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 16, 2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Creekwood Commercial Development, MVP-2018-01091-MHK

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI  County/parish/borough: Waukesha  City: Menomonee Falls

Center coordinates of site (lat/long in degree decimal format): Lat. 43.118252° N, Long. -88.131371° W.

Universal Transverse Mercator: Zone 16 (x:407960.479286, y:4774567.768047)

Name of nearest waterbody: Fox River

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region (07120006)

☐ 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: September 12, 2018; November 9, 2018

☒ Field Determination. Date(s): September 12, 2018

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: There are three intrastate wetlands (W2, W3, and W4), two storm water basins (W1, W5), and two ditches (W1 ditch, W5 ditch) in the review area. Wetland 2 is 0.01 acre in size; Wetland 3 is 0.04 acre in size; Wetland 4 is 0.09 acre in size. In 2001-2003, dry land was mass graded in relation to construction activities for future development in the review area. Subsequently, W2, W3 and W4 formed in depressions created due to grading and filling. These activities were confirmed by review of historic aerial photos, Wisconsin Wetland Inventory (WWI), NRCS soil survey, National Survey & Engineering grading plans for the Creekwood Highlands II & III development, and previous Corps authorizations. In accordance with the preamble to the 1986 Corps Regulations (33 CFR 320-330), the Corps does not generally consider the following waters to the waters of the U.S.: waterfilled depressions created in dry land incidental to construction activities.

Stormwater detention basins identified as W1 (2.33 acres) and W5 (1.14 acres) were constructed in dry land as part of the Creekwood Highlands development project to the south and east of the review area and are not waters of the U.S. This was confirmed by reviewing historic aerial photographs, WWI, National Survey & Engineering grading plans for the Creekwood Highlands II & III development, previous Corps authorization for the development, and the NRCS Soil Survey. The non-jurisdictional determination for these stormwater detention basins is in accordance with 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.: 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.

¹ Supporting documentation is presented in Section III.F.
The remaining aquatic resources in the review area are ditches identified as W1 ditch (0.06 acre in size) and W5 ditch (0.16 acre in size). A review of the desktop resources mentioned above indicates that the ditches were constructed wholly in uplands between 2001-2003 and drain only uplands. These ditches do not have a relatively permanent flow of water, as verified in the field. These ditches are not waters of the U.S. The determination of no jurisdiction is in accordance with the preamble to the 1986 Corps Regulations (33 CFR 320-330) and the 2008 Rapanos Guidance which states that the Corps does not generally consider the following to be waters of the U.S.; non-tidal drainage and irrigation ditches excavated on dry land.

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): 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:  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:
     - National Survey & Engineering grading plans for the Creekwood Highlands II & III development dated 4-1-99;
     - Stantec wetland delineation report 2018
   - 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 Quad: WI-Waukesha
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)
or ☑ Other (Name & Date): site photos and NAIP 2015 and 2008, FSA 2004, 1998, 1997 in wetland delineation report
Previous determination(s). File no. and date of response letter:
Applicable/supporting case law:
Applicable/supporting scientific literature:
Other information (please specify): Corps authorization for three road crossing for the Creekwood Highlands Subdivision (2000-07566-JBK) dated February 9, 2001

B. ADDITIONAL COMMENTS TO SUPPORT JD: