

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, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: MVP-2022-02255-DDP, American Family

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WI County/parish/borough: Dane City: City of Madison

Center coordinates of site (lat/long in degree decimal format): Lat. 43.149512° **Pick List**, Long. -89.301391° **Pick List**.

Universal Transverse Mercator: 16

Name of nearest waterbody: Unnamed (WBIC 805200)

Name of watershed or Hydrologic Unit Code (HUC): Upper Mississippi Region 07090002

☒ 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: December 19, 2022

☐ 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 Eastpark Wetland Delineation review area contains one aquatic feature for review: Wetland 2 (26,009.7 sq. ft.). The majority of the review area consists of urban and agricultural land use. Based on an analysis of multiple years of aerial photography, web soil survey data, USGS topographic mapping, WWI mapping, and the Ruekert & Mielke, Inc. November 1, 2022 - TAC - Eastpark Wetland Delineation Report, the Corps has determined that the aforementioned aquatic feature is not a water of the United States.

Wetland 2 is a fresh (wet) meadow wetland located on the southern toe slope of a manmade berm constructed between Wetlands 1 and 2. From a review of aerial imagery this berm was constructed in uplands from topsoil excavated during site preparation for Eastpark Boulevard between 2000 to 2003. Wetland hydrology is sustained by runoff from the adjacent agricultural fields as water collects behind the aforementioned berm, before flowing into Wetland 1 through a PVC pipe. Additionally, the majority of Wetland 2 is mapped as Marsh silt loam which has a drainage class of very poorly drained. Given the anthropogenic change in geomorphic position, this soil type would support wetland development at the upgradient toe slope. Prior to the berms construction this area was farmed and there is no definitive evidence of a natural wetland at this location.

Given the information described above, Wetland 2 was constructed in uplands incidentally as a result of the berm construction. In accordance with 33 CFR Part 328.3(b)(9), the Corps has determined that Wetland 2 is not regulated by the Corps under Section 404 of the Clean Water Act. The wetland was created in uplands or in non-jurisdictional waters incidental to mining or construction activities.

¹ 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): **Wetland 2 (26,009.7 sq. ft.)**

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: **Ruekert & Mielke, Inc. November 1, 2022 - TAC - Eastpark Wetland Delineation**
- ☒ 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: **Regulatory Viewer layer accessed December 19, 2022**
 - ☒ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K Quad Name: De Forest**
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: **Dane County Soil Survey**
- ☒ National wetlands inventory map(s). Cite name: **Regulatory Viewer layer accessed December 19, 2022**
- ☒ State/Local wetland inventory map(s): **Regulatory Viewer layer accessed December 19, 2022**
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): **Regulatory Viewer layer/Google Earth accessed December 19, 2022**
 - or ☒ Other (Name & Date): **Ruekert & Mielke, Inc. November 1, 2022 - TAC - Eastpark**

Wetland Delineation

- ☐ 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: