

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 5, 2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2019-02075-AIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Kenosha County City: Pleasant Prairie
Center coordinates of site (lat/long in degree decimal format): Lat. 42.56379 °N, Long. 87.91734 °W
Universal Transverse Mercator: Zone 16, x424701, y4712783

Name of nearest waterbody: Pike Creek

Name of watershed or Hydrologic Unit Code (HUC): Pike-Root (04040002)

- 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 includes three wetlands, labeled Wetland A, Wetland B, and Wetland C on the enclosed figure MVP-2019-02075-AIS Page 2 of 6.**

The Corps completed a delineation concurrence based on a 2011 delineation for this site in March of 2012 and found no wetlands at these sites. There were data points taken in what is now Wetland A and Wetland C that were determined not to be wetland points. While the concurrence was not re-reviewed after five years, the lack of wetlands on the property eight years ago is indicative of their current status. The soils surrounding Wetland B and Wetland C are non-hydric.

These wetlands 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. The non-jurisdictional determination for Wetland A, Wetland B, and Wetland C 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."

A review of aerial imagery shows that construction was clearly still occurring in 2017, while 2018 photos show an uncompleted asphalt driveway leading into the project site, indicating clear plans for future construction. We can therefore conclude that the site was not abandoned.

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

¹ Supporting documentation is presented in Section III.F.

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):

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: **See Section II.B.2, above.**
- Wetlands: ____ (# 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: Kenosha 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):
 or Other (Name & Date): Google Earth (2000-2018)
- Previous determination(s). File no. and date of response letter: MVP-2012-00272-MHK (March 29, 2012)
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Kenosha County LiDAR data

B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD.