



Jurisdictional Determinations

- What is a JD and why does it matter?
- How are JD's made?
- What is the associated workload and timeline?
- What are some alternatives to the current system?



What is the goal?

- What are the issues with the current JD process?
- What is the ideal future state?
- What are the gaps between the current state and the ideal future state?
- What changes can we make to close those gaps?
 - What are the best options?
 - What are the potential obstacles?



What is a Jurisdictional Determination?

- Formal determination by the USACE on whether or not a wetland (or waterway) is under federal jurisdiction (Section 404 CWA)
- Basis of a JD is a summary of the physical indicators and an explanation of how those indicators establish Corps jurisdiction
- May be additional interagency coordination required
 - Significant nexus evaluation needed
 - Non-navigable isolated water determination



JD Implications

- JD process may lengthen project timeline significantly
- If Corps jurisdiction is determined, need for federal permits may additionally lengthen project timeline, increase costs
- Potentially impacts project feasibility, business community



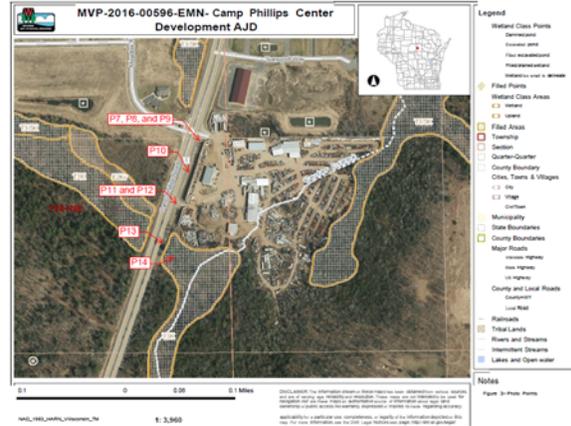
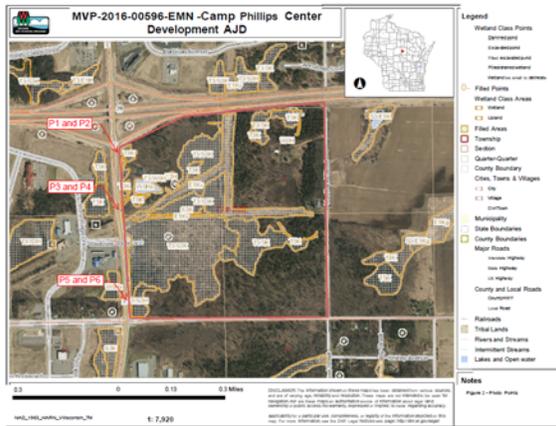
How do you make a JD?

- Background Information
- Summary of Findings
- CWA Analysis
- Data Sources
- Coordination with EPA, Cultural Resources

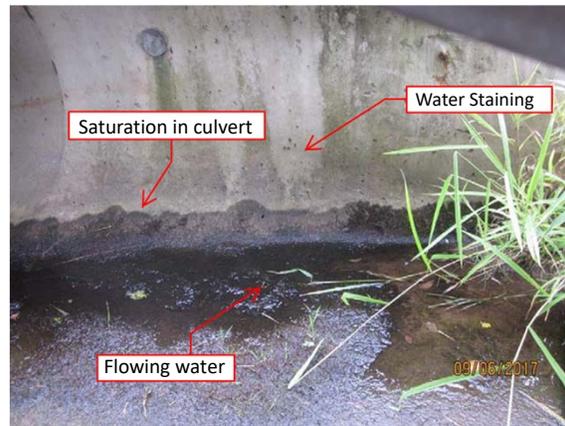


Approved JD example Camp Phillips Corridor – Weston, WI

Credit to USACE, WI DNR



Surface water was observed in the wetland and culvert and was flowing downslope, showing a continuous surface water connection through the man-made barrier that bisects this portion of the wetland complex.



Noted water staining in the culvert above this elevation that indicates water levels are seasonally higher.



Observed water staining in the culvert and flowing water was observed in the wetland and culvert showing a continuous surface water connection



This photo shows the tributary passing through a culvert south of the culvert

JD Streamlining Alternatives

- DNR Assist with JDs
- Corps/DNR Develops an Assured JD Program
- Corps Work Planning Reforms



DNR Assist with JDs

- DNR pre-certify JD for Corps under a MOU
- DNR certify JD for Corps under a MOU
- DNR funds cooperative position(s) at Corps to do JDs



Wetland is adjacent to a non-RPW.
Red lines mark approximate location
of OHWM. (credit USACE)

DNR Assist with JDs

DNR pre-certify JD for Corps under a MOU

Concept:

- *DNR would do the upfront work for JDs and Corps would confirm DNR's decision under the requirements of a MOU.*
- *Could be used for certain categories of wetlands or projects.*

DNR pre-certify JD for Corps under a MOU

Implementation Steps

- Develop efficient coordination process with EPA
- Develop efficient process to handle cultural resources consultations
- Develop framework/guidelines consistent with Corps JD procedures
 - Corps approval may take time

DNR pre-certify JD for Corps under a MOU

Implementation Steps

- Secure staff/funding dedicated to Corps JD processing
- Coordinate with Corps to process pre-certified JDs in an efficient manner
 - Significant nexus determinations

DNR Assist with JDs

DNR certify JD for Corps under a MOU

Concept:

- *DNR would take on all of the work for JDs and Corps would accept DNR's JD as their own.*
- *Could be used for certain categories of wetlands or projects. Could include Corps audit function and "certified JD" DNR staff.*

DNR certify JD for Corps under a MOU

Implementation Steps

- Develop efficient coordination process with EPA
- Develop efficient process to handle cultural resources consultations
- Develop framework/guidelines consistent with Corps JD procedures
 - Corps approval may take time

DNR certify JD for Corps under a MOU

Implementation Steps

- Secure staff/funding dedicated to Corps JD processing
- Coordinate with Corps to process pre-certified JDs in an efficient manner
 - Significant nexus determinations

DNR Assist with JDs

DNR funds cooperative position(s) at Corps to do JDs

Concept:

Through a cooperative agreement, the DNR would provide staff to the Corps to conduct JDs.



Adjacent wetland, South Atlantic Division. Wetland is marked in yellow and is separated from non-RPW by a man-made berm. Non-RPW marked in blue. (credit USACE)

DNR funds cooperative position(s) at Corps to do JDs

Implementation Steps

- Coordinate appropriate duties and authorization to process JDs for Corps
- Secure dedicated funding for position (salary, travel, leave and benefits)
- Position requires Corps headquarter approvals
- Internal prioritization of JD workload

Corps/DNR develops an Assured JD program

Concept:

Similar to Wisconsin Assured Wetland Delineator program, the agencies would utilize training and audits to certify consultants to conduct JDs

Corps/DNR develops an Assured JD program

Implementation Steps

- Initial/continued coordination with Corps to develop acceptable SOP
- Develop efficient coordination process with EPA
- Develop efficient process to handle cultural resources consultations
- Unknown number of willing participants from private sector

Corps Work Planning Reforms

- Corps add additional staff to prioritize JDs
- Develop a JD prioritization framework for all staff
- Designate specialized staff responsible for JDs

Corps add additional staff to prioritize JDs

Concept:

Given the substantial increase in Corps published JDs over the last few years (187 in 2017, 232 in 2018 and projected 340 in 2019), the Corps would respond by hiring additional staff.

Corps add additional staff to prioritize JDs

Implementation Steps

- Upward trend of JD requests in Wisconsin
- Budget constraints likely
- WSC could lobby for additional funding
- Possibly attach fees to pre-certified JDs to fund position

Develop a JD prioritization framework for all staff

Concept:

Corps would develop a framework for prioritizing completion of JDs based upon certain criteria instead of JD typically being a low priority.

Develop a JD prioritization framework for all staff

Implementation Steps

- JDs not associated with permit applications currently processed last (Attaching permit may speed up process)
- Alternate options
 - First in, first out approach on JDs
 - Prioritize JDs associated with projects to be completed in near future

Designate specialized staff responsible for JDs

Concept:

Corps would designate a staff or portion of a staff to exclusively work on JDs as a top priority.

Designate specialized staff responsible for JDs

Implementation Steps

- Secure dedicated internal funding for position (salary, travel, leave and benefits)
- Coordinate appropriate duties and authorization to process JDs for Corps
- Possibly no influence on
 - JD workload prioritization
 - Final determination time

Jurisdictional Determinations

- JDs are formal decisions made by the USACE based on data driven decisions and professional decisions
- JDs are made following a formal process that may take months or years
- JDs have real world implications for the business community
- WDNR may assist in several alternative options

Example Jurisdictional Determination

Camp Philips Development Weston WI

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): October 13, 2017

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2016-00596-EMN, Camp Phillips Center Development

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Marathon City: Village of Weston

Center coordinates of site (lat/long in degree decimal format): Lat. 44.891063° N, Long. -89.566998° E.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Cedar Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Wisconsin River

Name of watershed or Hydrologic Unit Code (HUC): 07070002

- 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: August 31, 2017
 Field Determination. Date(s): September 6, 2017

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. [Required]

- Waters subject to the ebb and flow of the tide.
 Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
 Wetlands adjacent to TNWs
 Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
 Non-RPWs that flow directly or indirectly into TNWs
 Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
 Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
 Impoundments of jurisdictional waters
 Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 600 linear feet: 3 width (ft) and/or N/A acres.

Wetlands: 35.82 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

2. **Non-regulated waters/wetlands (check if applicable):**³

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**

Identify TNW: .

Summarize rationale supporting determination: .

2. **Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

(i) **General Area Conditions:**

Watershed size: **Pick List**
Drainage area: **Pick List**
Average annual rainfall: inches
Average annual snowfall: inches

(ii) **Physical Characteristics:**

(a) **Relationship with TNW:**

- Tributary flows directly into TNW.
 Tributary flows through **Pick List** tributaries before entering TNW.

Project waters are **Pick List** river miles from TNW.
Project waters are **Pick List** river miles from RPW.
Project waters are **Pick List** aerial (straight) miles from TNW.

³ Supporting documentation is presented in Section III.F.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Project waters are **Pick List** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: .

Identify flow route to TNW⁵:
Tributary stream order, if known: .

(b) **General Tributary Characteristics (check all that apply):**

Tributary is: Natural
 Artificial (man-made). Explain: .
 Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: **Pick List**.

Primary tributary substrate composition (check all that apply):

<input type="checkbox"/> Silts	<input type="checkbox"/> Sands	Concrete
<input type="checkbox"/> Cobbles	<input type="checkbox"/> Gravel	
<input type="checkbox"/> Bedrock	Vegetation. Type/% cover:	
<input type="checkbox"/> Other. Explain: .		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .

Presence of run/riffle/pool complexes. Explain: .

Tributary geometry: **Pick List**

Tributary gradient (approximate average slope): %

(c) **Flow:**

Tributary provides for: **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime: .

Other information on duration and volume: .

Surface flow is: **Pick List**. Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

Tributary has (check all that apply):

<input type="checkbox"/> Bed and banks	
<input type="checkbox"/> OHWM ⁶ (check all indicators that apply):	
<input type="checkbox"/> clear, natural line impressed on the bank	<input type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input type="checkbox"/> shelving	<input type="checkbox"/> the presence of wrack line
<input type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	
<input type="checkbox"/> Discontinuous OHWM. ⁷ Explain: .	

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

(iii) **Chemical Characteristics:**

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: .

Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width): .
- Wetland fringe. Characteristics: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain: .

Surface flow is: **Pick List**

Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .

Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- Directly abutting
- Not directly abutting
 - Discrete wetland hydrologic connection. Explain: .
 - Ecological connection. Explain: .
 - Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width): .
- Vegetation type/percent cover. Explain: .
- Habitat for:
 - Federally Listed species. Explain findings: .
 - Fish/spawn areas. Explain findings: .
 - Other environmentally-sensitive species. Explain findings: .
 - Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - TNWs: linear feet width (ft), Or, acres.
 - Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: The tributary to Cedar Creek is located along the east side of Camp Phillips Road (CTH X) within the roadside ditch and extends south approximately 0.55-mile before it deviates from the roadside ditch and exhibits more of a natural stream channel prior to its convergence with Cedar Creek. The tributary is visible on aerial photography and water is clearly visible within the tributary at the time the aerial photo was taken. Photo documentation also shows that there was flowing water at the time of the field inspection on September 6, 2017. Corps staff recorded a 6-inch water depth at the time of the field inspection and

observed flowing water in the tributary and culvert under Weston Avenue. It was also noted that water levels within the tributary were recently higher than the recorded 6-inch depth as the culvert showed evidence of saturation approximately 3-4 inches above the recorded depth during the field inspection. In addition, water staining in the culverts underneath Weston Avenue indicate that water depths can reach approximately 20 inches in the tributary at certain times of the year within the review area. The tributary has a defined bed and bank, the substrate is comprised of fine sediments, sand, and large rock that is not native to the tributary (was placed around the culvert endwalls to protect the culverts), and the channel width is approximately 3 feet within the review area. The tributary enters a 36-inch culvert just north of Weston Avenue and exits the culvert approximately 0.3-mile south of the review area where the tributary is still man-altered (within the roadside ditch), but exhibits similar characteristics described above. However, the channel width of the tributary at this location widens to approximately 5 feet and the recorded water depth was approximately 8 inches. Upon leaving the roadside ditch, the tributary exhibits a natural, meandering stream channel with an approximately 6-foot width, defined bed and bank, approximately 6-12 inch recorded water depths (shallower in riffles and deeper depths in the pools), and the substrate is comprised of sand, rock, and cobble (reference photo log attached to this document for supporting information).

Based upon the characteristics observed during the field inspection on September 6, 2017 and utilizing off-site mapping tools, we have determined that the tributary typically flows year-round and is a perennial tributary to Cedar Creek. The tributary would be considered a relatively permanent water (RPW) and is a tributary to Cedar Creek (RPW), which is a tributary to the Wisconsin River (TNW), a federally navigable water of the United States.

- Tributaries of TNW where tributaries have continuous flow “seasonally” (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: **600** linear feet **and 3** width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: **Perennial tributary to Cedar Creek.**

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 - Other non-wetland waters: acres.
- Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
- Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Photo documentation from a site visit on September 6, 2017 shows that W1, W4, W5, W8 and wetland mosaics M1, M2, M3, M4, M5, M6, and M7 are part of a large wetland complex directly abutting the RPW (tributary to Cedar Creek) as these wetlands have a continuous surface hydrologic connection to the RPW. This wetland complex is directly abutting the RPW as the wetland complex extends to the ordinary high water mark of the RPW and there were no natural upland**

⁸See Footnote # 3.

features or man-made barriers that would sever a jurisdictional connection. In addition, Corps staff noted that two culverts connect W8 and W1 to W4. Photo documentation from the site visit shows that these two culverts maintain a surface hydrologic connection between these wetlands and the larger wetland complex (W4, W5, and M1-M7) and would not sever a jurisdictional connection. Reference the attached photo log for additional documentation that the wetlands are directly abutting the RPW.

- Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: _____.

Provide acreage estimates for jurisdictional wetlands in the review area: **35.82** acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: _____ acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: _____ acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from “waters of the U.S.,” or
- Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
- Demonstrate that water is isolated with a nexus to commerce (see E below).

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):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: _____.
- Other factors. Explain: _____.

Identify water body and summarize rationale supporting determination: _____.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: _____ linear feet _____ width (ft).
- Other non-wetland waters: _____ acres.
Identify type(s) of waters: _____.
- Wetlands: _____ acres.

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).

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

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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: 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: . 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: **WI - Wausau East.**
 USDA Natural Resources Conservation Service Soil Survey. Citation:

Marathon 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): **FSA 2015**
 Aerial Photos. or Other (Name

& Date):

Previous determination(s). File no. and date of response letter: .
 Applicable/supporting case law: . Applicable/supporting scientific literature: . Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Reference photo log attached to this document for additional information to support the approved jurisdictional determination that the tributary to Cedar Creek is a relatively permanent water (RPW) and that the wetlands identified in Section III.D.4 are directly abutting the RPW identified in Section III.D.2