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): 17 July 2012

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Omaha District (ND) |Wenck Associates, Inc. Request for JD Northeast of Berthold, ND | NWO-2012-0720-BIS

C. PROJECT LOCATION AND BACKGROUND INFORMATION: NE1/4 of Section 14, Township 156 North, Range 86 West
State: ND County/parish/borough: Ward City: Berthold

Wetland No.:	Latitude	Longitude	Wetland Size (acres):	Cowardin Classification
W1	48.341448	-101.695208	0.24	PEM
W2	48.340725	-101.695101	0.74	PEM
W3	48.341313	-101.693906	1.17	PEM
W4	48.340988	-101.692283	1.34	PEM
W5	48.341605	-101.691113	0.50	PEM
W6	48.341464	-101.688933	0.96	PEM
W7	48.340874	-101.689131	0.09	PEM
W8	48.341414	-101.688000	0.27	PEM
W9	48.340811	-101.687041	2.77	PEM
W10	48.339798	-101.685047	1.49	PEM
W11	48.340347	-101.686651	0.04	PEM
W12	48. 339770	-101.686934	0.54	PEM
W13	48.339028	-101.688222	0.39	PEM
W14	48.339639	-101.690374	0.57	PEM
W15	48.339645	-101.692157	0.69	PEM
W16	48.338974	-101.692835	0.78	PEM
W17	48.339829	-101.694581	0.46	PEM
W18	48.339275	-101.695577	0.07	PEM
W19	48.338876	-101.694773	0.32	PEM
W20	48.338528	-101.693633	0.24	PEM
W21	48.338350	-101.689239	0.50	PEM
W22	48.337525	-101.688476	0.18	PEM
W23	48.337967	-101.687593	0.21	PEM
W24	48.338436	-101.685169	0.74	PEM
W25	48.335248	-101.685095	0.96	PEM
W26	48.335826	-101.694030	8.94	PEM
W27	48.335729	-101.689059	6.86	PEM
PW28	48.341660	-101.689873	0.12	PEM
PW29	48.340388	-101.689972	0.07	PEM
PW30	48.339808	-101.685723	0.03	PEM
PW31	48.338705	-101.687241	0.12	PEM
PW32	48.338335	-101.688418	0.07	PEM
PW33	48.338043	-101.690592	0.21	PEM
PW34	48.337992	-101.691767	0.14	PEM
PW36	48.336791	-101.690262	0.04	PEM
PW37	48.336942	-101.691516	0.18	PEM

Wetland No.:	Latitude	Longitude	Wetland Size (acres):	Cowardin Classification
PW39	48.336173	-101.691545	0.12	PEM
PW40	48.336780	-101.688777	0.14	PEM
PW41	48.335373	-101.686772	0.07	PEM

Universal Transverse Mercator:
Name of nearest waterbody: Black's Coulee
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Des Lacs River
Name of watershed or Hydrologic Unit Code (HUC): Des Lacs | 09010002
☒ 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: 3 July 2012
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION. N/A

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** "*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.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
      ☐ TNWs, including territorial seas
      ☐ Wetlands adjacent to TNWs
      ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
      ☐ Non-RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
      ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
      ☐ Impoundments of jurisdictional waters
      ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
      Non-wetland waters: linear feet: width (ft) and/or acres.
      Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: **Pick List**
      Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):** [3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: Thirty eight (38) wetland basins are included in this jurisdictional determination. Each may be impacted through development of the 160-acre parcel. An offsite determination was made utilizing a series of aerial photographs, USGS topographic maps, NRCS soil survey information and NWI. Each basin is holding water at higher than normal levels in the aerial photos attached; however, these were utilized to show clear isolation from each other and Black's Coulee, except for W25, W26 and W27. Wetlands W1-W24 and PW28-PW41 are isolated, intrastate and non-navigable. They are not utilized for recreational or industrial purposes. The closest TNW is the Des Lacs River, which is located approximately 5 miles to the north and west.

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: **Des Lacs River**.

Summarize rationale supporting determination: The Des Lacs River is an international waterway that flows from Canada, south across the border into North Dakota. The US Fish and Wildlife Service operates and maintains a series of dams within the Des Lacs National Wildlife Refuge. The Refuge only allows boating in Upper Des Lacs Lake; however, the entire river downstream of the Refuge to the Souris (Mouse) River is capable of be navigated. It meets the criteria of a TNW and has been designated as such by the Omaha District, Corps of Engineers.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": Wetlands identified as W25, W26 and W27 are located on or adjacent to Black's Coulee, which flows directly into the Des Lacs River. Aerial photographs show a distinct channel all the way from this parcel of property and the wetlands identified to the River.

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):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

☐ TNWs: linear feet width (ft), Or, acres.

☒ Wetlands adjacent to TNWs: 17 acres.

2. RPWs that flow directly or indirectly into TNWs.

☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .

☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

3. Non-RPWs[4] that flow directly or indirectly into TNWs.

☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

☐ Tributary waters: linear feet width (ft).

☐ Other non-wetland waters: acres.

Identify type(s) of waters: .

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

[4]See Footnote # 3.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.**[5]
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

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):[6] 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: 16.77 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: .
☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

[5] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
[6] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

☐ 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. 09010002 | Des Lacs
☒ U.S. Geological Survey map(s). Cite scale & quad name: 1:24000 | Berthold, ND.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name Berthold, ND.
☐ State/Local wetland inventory map(s): .
☐ FEMA/FIRM maps: .
☐ 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Provided by Applicant/ArcGIS/ORM/Google Earth Pro.
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: Wenck completed an off-site determination utilizing NRCS methods. Aerial photography from 2003, 2004 and 2005 were utilized along with NRCS soil survey maps, USFWS NWI, Topo Maps and local hydrologic information.