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): April 12, 2019

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: FHCC Addition - MVP-2019-00260-EMN

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

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

Center coordinates of site (lat/long in degree decimal format): Lat. 42.91964° N, Long. -88.05255° W.

Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Ryan Creek

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: March 6, 2019
 - Field Determination. Date(s):

<u>SECTION II: SUMMARY OF FINDINGS</u> 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: There is a man-made ditch (0.06 acres) and three intrastate wetlands (W-2, W-3, and W-4) delineated within the review area as shown on the attached figures (MVP-2019-00260-EMN, Page 2 of 13). The USGS Topo map shows the ditch is located in a flat area in the landcape and the wetlands are located on an approximately 1-6% slope. There are no mapped wetlands on the Wisconsin Wetland Inventory at the location of these aquatic resources. The ditch is located within the Blount silt loam soil unit (BIA) which is a somewhat poorly drained soil with hydric soil inclusions and average depth to water table of 6-24 inches. W-2 and W-3 are located within the Ozaukee silt loam soil unit (OzaB2) which is a moderately well drained soil with no hydric soil inclusions and an average depth to water table of 24-42 inches. W-4 is located within the Ashkum silty clay loam soil unit (AsA), which is poorly drained and has an average depth to water table of 0-12 inches. The consultant (raSmith) stated that these three wetlands formed from past construction activities (grading and filling around the facility) and developed wetland characteristics on top of existing fill. The consultant also provided information that states the man-made ditch was constructed between 1998-2000 to act as a stormwater convenyance to direct runoff from the facility and parking lots to the stormwater pond to the south. A review of historic aerial photos from 1980 and 1990 do not show the presence of a wetland or wet signatures at any of these locations. The 2000 aerial photo shows grading and disturbance within the areas where these features are located, which would be consistent with the construction of the large building to the south and construction of the stormwater features (1998-2000). Wet signatures become evident in the ditch and the three wetland locations in subsequent years (2005-2018). Based upon this information, we have determined the ditch was constructed in dry land and is not a water of the United States and the three wetlands formed as a result of past construction activities in uplands. This determination of no jurisdiction is in accordance with the preamble to the 1986 Corps Regulations (33 CFR Parts 320-330) and the 2008 Rapanos Guidance.

¹ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs: N
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B. (CHARACTERISTICS OF TRIBUTARY	(THAT IS NOT A TNW	() AND ITS ADJACENT	WETLANDS (IF ANY): N/A
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- 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 <u>solely</u> 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): Reference Section II.B.2.

Provide acreage estimates for non-jurisdictional waters in the review area, where the <u>sole</u> 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.	SUF	PPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked
	and	d requested, appropriately reference sources below):
	\boxtimes	Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Tina Smith - raSmith (consultant)
		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:
	\bowtie	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 Hales Corners
- 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): 1980, 1990, 2000, 2005, 2010, 2013, 2015, and 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):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Reference attachments for historical aerial photos and supporting figures.