

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): **MAR 14 2019**

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Brown County South Landfill (Wetlands W1, W2, W3, W6/7, W8, W10, W11, W12, W13, W14, W15, W16, W21, W22, W32, W4/5(a), and W4/5(b))/2017-03839-JLK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Brown City: Holland

Center coordinates of site (lat/long in degree decimal format): Lat. 44.29236° N Long. -88.120451° W

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Unnamed Tributary of the East River

Name of watershed or Hydrologic Unit Code (HUC): Northwestern Lake Michigan (04030204)

☒ 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: February 28, 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.

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

☒ Other: (explain, if not covered above): The review areas include four constructed settling basins (labeled as W1, W2, W3, and W6/7 on figures) totaling approximately 13.23 acres in size. Constructed in the early 1990's by Brown County, these basins were designed to serve a future landfill site. Pursuant to 33 CFR Part 328.3(c); 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 are not waters of the United States.

Additionally the review areas include ten water filled depressions created in dry land (W8, W10, W11, W12, W13, W14, W15, W16, W32 on figures) totaling approximately 1.02 acres in size. These water-filled depressions were created in upland as a result of construction/grading and landfill preparation activities. Pursuant to 33 CFR Part 328.3(e); waterfilled depressions created in dry land incidental to construction activities and pits excavated in dry land are not waters of the United States.

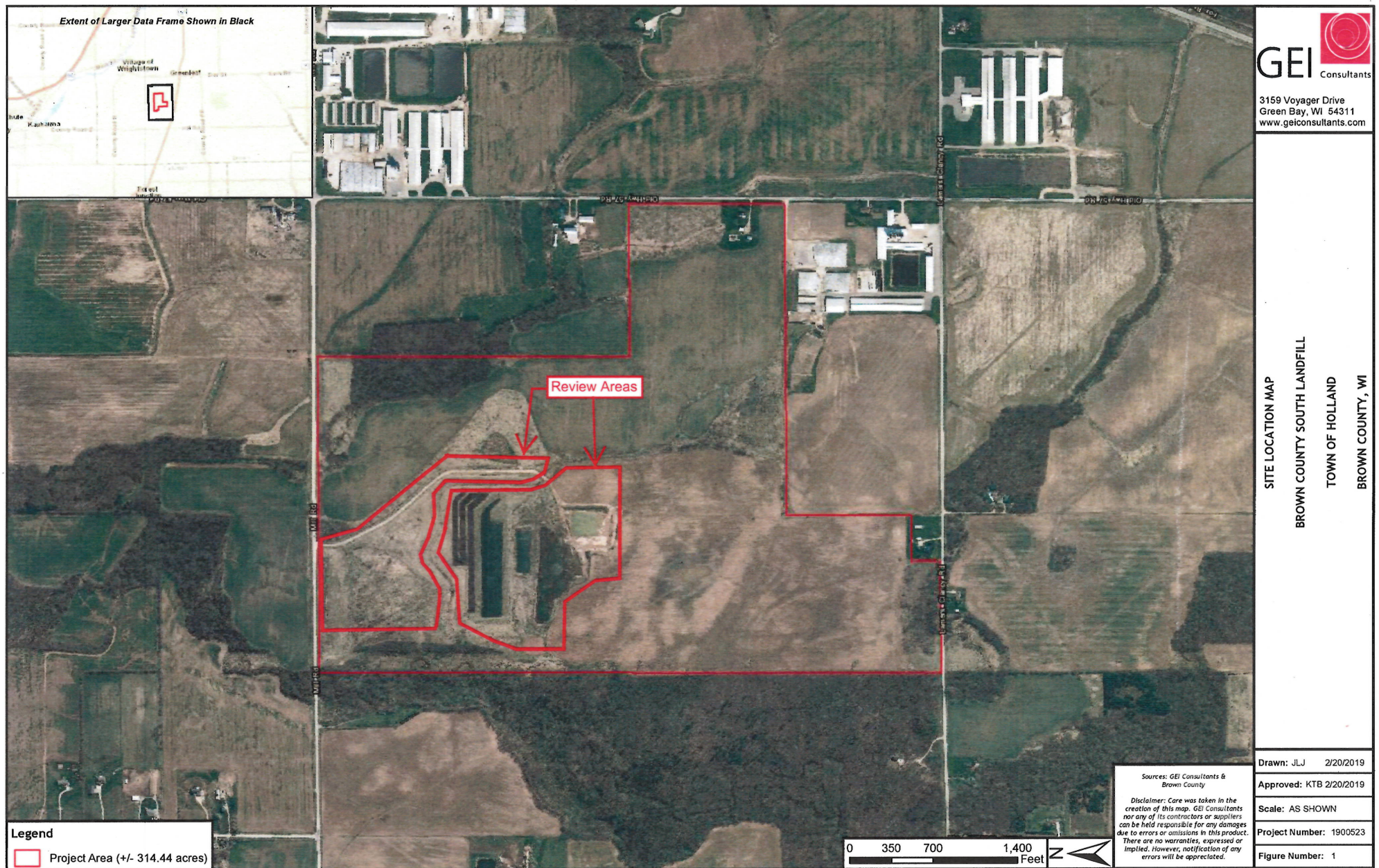
And finally, the review areas include four aquatic resources (labeled as W21, W22, W4/5(a), and W4/5(b) on figures) totaling approximately 0.51 acre that are ditches constructed in uplands prior to 1992. Review of site photos indicate these ditches do not convey a relatively premanent flow. In accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), the Corps does not generally consider the following waters to be waters of the United States; non-tidal drainage ditches excavated on dry land. Further clarification is provided in the December 2, 2008 Revised Guidance on Clean Water Act Jurisdiction following the Supreme Court Decision in *Rapanos v. U.S.* and *Carabell v. U.S.* issued jointly by the Corps and EPA which indicates that ditches excavated wholly in and draining only uplands and do not carry a relatively permanent flow are not waters of the U.S.

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: GEI Consultants Wetland Delineation 2017, Robert E. Lee & Associates Wetland Delineation 1991
- ☒ 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:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation: Brown 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): 2017 Wetland Delineation Report
 - or ☒ Other (Name & Date): Ground Level Photos
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Applicable/supporting case law:
- ☐ Applicable/supporting scientific literature:
- ☒ Other information (please specify): Historical site information provided by GEI Consultants dating from early 1990's to present demonstrates an unnamed tributary to the East River once traversed through the northeastern portion of the site before the current settling basins were constructed. This tributary was lawfully rerouted in the early 1990's to flow north, then west around the constructed settling basins.

B. ADDITIONAL COMMENTS TO SUPPORT JD:



2017-03839-JLK (Figure 1 of 2)

