

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): March 4, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2016-04205-AIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Winnebago County City: Oshkosh
Center coordinates of site (lat/long in degree decimal format): Lat. 44.084077°N, Long. 88.597132°W
Universal Transverse Mercator: Zone 16, x372131.741647, y4882451.186207

Name of nearest waterbody: Fox River
Name of watershed or Hydrologic Unit Code (HUC): Upper Fox (04030201)

- Check if map/diagram of review area is 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: February 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 not to be jurisdictional.
Explain: **The review area contains three wetlands, labeled Wetland "A", Wetland "B", and Wetland "C" on the attached figure MVP-2016-04205-AIS Page 2 of 6. This determination applies only to Wetland "A", Wetland "B", and the section of Wetland "C" outlined in red on the figure and pictured in Photo 7 on the figure MVP-2016-04205-AIS Page 5 of 6. The section of Wetland "C" in this review is a roadside ditch constructed in uplands. This ditch was constructed in uplands, drains only uplands, and does not carry a relatively permanent flow of water into waters of the U.S. (WoUS). It does appear on the one aerial photograph available from before the construction of the roads. Per the Rapanos decision, the evaluated ditch is not a WoUS because it is not a tributary and does not have a significant nexus to traditionally navigable waters. This was confirmed by reviewing aerial photography, elevation data and soils data.**

Wetland "A" and Wetland "B" are not bordering, contiguous with, or neighboring another WOUS nor are these aquatic resources separated from another WOUS by man-made dikes, barriers, or berms. While there is a tributary less than 150 feet north of Wetland "A", USGS Streamstats confirms that the tributary does not connect to a traditionally navigable water. The surrounding soils are all non-hydric or predominantly non-hydric.

The wetlands located within the review area 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 purposes by industries in interstate commerce. Furthermore, these wetlands are hydrologically isolated with no surface or shallow subsurface connections to a water of the United States and do not have an ecological interconnection due to existing disturbance. Therefore, the Corps has determined that Wetland "A" and Wetland "B" 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

¹ Supporting documentation is presented in Section III.F.

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): See section II.B.2

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
- Wetlands: Wetland “A” (2.84 ac.), Wetland “B” (0.02 ac.)

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: Martenson & Eisele
- 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:
- 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:
- USDA Natural Resources Conservation Service Soil Survey. Citation: Winnebago County Soil Survey
- National wetlands inventory map(s). Cite name: USFWS NWI
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:
- Photographs: Aerial (Name & Date): Google Earth (1992-2015)
 or Other (Name & Date): Ground level photographs provided by applicant
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): USGS Streamstats

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD.