

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): August 27, 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Madyson Court Road Extension AJD - MVP-2019-00261-SJW

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Wisconsin**

County/parish/borough: **Waukesha** City: **Muskego**

Center coordinates of site (lat/long in degree decimal format): Lat. **42.862834° N**, Long. **-88.171222° W**.

Universal Transverse Mercator: **Zone 16**

Name of nearest waterbody: **Unnamed Tributary to the Fox River**

Name of watershed or Hydrologic Unit Code (HUC): **07120006 - 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: **July 24, 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: **The approximately 7.56 acre review area includes three interstate wetlands which are identified as W-1, W-2, and W-3 on the attached figure labeled MVP-2019-00261-SJW: Page 2 of 2. These delineated wetland features are situated within an Ashkum silty clay loam soil unit which is described as a hydric poorly drained soil with 0-2% slopes and a depth to water table of 0-12 inches. A review of the Wisconsin Wetland Inventory shows no mapped wetlands within the review area, however a review of aerial imagery dating back to the year 2000 shows wetland signatures and ponding (likely created as a result of on-site grading activities) within the review area. The wetlands within the review area depression and do not maintain a surface or shallow subsurface hydrologic connection or ecological connection to the unnamed tributary to the Fox River, nor are they separated from other WOUS by man-made dikes, barriers or berms. Based on a review of the data presented in the wetland delineation report prepared by the Southeastern Wisconsin Regional Planning Commission (SWRPC), the Wisconsin Wetland Inventory mapping, and a review of aerial imagery from 04/13/2000 - 03/06/2018, the Corps has determined that W-1, W-2, and W-3 are isolated intrastate waters which do not maintain a surface connection to a downstream TNW. W-1, W-2, and W-3 are not/have not been utilized for interstate or foreign commerce, and these wetlands are not used by interstate or foreign travelers for recreation or other purposes. In addition, these wetlands do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce, and are not used for industrial purposes. Therefore, the Corps has determined that W-1, W-2, and W-3 are isolated features 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

¹ Supporting documentation is presented in Section III.F.

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: 0.31 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: **Jeremy Hinds - Key Energy Group, LTD (consultant)**
- 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-Waterford**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Waukesha 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): **2000, 2005, 2006, 2007, 2010, 2011, 2014, 2015, 2017, and 2018.**
 - 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: