



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

REPLY TO ATTENTION OF
REGULATORY BRANCH

Regulatory File No. 2018-03170-MHK December 21, 2018

Mr. Ron Londre
TRC Environmental Corporation
150 N. Patrick Boulevard, Suite 180
Brookfield, Wisconsin 53045

Dear Mr. Londre:

This letter is in response to your request for an approved jurisdictional determination for a 100-acre area located northeast of the intersection between County Road H and KR County Line Road in the Village of Mount Pleasant. The review area includes W-15, W-16, W-17, W-18, W-19, W-20, and W-22 and is located in Section 33, Township 3 North, Range 22 East, Racine County, Wisconsin. The review area for our jurisdictional determination is identified on the enclosed Figure 1.

The review area contains no waters of the United States subject to Corps of Engineers (Corps) jurisdiction. Therefore, you are not required to obtain Department of the Army authorization to discharge dredged or fill material within this area. The rationale for this determination is provided in the enclosed Approved Jurisdictional Determination form.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

If you object to this approved jurisdictional determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the address shown on the form.

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the enclosed NAP. It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

This approved jurisdictional determination may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise the determination in response to changing site conditions, information that was not considered during our initial review, or off-site activities that could indirectly alter the extent of wetlands and other resources on-site. This determination may be renewed at the end of the five year period provided you submit a written request and our staff are able to verify that the limits established during the original determination are still accurate.

Regulatory Branch (File No. 2018-03170-MHK)

If you have any questions, please contact me in our Brookfield office at (651) 290-5733 or Marie.H.Kopka@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

Marie H. Kopka
Lead Project Manager

Enclosures

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): December 21, 2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Foxconn Area 3, MVP-2018-03170-MHK (W15, W16, W17, W18, W19, W20, W22)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI** County/parish/borough: **Racine** City: **Mount Pleasant**

Center coordinates of site (lat/long in degree decimal format): Lat. **42.67307° N**, Long. **-87.91023° E**.

Universal Transverse Mercator: **Zone 16 (X 425416.57, Y 4724912.56)**

Name of nearest waterbody: **Pike River**

Name of watershed or Hydrologic Unit Code (HUC): **Great Lakes Region (04040002)**

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: **November 21, 2018**

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 to be not jurisdictional. Explain: **The review area contains 7 intrastate wetlands: W15, W16, W17, W18, W19, W20, and W22. A review of the 2018 TRC Environmental Corporation wetland delineation report and additional ground level photos, NRCS soil survey, USGS topographic map, National Hydrography Dataset, Wisconsin Wetland Inventory, Racine County GIS 2-foot contour map, and aerial photos from 1981 to present indicate that these are isolated wetlands with no surface or shallow subsurface connection to the unnamed tributary to the Pike River, approximately 460 feet to the north of W22. There were no surface inlets/outlets observed in the wetlands. W15 is part of W13 which extends to the south. W13 was determined to be non-jurisdictional (MVP-2017-04050-ANM, March 8, 2018). These wetlands do not border, neighbor nor are contiguous with another water of the U.S. They are not separated from other WOUS by man-made dikes, barriers, or berms. These wetlands are surrounded by agricultural areas and transportation corridors. The disturbance of surrounding land uses precludes an ecological connection to a WOUS.**

These aquatic resources 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. Therefore, the Corps has determined that these wetlands 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

¹ Supporting documentation is presented in Section III.F.

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):

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: W15 is 1.26 acres in the review area, W16 is 1.28 acres, W17 is 0.18 acre, W18 is 0.01 acre, W19 is 0.10 acre, W20 is 0.15 acre, and W22 is 0.03 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.

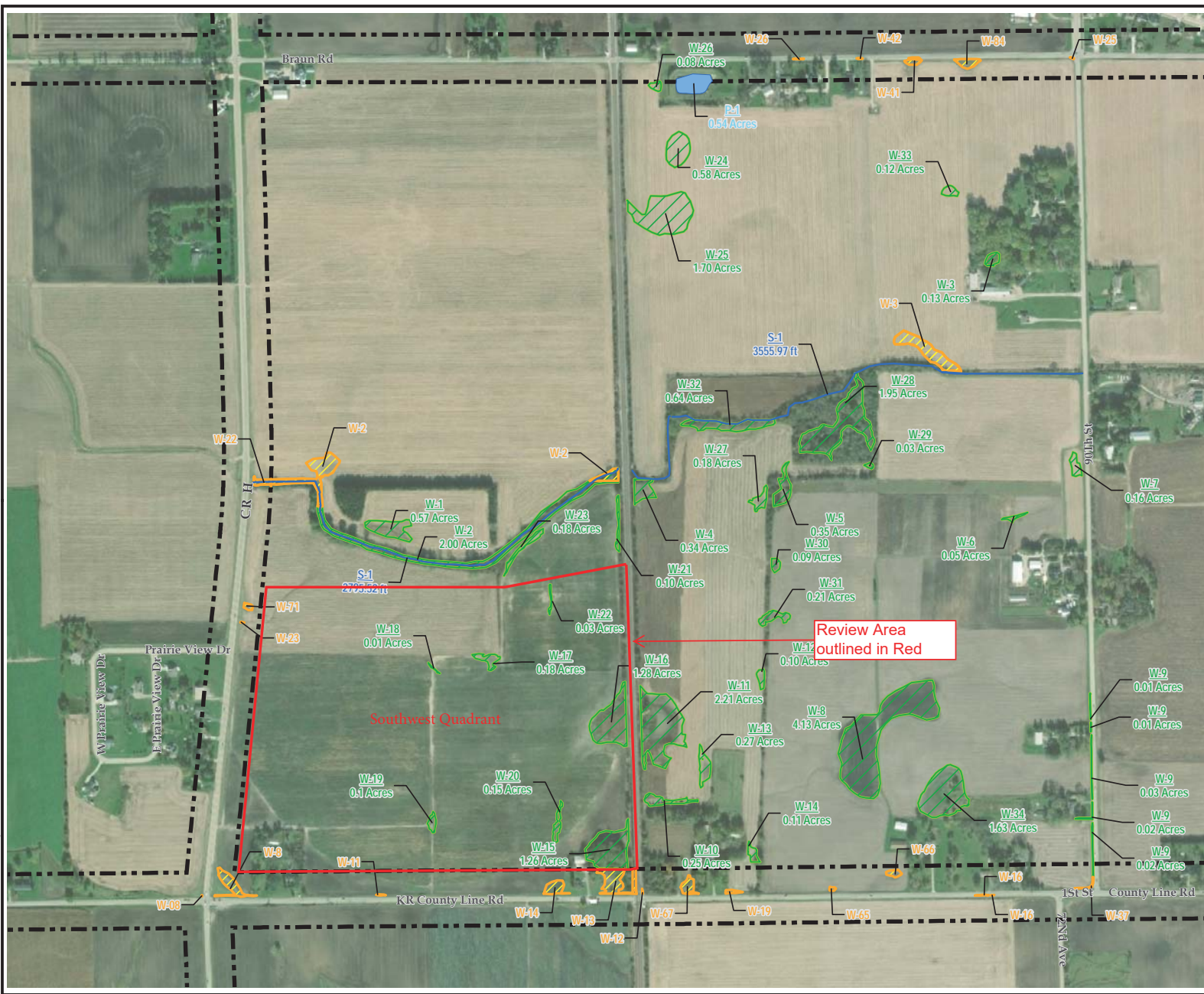
A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: TRC Environmental Corporation Area 3 Wetland Delineation Report dated November 14, 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 WI-Sturtevant
- USDA Natural Resources Conservation Service Soil Survey. Citation: Racine County
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s): Wisconsin Wetland Inventory (Wisconsin DNR Surface Water Data Viewer)
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): FSA crop slides 1980-1987, 1989-2002; Racine County GIS 2000, 2005, 2010, 2015; DigitalGlobe 2017; Google Earth 2005-2018
 - or Other (Name & Date): ground level photos in 2018 delineation report and supplemental TRC photos

- Previous determination(s). File no. and date of response letter: MVP-2017-04050-ANM isolated jurisdictional determination for W-13 (March 8, 2018)
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Racine County GIS 2-foot contour map

B. ADDITIONAL COMMENTS TO SUPPORT JD:

TRC - GIS
 Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet (Foot US)
 Plot Date: 10/16/2018 16:22:19 Path: S:\PROJECTS\Wetland\GIS\sigma\area3\177
 Path: S:\PROJECTS\Wetland\GIS\sigma\area3\177



LEGEND

- SPRING 2018 TID5 SANITARY SEWER WETLAND DELINEATION
- ATC PROPERTIES
- TID 5 PROJECT AREA
- 2017 ROW PROJECT AREA
- NO ACCESS PARCELS
- TRC DELINEATED WETLAND
- 2017 TRC DELINEATED WETLAND
- TRC DELINEATED PONDS
- TRC DELINEATED STREAM

- NOTES**
1. BASE MAP IMAGERY FROM DIGITALGLOBE WEBSERVICE LAYER, 2017.
 2. INFORMATION FOR THE 2017 DELINEATED WETLANDS CAN BE FOUND IN THE DEVELOPMENT ROADS WETLAND AND WATERWAY DELINEATION REPORT PREPARED BY TRC DATED DECEMBER 22, 2017.
 3. INFORMATION FOR THE SPRING TID 5 PROJECT AREA CAN BE FOUND IN THE TID5 SANITARY SEWER: CTH H TO PIKE RIVER GRAVITY CONVEYANCE (GS-1) DATED MAY 24, 2018.

1" = 600'
1:7,200

PROJECT	
SIGMA AREA 3 RACINE COUNTY, WISCONSIN	
TITLE	
WETLAND AND WATERWAY DELINEATION MAP	
DRAWN BY:	S. MAJOR PROJ. NO.: 310749
CHECKED BY:	A. LARSEN
APPROVED BY:	EXHIBIT A
DATE:	OCTOBER 2018
150 North Patrick Blvd., Suite 180 Brookfield, WI 53005 Phone: 262.879.1212 www.trcsolutions.com	
FILE NO.:	307994-014wfdelin_sansSP.mxd

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Ron Londre (TRC Environmental Corporation)	File No.: 2018-03170-MHK	Date: Dec. 21, 2018
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.
- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT:** You may accept or appeal the permit
- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.
- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
 - **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Marie Kopka
U.S. Army Corps of Engineers
250 Sunnyslope Road, Suite 296
Brookfield, Wisconsin 53005

651-290-5733

If you only have questions regarding the appeal process you may also contact the Division Engineer through:

Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
601-634-5820 FAX: 601-634-5816

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: