

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): JUN 18 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2019-00430-RJH Wetlands A, B, C, D, E, F, & G

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Kenosha City: Pleasant Prairie
Center coordinates of site (lat/long in degree decimal format): Lat. 42.52197° N, Long. -87.886631° W
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Jerome Creek

Name of watershed or Hydrologic Unit Code (HUC): 07120004- Upper Illinois

- 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: May 6, 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 review area contains 7 wetlands: Wetland B (0.013 acre), Wetland F (0.0039 acre), Wetland G (0.003 acre) are located in topographic depressions created due to on-site grading, topsoil stripping, and excavation associated with a residential development as seen on 2007 aerial imagery. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following activities to be waters of the United States; water filled depressions created in dry land incidental to construction activity.**

The aquatic feature labeled Wetland C is a 0.49 acre stormwater pond that was constructed in uplands in 2012 and is not a water of the US. This was confirmed by reviewing historic aerial imagery. The non-jurisdictional determination for this pond is in accordance with the pre-ambles to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be water of the US; artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins or rice growing.

Based on information provided in a recent wetland delineation report, the Corps has determined that the ditches identified as Wetlands A (0.06 acre), D (0.02 acre), and E (0.14 acre) within the review area shown on MVP-2018-3749-RJH Figure 2 were excavated wholly in and drain dry land only. Additionally, it has been determined that the subject ditches do not have relatively permanent flow. In accordance with the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos, these ditches are not waters of the United States.

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): **Wetlands B, C, F, and G are not waters of the United States pursuant to the preamble to the Corps 1986 regulation (33 CFR Parts 320-330). Wetlands A, D, and E are not waters of the U.S. in accordance with the Corps/EPA Memorandum Regarding CWA Jurisdiction Following Rapanos.**

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: 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 and Waterway Consulting LLC**
- 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- Pleasant Prairie**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **SoilWeb**
- 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): **Applicant submitted photos**
or Other (Name & Date): **Google Earth**

- 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: