

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): November 12, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2011-00689-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. 43.98749 °N, Long. 88.61895 °W
Universal Transverse Mercator: Zone 16, x370557, y4871524

Name of nearest waterbody: Sawyer Creek

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: October 3, 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 7 wetlands, labeled Wetland 1, Wetland 2A-2E, Wetland 3, Wetland 4, Wetland 5, Wetland 6, and Wetland 7 on the attached figure MVP-2011-00689-AIS Page 2 of 7.**

Wetland 3, Wetland 4, Wetland 5, and Wetland 6 developed as a result of excavation in a previously non-wetland/upland area, and they are not jurisdictional waters of the U.S. (WOUS) under Section 404 of the CWA. The purpose of the excavation was not to restore or create wetland at this location, it was created incidental to ongoing construction and grading activities on the property. No wetness signatures appear on a review of aerial imagery until after the site was graded for construction in 2011. Soils in the area around Wetland 3 and Wetland 6 are predominantly non-hydric, whereas soils around Wetland 4 and Wetland 5 are on the edge of hydric and non-hydric soil types. The non-jurisdictional determination for Wetland 3, Wetland 4, Wetland 5, and Wetland 6 was completed pursuant to the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps does not generally consider the following to be waters of the U.S.: "Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States."

Wetland 1, Wetland 2, and Wetland 7 are not bordering, contiguous with, or neighboring another WOUS nor are these aquatic resources directly separated from another WOUS by man-made dikes, barriers, or berms. The closest tributary is approximately 1,350 feet to the east of the nearest wetland (Wetland 7). Wetland 1 appears to be a continuation of an offsite swale to the west, but LiDAR hillshade clearly shows that it does not continue on to connect with any other potential water and topography in the area means that the swale flows from west to east. Wetland 1 and Wetland 2 are adjacent to a drainage ditch that does eventually run to a WOUS, however, the ditch is not continuous and flow is diverted by an unculverted driveway slightly north of the site boundary. Wetland 7 is at a topographic low point and cannot drain to any other water due to increases in elevation on all sides. The soils around Wetland 1 and Wetland 7 are predominantly non-hydric. In addition, Evergreen Consultants LLC have conducted a watershed analysis and found that the project occurs within an isolated watershed.

Wetland 1, Wetland 2, and Wetland 7 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

¹ Supporting documentation is presented in Section III.F.

has determined that Wetland 1, Wetland 2, and Wetland 7 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
- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERESTATE 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: Wetland 3 (0.06 ac.), Wetland 4 (0.08 ac.), Wetland 5 (0.05 ac.), Wetland 6 (0.01 ac.)
- Wetlands: Wetland 1 (0.11 ac.), Wetland 2 (4.08 ac.), Wetland 7 (0.14 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: Evergreen Consultants 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:
- 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: 1:24,000 Van Dyne
- USDA Natural Resources Conservation Service Soil Survey. Citation: Winnebago County Soil Survey
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:
- Photographs: Aerial (Name & Date): Google Earth (1992-2015), DigitalGlobe (2014-2019)
 - or Other (Name & Date): Google Street View (2018)
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): LiDAR Hillshade, Evergreen Consultants LLC Watershed Analysis

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD.