



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

Regulatory File No. 2019-00029-MHK    May 13, 2019

Mr. Richard Reaves  
Jacobs  
6600 Peachtree Dunwoody Road  
400 Embassy Row, Suite 600  
Atlanta, Georgia 30326

Dear Mr. Reaves:

This letter is in response to your jurisdictional determination requests for individual parcels surrounding Foxconn Area 1 in the Village of Mount Pleasant. The review area includes 13 aquatic resources and is located in Sections 31 and 32, Township 3 North, Range 22 East, Racine County, Wisconsin. The review area for our jurisdictional determinations is identified on the enclosed exhibit labeled MVP-2019-00029-MHK Pages 1 through 4.

A preliminary jurisdictional determination (PJD) has been prepared for 3 aquatic resources: Kilbourn Road Ditch, W2, and W10. This PJD presumes that all three aquatic resources identified above are subject to Corps of Engineers' jurisdiction under the Clean Water Act. The PJD is not appealable. If you wish, you may request an approved jurisdictional determination (which may be appealed), by contacting the Corps representative identified in the final paragraph of this letter. If this PJD is acceptable, please sign and date the PJD form and return within 15 days from the date of this letter.

In addition, we have determined that the review area contains 10 aquatic resources that are not waters of the United States subject to Corps of Engineers (Corps) jurisdiction: W1, W3, W4, W-5a, W5b, W5c, W6, W7, W8, and W9. Therefore, you are not required to obtain Department of the Army authorization to discharge dredged or fill material within these areas. The rationale for this determination is provided in the enclosed Approved Jurisdictional Determination forms.

The jurisdictional determinations have been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. These determinations 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 the approved jurisdictional determinations, 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 these determinations, 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 determinations in this letter.

Regulatory Branch (File No. 2019-00029-MHK)

The approved jurisdictional determinations may be relied upon for five years from the date of this letter. However, the Corps reserves the right to review and revise the determinations 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. The determinations 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 determinations are still accurate.

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

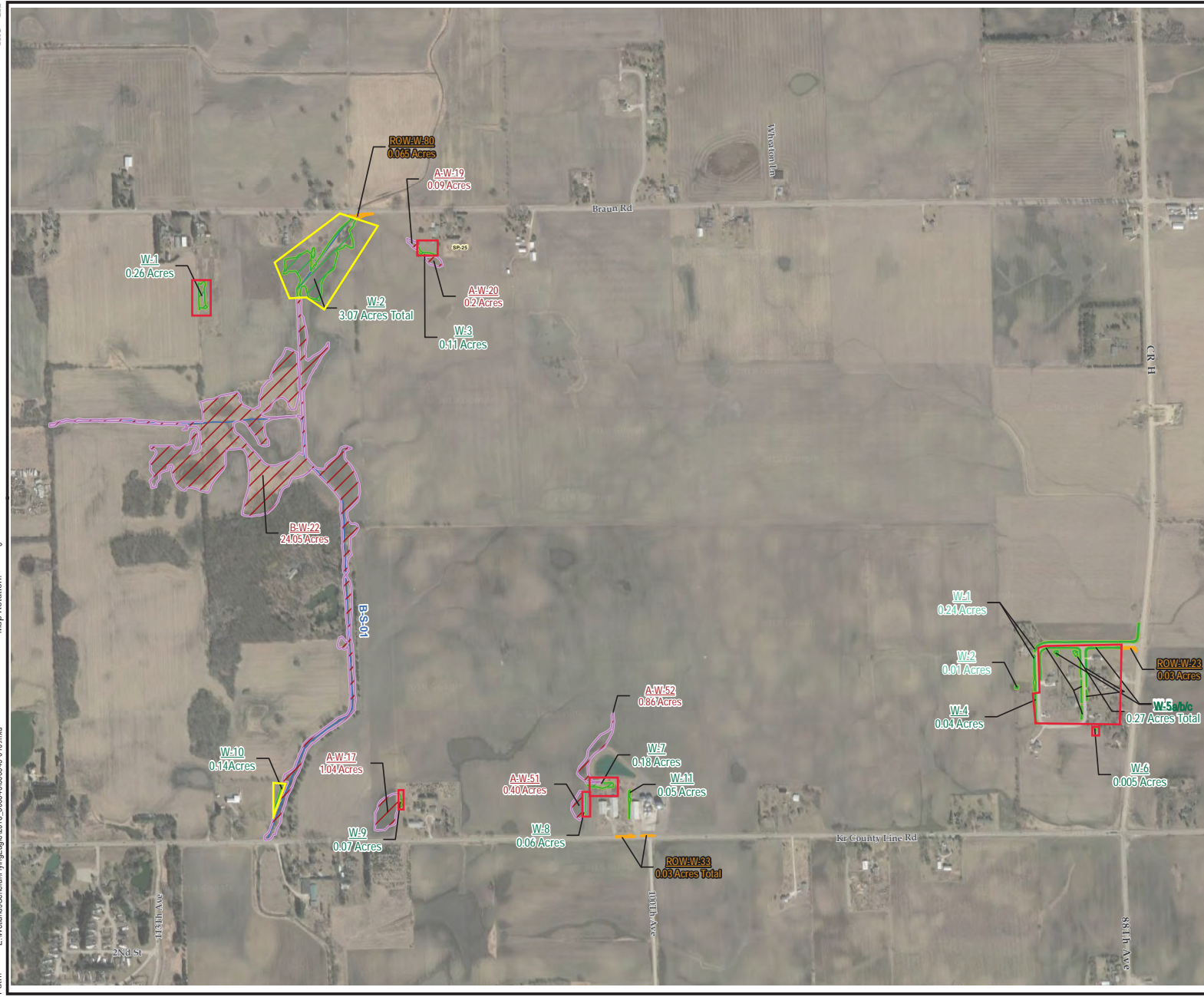
Enclosures

Cc: Michelle Hackett, Jacobs

TRC - GIS

Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet (Foot US)  
Map Rotation: 0

Plot Date: 11/20/2018 08:26:45 AM by SHAOR - LAYOUT\_ANSI(B(11" x 17")  
Path: E:\Wetlands\General\FlygEagle\2018\_306545\306545-010.mxd



**LEGEND**

- CULVERT
- 2017 TRC DELINEATED STREAMS
- 2018 TRC DELINEATED WETLAND (PARCELS 409 & 413)
- 2018 TRC DELINEATED WETLAND
- 2017 TRC WETLAND DELINEATION (ROW)
- 2017 TRC WETLAND DELINEATION (NON-ROW)
- AJD review area
- PJD review area

**NOTES**

1. BASE MAP IMAGERY ACQUIRED FROM GOOGLE EARTH PRO. (03/16/2018)
2. PARCEL DATA ACQUIRED FROM WISCONSIN STATE CARTOGRAPHER'S OFFICE. LOCATIONS ARE APPROXIMATE.
3. INFORMATION FOR THE 2017 DELINEATED WETLANDS CAN BE FOUND IN THE AMERICAN FLYING EAGLE WETLAND AND WATERWAY REPORT PREPARED BY TRC DATED DECEMBER 21, 2017.
4. INFORMATION FOR THE 2017 ROW DELINEATED WETLANDS CAN BE FOUND IN THE DEVELOPMENT ROADS WETLAND AND WATERWAY DELINEATION REPORT PREPARED BY TRC DATED DECEMBER 22, 2017.
5. INFORMATION FOR DELINEATED WETLANDS ON PARCELS 409 & 413 CAN BE FOUND IN THE FOXCONN - PARCELS 409 & 413 WETLANDS AND WATERWAYS DELINEATION REPORT DATED AUGUST 3, 2018; REVISED SEPTEMBER 19, 2018.

0 800 1,600 Feet  
1" = 800'  
1:8,600

PROJECT: FOXCONN INDIVIDUAL PARCELS - AREA 1  
RACINE COUNTY, WISCONSIN

TITLE: WETLAND AND WATERWAY DELINEATION  
OVERVIEW MAP

DRAWN BY: A. ADAIR	PROJ. NO.: 306545
CHECKED BY: A. LARSEN	
APPROVED BY: A. LARSEN	<b>EXHIBIT A1</b>
DATE: NOVEMBER 2018	

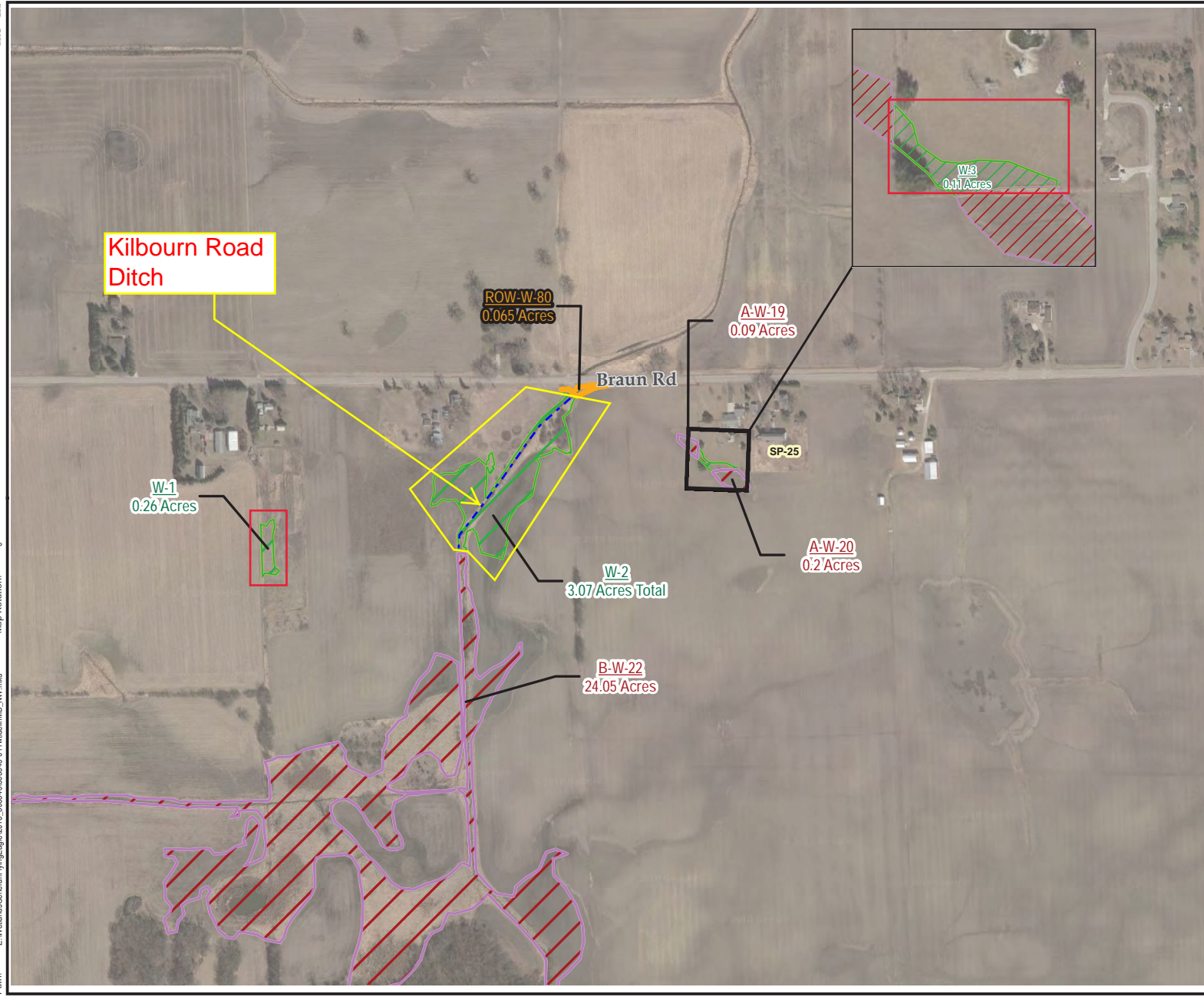
TRC 150 North Patrick Blvd., Suite 100  
Brookfield, WI 53005  
Phone: 262.879.1212  
www.trcsolutions.com

FILE NO.: 306545-010.mxd

TRC - GIS

Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet (Foot US)  
Map Rotation: 0

Plot Date: 11/02/2018 09:51:41 AM by: SHAJOR - LAYOUT\_ANSI(B)(1)\*.177  
Path: E:\Wetlands\General\FlygEagle\2018\_306545\306545-011wdeleinMB\_NW.mxd



**LEGEND**

- CULVERT
- 🟢 2018 TRC DELINEATED WETLAND
- 🟡 2017 TRC WETLAND DELINEATION (ROW)
- 🟣 2017 TRC WETLAND DELINEATION (NON-ROW)
- 🔴 AJD review area



**NOTES**

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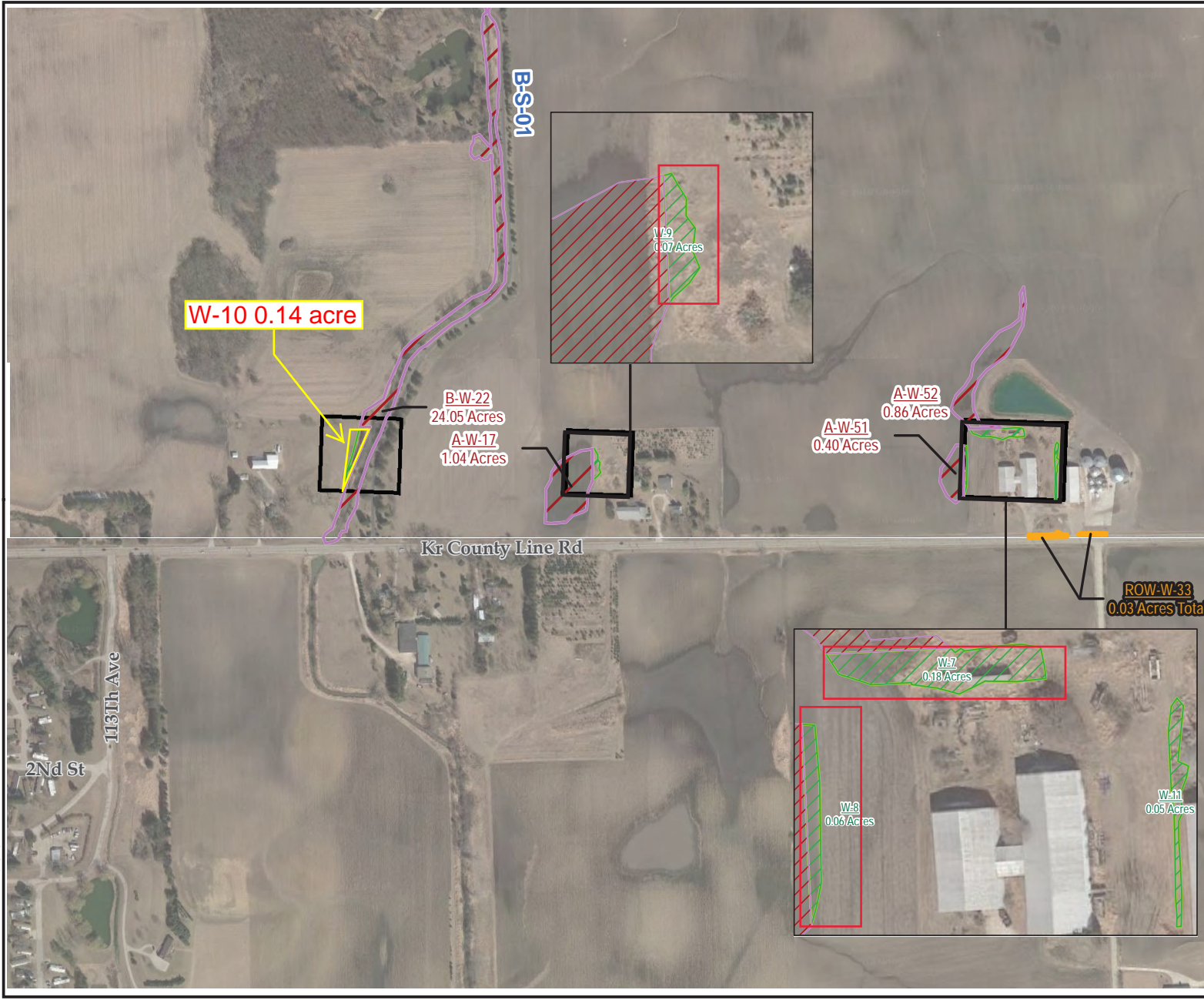


PROJECT:		<b>FOXCONN INDIVIDUAL PARCELS - AREA 1 RACINE COUNTY, WISCONSIN</b>	
TITLE:		<b>DETAILED WETLAND AND WATERWAY DELINEATION MAP</b>	
DRAWN BY:	A. ADAIR	PROJ. NO.:	306545
CHECKED BY:	A. LARSEN		
APPROVED BY:	A. LARSEN	<b>EXHIBIT A2</b>	
DATE:	NOVEMBER 2018		
		150 North Patrick Blvd., Suite 180 Brookfield, WI 53045 Phone: 262.879.1212 www.trcsolutions.com	
FILE NO.:	306545-011wdeleinMB_NW.mxd		

TRC - GIS

Coordinate System: NAD 1983 StatePlane Wisconsin South FIPS 4803 Feet (Foot US)  
Map Rotation: 0

Plot Date: 11/02/2018 09:03:42 AM by: SHAJOR - LAYOUT\_ANSI\_B(11)\*177  
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**LEGEND**

- CULVERT
- 2018 TRC DELINEATED WETLAND
- 2017 TRC WETLAND DELINEATION (ROW)
- 2017 TRC WETLAND DELINEATION (NON-ROW)
- AJD review area

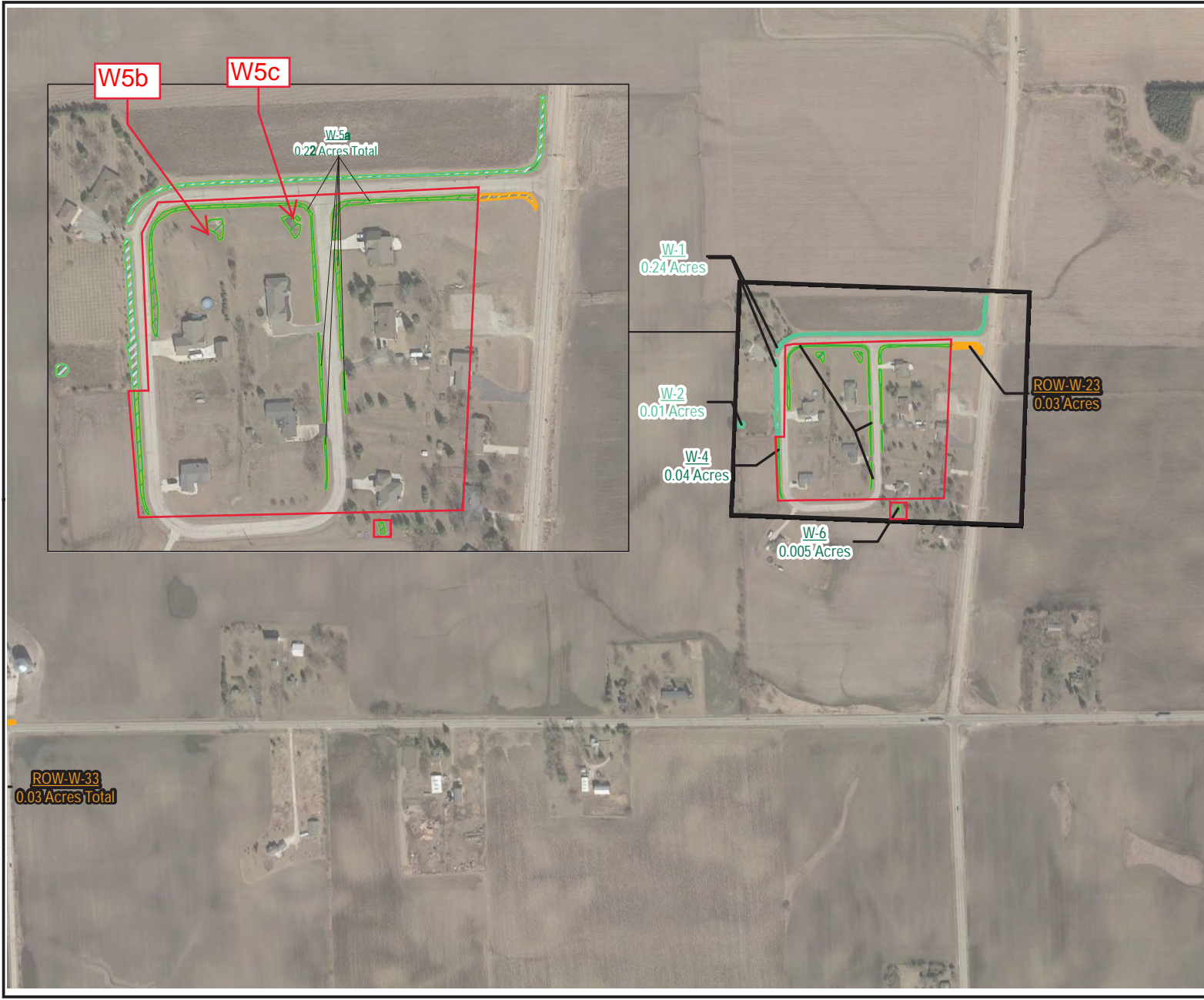
- NOTES**
1. BASE MAP IMAGERY ACQUIRED FROM GOOGLE EARTH PRO. (03/16/2018)
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- 0 400 800 Feet
- 1" = 400'  
14,800'

PROJECT:		<b>FOXCONN INDIVIDUAL PARCELS - AREA 1 RACINE COUNTY, WISCONSIN</b>	
TITLE:		<b>DETAILED WETLAND AND WATERWAY DELINEATION MAP</b>	
DRAWN BY:	A. ADAIR	PROJ. NO.:	306545
CHECKED BY:	A. LARSEN		
APPROVED BY:	A. LARSEN	<b>EXHIBIT A4</b>	
DATE:	NOVEMBER 2018		
		150 North Patrick Blvd., Suite 180 Brookfield, WI 53005 Phone: 262.879.1212 www.trcsolutions.com	
FILE NO.:	306545-011\wde\in\MB_S\W.mxd		

TRC - GIS

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Map Rotation: 0

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**LEGEND**

- CULVERT
- 2018 TRC DELINEATED WETLAND (PARCELS 409 & 413)
- 2018 TRC DELINEATED WETLAND
- 2017 TRC WETLAND DELINEATION (ROW)
- AJD review area



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PROJECT:		FOXCONN INDIVIDUAL PARCELS - AREA 1 RACINE COUNTY, WISCONSIN	
TITLE: <b>DETAILED WETLAND AND WATERWAY DELINEATION MAP</b>			
DRAWN BY:	A. ADAIR	PROJ. NO.:	306545
CHECKED BY:	A. LARSEN		
APPROVED BY:	A. LARSEN	<b>EXHIBIT A5</b>	
DATE:	NOVEMBER 2018		
		150 North Patrick Blvd., Suite 100 Brookfield, WI 53005 Phone: 262.879.1212 www.trcsolutions.com	
FILE NO.:	306545-011\wdelinMB_SE.mxd		

**PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PJD:** 13 May 19

**B. NAME AND ADDRESS OF PERSON REQUESTING PJD:** Richard Reaves,  
Jacobs, 6600 Peachtree Dunwoody Rd, 400 Embassy Row, Suite 600, Atlanta,  
GA 30328

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** CEMVP-OP-R, Foxconn Area 1  
Individual parcels, MVP-2019-00029-MHK

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:  
(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES  
AND/OR AT DIFFERENT SITES)**

State: Wisconsin County: Racine City: Mount Pleasant

Center coordinates of site (lat/long in degree decimal format):

Latitude: 42.67511 °N, Longitude: -87.94034°W

Universal Transverse Mercator: Zone 16 (x: 422971.50, y: 4726042.91)

Name of nearest waterbody: Kilbourn Road Ditch

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- Office (Desk) Determination.
- Field Determination.

Date: 17 Apr 19  
Date(s): *Date*

**TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH “MAY BE” SUBJECT  
TO REGULATORY JURISDICTION.**

Site Number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimate amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland)	Geographic authority to which the aquatic resource “may be” subject (i.e., Section 404 or Section 10/404)
Kilbourn Road Ditch/S-1	42.68260	-87.94013	878 linear feet	non-wetland waters	Section 404
W2	42.68301	-87.94022	3.07 acres	wetland	Section 404
W10	42.66979	-87.94190	0.14 acres	wetland	Section 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
  
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

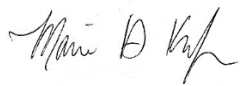


**SUPPORTING DATA. Data reviewed for PJD (check all that apply)**

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:  
Map: TRC Environmental Corporation wetland delineation November 2018
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report. Rationale:
- 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
- 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
- FEMA/FIRM map(s):
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs  Aerial (Name & Date): aerial photos in delineation report  
or  Other (Name & Date): ground level photos in delineation report
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**



5/13/2019

\_\_\_\_\_  
Signature and date of Regulatory staff member completing PJD

\_\_\_\_\_  
Signature and date of person requesting PJD (REQUIRED, unless obtaining the signature is impracticable)<sup>1</sup>

<sup>1</sup> Districts may establish timeframes for requester to return signed PJD forms. If the requester does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

**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):** May 13, 2019

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Foxconn Area 1 Individual Parcels, MVP-2019-00029-MHK (W1, W-3, W-6 through W-9)

**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. 42.67675° N, Long. -87.93168° E.

Universal Transverse Mercator: Zone 16 (X 423966.78, Y 4725589.30)

Name of nearest waterbody: Kilbourn Road Ditch to west; Pike River to East

Name of watershed or Hydrologic Unit Code (HUC): 07120004 to west; 04040002 to east

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: April 9 and 15, 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):**<sup>1</sup>

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area contains 6 intrastate wetlands: W1, W3, W6, W7, W8, and W9. A review of the 2018 TRC Environmental Corporation wetland delineation report, NRCS soil survey, USGS topographic map, National Hydrography Dataset, Wisconsin Wetland Inventory, Racine County GIS 2-foot contour map, and aerial photos from 1980 to present indicate that these are isolated waters with no surface or shallow subsurface connections to waters of the U.S. The Kilbourn Road Ditch is the closest waterway to the west which is approximately 733 feet to the west of W3 (closest wetland). The unnamed tributary to the Pike River is approximately 1,826 feet to the north of W6 (closest wetland). There were no surface inlets/outlets observed in the wetlands. Several of the wetlands are part of wetland complexes that were previously delineated and were determined to be isolated, non-jurisdictional wetlands per an approved jurisdictional determination dated Dec. 8, 2018 under MVP-2017-03856-MHK (W3 is part of AW19/AW20, W7 is part of AW52, W8 is part of AW51, and W9 is part of AW17). These waters 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 residential development. 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.**

<sup>1</sup> Supporting documentation is presented in Section III.F.

**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):

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: Within the review area, W1 is 0.26 acre, W3 is 0.11, W6 is 0.005 acre, W7 is 0.18 acre, W8 is 0.06 acre and W9 is 0.07 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 "Foxconn Individuals Parcels - Area 1" Wetland Delineation Report dated November 12, 2018 revised November 30, 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 Geodectic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): FSA crop slides 1980-2002; NRCS/USDA 2005-2018; Google Earth 2000-2018

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-2017-03856-MHK isolated jurisdictional determinations (December 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:**

**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):** May 13, 2019

**B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER:** Foxconn Individual Parcels Area 1, MVP-2019-00029-MHK (Wetland 4 and Wetland 5a, 5b, 5c)

**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. **42.67324° N**, Long. **-87.91679° E**.  
Universal Transverse Mercator: **Zone 16 (X 424878.86, Y 4724937.57)**

Name of nearest waterbody: **Pike River**

Name of watershed or Hydrologic Unit Code (HUC): **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: **April 15 and 17, 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):<sup>1</sup>**

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain: **The review area contains a roadside ditch system (Wetland 5a and Wetland 4) and two stormwater basins (Wetland 5b and 5c). The roadside ditches associated with Wetland 5a are located on the south side of Prairie View Drive and on both sides of East Prairie View Drive totaling 0.22 acre in size. This ditch system is a continuation of a right-of-way ditch (Ditch 8/ROW-W-23) which was determined to be non-jurisdictional (MVP-2017-04050-MHK, July 30, 2018). The roadside ditch associated with Wetland 4 is located on the west side of W. Prairie View Drive and is 0.04 acre in size. This ditch is a continuation of W-1 ditch which was determined to be non-jurisdictional on October 5, 2018 (MVP-2017-03856-MHK). Both ditch systems were constructed wholly in uplands and drain only uplands. These ditches do not have a relatively permanent flow of water and are not a water of the U.S. The determination of no jurisdiction for the ditches is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos Guidance.**

**The two stormwater basins were constructed in uplands between 2008 and 2010 and are both 0.02 acre in size. This was confirmed by reviewing aerial photos, 2018 TRC Environmental Corporation wetland delineation report, NRCS soil map, and Wisconsin Wetland Inventory. The jurisdictional determination for these stormwater 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.**

**SECTION III: CWA ANALYSIS**

<sup>1</sup> Supporting documentation is presented in Section III.F.

- 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: TRC Environmental Corporation "Foxconn Individual Parcels - Area 1" wetland delineation report November 12, 2018, revised November 30, 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
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is:      (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): ground level photos and 2000, 2005, 2010, 2015, 2017 aerial photos in 2018 TRC delineation report
  - or  Other (Name & Date): Google Earth 2000, 2002, 2005, 2006, 2007, 2008, 2010.
- Previous determination(s). File no. and date of response letter: MVP-2017-04050-MHK AJD dated July 30, 2018 for Ditch 3 (ROW-W-23); MVP-2017-03856-MHK AJD dated October 5, 2018 for W-1.

- 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:**

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

<b>Applicant:</b> Richard Reaves (Jacobs)		<b>File No.:</b> 2019-00029-MHK	<b>Date:</b> May 13, 2019
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: