survey
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Google Earth Aerial Maps April 1998, May 2005, June 2006, June 2008, March 2009, June 2010, October 2011, April 2014, and April 2017.
 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): Wisconsin DNR Surface Water Data Viewer

B. ADDITIONAL COMMENTS TO SUPPORT JD: