

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): February 18, 2020

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Lake Vista North Capping Project, MVP-2014-02725-DJM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin County/parish/borough: Milwaukee County City: Oak Creek

Center coordinates of site (lat/long in degree decimal format): Lat. 42.881606° N, Long. -87.849124° W.

Universal Transverse Mercator: 16

Name of nearest waterbody: Lake Michigan

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: December 31, 2019

☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “*navigable waters of the U.S.*” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no “*waters of the U.S.*” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: **A desktop review of the 80-acre site was conducted on December 31, 2019 to review potentially jurisdictional waters: Wetland 1 (0.79-acre), Wetland 2 (0.22-acre), Wetland 3 (1.25-acre), Wetland 4 (0.60-acre), Wetland 5 (0.31-acre), Wetland 6 (0.10-acre), Wetland 7 (0.16-acre), Wetland 8 (0.19-acre) as requested by Brian Lennie of Stantec on behalf of Sue Winnen of the City of Oak Creek.**

Corps staff have determined that Wetlands 1-8 are isolated wetlands with no hydrologic connection to a Water of the United States. The Review Area for this Jurisdictional Determination is limited to the boundaries of Wetlands 1-8.

A thorough desktop review was conducted to identify any culverts and/or other hydrologic connections within and adjacent to the project site. The closest surface water found was Lake Michigan as indicated on the USGS topographic map. Lake Michigan is a Section 10 Navigable Water of the United States. Wetlands 1-8 do not have surface or shallow subsurface connections to Lake Michigan or other Waters of the United States. Wetlands 1-8 are located in small depressional areas within an 80-acre abandoned industrial brownfield site.

Based upon information gathered as a result of the desktop review and the wetland delineation report, Corps staff determined that Wetlands 1-8 are wholly surrounded by uplands and lack unbroken surface or shallow sub-surface connections to a Water of the United States. Wetlands 1-8 have no physical separations by man-made dikes or barriers, natural river berms, beach dunes, and the like from jurisdictional waters. The surrounding land uses comprised of commercial and residential properties do not provide cover or habitat between the wetlands and other aquatic resources to the north, west, and

¹ Supporting documentation is presented in Section III.F.

south. As a result, Wetlands 1-8 do not have ecological connections to a WOUS to the north, west, and south due to the lack of ecological resources and distance between the wetlands and the nearest Water of the United States. However, the proximity of Wetlands 1-8 to Lake Michigan to the east is reasonably close and could potentially support an ecological connection. Despite the close proximity between Wetlands 1-8 and Lake Michigan, aquatic and terrestrial organisms seeking and currently utilizing Wetlands 1-8 for habitat would not likely find suitable habitat within Lake Michigan. The land area between the nearest wetlands (Wetlands 3-8) and Lake Michigan consists of an 80-foot change in elevation over approximately 400 linear feet. There are no other aquatic resources or similar habitats within the upland areas between Wetlands 3-8 and Lake Michigan. Additionally, Wetlands 1-8 and on-site uplands have been determined by the Wisconsin Department of Natural Resources to be highly contaminated. As a result of the contamination, wetlands 1-8 do not provide high quality habitat for aquatic and terrestrial life. Therefore, the Corps has determined there is no ecological connection between Wetlands 1-8 and Lake Michigan.

The waterbodies described above, Wetlands 1-8 do not support a link to interstate or foreign commerce because they are not known to be used by interstate or foreign travelers for recreation or other purposes; they do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes for interstate or foreign commerce. Wetlands 1-8 have been determined to be non-jurisdictional under the Clean Water Act because the wetlands lack connections and/or relationships sufficient to serve as a basis for jurisdiction.

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: 3.62 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: 2014 Wetland Delineation Report prepared by the Smith Group JJR (The wetland boundaries received Corps concurrence on 6-OCT-2014. The permit application/AJD request was submitted prior to the expiration of the 5-year delineation report validation.)
- ☒ 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, South Milwaukee
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Milwaukee County Web Soil Survey
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Google Earth Aerial Maps APR 2000, APR 2004, AUG 2005, JUN 2006, OCT 2007, JUN 2008, JUL 2011, APR 2014, JUN 2015, APR 2017, and MAR 2018.
- 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): Wisconsin Surface Water Data Viewer

B. ADDITIONAL COMMENTS TO SUPPORT JD: