

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): 12/29/2015

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Meyer Gravel, Lakemoor, JD Waters Edge, 2006-1008

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Review area of approximately 200 acres at 1205 W. IL Route 120

State: **Illinois** County/parish/borough: **McHenry** City: **Lakemoor**

Center coordinates of site (lat/long in degree decimal format): **Lat. 42.33277°N, Long. -88.22388° W**

Universal Transverse Mercator: **Zone 16, Y: 4687450.08498185; X: 399170.219932866**

Name of nearest waterbody: **Fox River**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **None**

Name of watershed or Hydrologic Unit Code (HUC): **Upper Fox (07120006)**

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: **12/3/2015**

Field Determination. Date(s): **10/27/2015**

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. [Required]

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. [Required]

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: **The review area contains three ponds that were excavated for gravel mining purpose, two larger ponds to the north (Ponds A and B) and one smaller pond to the south (Pond C). All mining activities terminated around 2001. Each pond is surrounded by a berm. Ponds A and B were clearly excavated in non-hydric soil. They both are two former gravel pits that receive water from the adjacent upland. The berm surrounding these two ponds is very tall and there is no outlet to any water of the U.S. These two ponds are clearly isolated in the landscape.**

Pond C, the smaller pond to the south, was created as a wash pit. It is also entirely surrounded by a berm with no hydrologic connection to a water of the U.S. There is a wetland on the other side of the berm but a site visit revealed that the berm is high enough at all locations to prevent any water exchange between the pond and the wetland. No culverts were found to be present on the berm. While it is possible that Pond C may have been created in hydric soil, based on a review of historical USGS quadrangles, the mining disturbance started in the early 1970s. A review of aerial photos from 1988 to the present reveals that Pond C changed size and shape over the years depending on the mining activity occurring on the site. The berm separating the pond from the landscape outside of the mine appears clearly on all the aerial photos dated back to 1988 and there is no evidence of any water exchange occurring on any of the aerial photos between the pond and the wetland on the other side of the berm. At the present time, and at least since the 1970s, Pond C has been isolated in the landscape from the wetlands located south of the site. Pond C has begun to naturalize but clearly remains a remnant of mining activity. There is no evidence of any ecological or chemical nexus to a downstream water.

SECTION III: CWA ANALYSIS

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):²

¹ Supporting documentation is presented in Section III.F.

² 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.

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
- from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- which are or could be used for industrial purposes by industries in interstate commerce.
- Interstate isolated waters. Explain: .
- Other factors. Explain: .

Identify water body and summarize rationale supporting determination:

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: .
- Wetlands: acres.

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: **Ponds A, B, and C total 73.2 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: **DK Environmental Services, Inc.**
- 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: **Wauconda HA 297, 1966,**
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: **Wauconda 7.5", 1993,, 1960, photorevised in 1972 and 1976.**
- USDA Natural Resources Conservation Service Soil Survey. Citation: **NRCS Web Soil Survey.**
- National wetlands inventory map(s). Cite name: **Wauconda,**
- State/Local wetland inventory map(s): Pick List, Pick List,
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): **Aerial views dated 1988-2015 obtained on Google Earth Pro.**
or Other (Name & Date): .
- Previous determination(s). File no. and date of response letter: **AJD previously completed for this property on 9/11/2006, File Number 2006-1008. These ponds were found to be gravel pits and wash pit area with no discernible connection to a navigable waterway.**
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

- Area(s) are geographically isolated.
- Area(s) do not have a hydrologic nexus. **The closest tributary to the Fox River is Defiance Lake, and is approximately 2,400 feet south of the review area.**
- Area(s) do not have an ecological nexus.
- Area(s) do not have evidence of a subsurface flow connection to a jurisdictional water.
- Area(s) do not have evidence of surface overland sheet flow.
- Area(s) are not located within the flood plain.

DK Environmental Services, Inc.

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