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): JUN 05 2018

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: West Metro Auto Mall, MVP-2018-00702-ANM

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
   State: WI  County/parish/borough: Milwaukee  City: Milwaukee
   Center coordinates of site (lat/long in degree decimal format): Lat. 43.143781° N, Long. -88.048047° W.
   Universal Transverse Mercator: Zone 16 (X 414774.550668, Y 4777314.684872 )
   Name of nearest waterbody: Menomonee River
   Name of watershed or Hydrologic Unit Code (HUC): Great Lakes Region (04040003)
   ☑ 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: May 31, 2018
   ☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS
A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no “navigateable 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):²
   ☑ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: The 10.8-acre review areas contains four waterfilled depressions (W-1 through W-4) created in upland incidental to construction activity and are not waters of the U.S. This was confirmed by reviewing WWI, NRCS Soil Survey data, aerial photographs from 1937 to 2018, and the 2016 R.A. Smith National wetland delineation report. Within the review area, no wetlands are mapped in WWI and no hydric soil is present based on the NRCS Soil Survey map. In addition, no wet signatures appear on any of the aerial photographs prior to 2000. Grading activity occurred between 1995-2000 and the 2000 aerial shows construction of the new W. Metro Auto Mall roadway. Additional development occurred adjacent to the site between 2000-2015. The grading activity appears to have created all of the waterfilled depressions. The determination of no jurisdiction for the waterfilled depressions is in accordance with the 2008 Rapanos guidance and 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 waters of the United States (see 33 CFR 328.3(a)).

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

² Supporting documentation is presented in Section III.F.
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): The waterfilled depressions (W-1 through W-4) are not waters of the U.S. pursuant to the preamble to the Corps 1986 regulations (33 CFR Parts 320-330).

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: 2016 R.A. Smith National wetland 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:
    ☑ USGS NHD data.
    ☑ USGS 8 and 12 digit HUC maps.
  ☑ U.S. Geological Survey map(s). Cite scale & quad name: 1:24K WI-Menomonee Falls
  ☑ 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 Geodetic Vertical Datum of 1929)
    or ☑ Other (Name & Date): Ground level photos in delineations
  ☑ 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: