

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 21, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2019-02037-AIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Waukesha County City: Muskego
Center coordinates of site (lat/long in degree decimal format): Lat. 42.91853 °N, Long. 88.16556 °W
Universal Transverse Mercator: Zone 16, x404870, y4752426

Name of nearest waterbody: Mill Brook

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

- 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 22, 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 Area A, Wetland Area B, and Wetland Area C on the attached figure MVP-2019-02037-AIS Page 3 of 5. All the soils in the area are non-hydric.**

Wetland Area A and part of Wetland Area C are ditches left over from the 1963 demolition of the missile base formerly on the site. The drainage ditches were constructed in uplands, drain only uplands, and do not carry a relatively permanent flow of water into waters of the U.S. (WoUS). Per the Rapanos decision, the evaluated ditches are not WoUS because they are not tributaries and do not have a significant nexus to traditionally navigable waters. This was confirmed by reviewing aerial photography, elevation data and soils data.

Based on topography and location relative to the former building, the remainder of Wetland Area C is a stormwater pond constructed in uplands. The basis for this jurisdictional determination is the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330), which states that the Corps generally does not consider certain waterbodies to be Waters of the U.S. (WoUS), including: 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. Therefore, Wetland Area B and Wetland Area C are not WoUS and are not jurisdictional under the CWA.

Wetland Area B is not bordering, contiguous with, or neighboring another WOUS nor is this aquatic resource separated from another WOUS by man-made dikes, barriers, or berms. The closest tributary is approximately 900 feet to the northwest of the wetland. There are 600 feet of uplands separating Wetland Area B from the tributary and the wetlands surrounding it.

Wetland Area B does not support a link to interstate or foreign commerce; is not known to be used by interstate or foreign travelers for recreation or other purposes; does not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and is not known to be used for industrial purposes by industries in interstate commerce. Furthermore, this wetland is hydrologically isolated with no surface or shallow subsurface connections to a water of the United States and does not have an ecological interconnection due to existing disturbance. Therefore, the Corps has determined that Wetland Area B is not regulated by the Corps under Section 404 of the Clean Water Act.

3. **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

¹ Supporting documentation is presented in Section III.F.

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: Wetland Area B (0.74 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: Wetland & 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:

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: Waukesha County Soil Survey

National wetlands inventory map(s). Cite name: US FWS NWI

State/Local wetland inventory map(s): Wisconsin Wetland Inventory

FEMA/FIRM maps:

100-year Floodplain Elevation is:

Photographs: Aerial (Name & Date):

 or Other (Name & Date): Google Earth (2000-2018)

Previous determination(s). File no. and date of response letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD.