

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 5, 2016

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: Bear Development St. Francis, 2015-03186-MHK (Wetland 1 and 2)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **WI** County/parish/borough: **Milwaukee** City: **St. Francis**
Center coordinates of site (lat/long in degree decimal format): Lat. **42.97194° N**, Long. **-87.85355° W**.
Universal Transverse Mercator: **16**

Name of nearest waterbody: **Lake Michigan**

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: **February 5, 2016**
 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: **W-1 (0.05 acre) and W-2 (0.31 acre) are wetlands that developed within depressions that were created as a result of upland excavation and are not waters of the U.S. (WOUS). This was confirmed by reviewing Milwaukee County and Google Earth aerial photos between 1937 to 2007 and by reviewing construction and grading plans from 2005. This determination 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., "waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of WOUS."**

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

¹ Supporting documentation is presented in Section III.F.

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): **W-1 and W-2 are not WOUS pursuant to the preamble to the Corps 1986 regulations (33 CFR Parts 320-330).**

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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: **R.A. Smith National delineation report**
- 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 Quad WI-South Milwaukee**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **Milwaukee 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 Geodectic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **1937, 1951, 1963, 1970, 1980, 1985, 1990, 1995 Milwaukee County GIS; Google Earth Imagery 2000, 2004, 2005, 2007, 2008, 2010, 2011, 2014, and 2015**
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): **Park Shore Phase 2A Erosion Control and Grading Plans dated October 2005**

B. ADDITIONAL COMMENTS TO SUPPORT JD: This determination concludes that W-1 and W-2 are not waters of the U.S., as detailed in Section II, B2.

Bear Development, LLC
City of St. Francis
Milwaukee County, Wisconsin

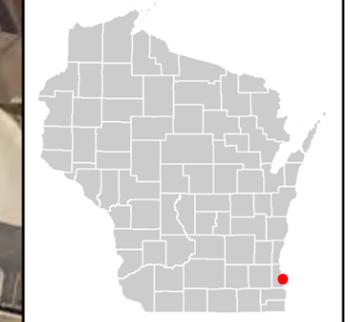


Figure 2
Wetland Boundary
Map



Map Legend

- Sample Plot
- Delineated Wetland - 0.55 acre
- Study Area - 11 acres

Document Path: H:\1150397\GIS\Wetland Figures\Figure 2 - Wetland Boundary Map.mxd