

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): January 6, 2016

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, DuPage Airport Authority, LRC-2015-824

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Northeast of Route 38 and Knauz Road

State: Illinois County/parish/borough: **DuPage** City: West Chicago
Center coordinates of site (lat/long in degree decimal format): Lat. 41.88698°N, Long. -88.25435° W.
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Kress Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Des Plaines River**

Name of watershed or Hydrologic Unit Code (HUC): **Des Plaines (07120004)**

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: December 17, 2015

Field Determination. Date(s): December 4, 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]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: Defined in People of State of Ill. ex rel. Scott v. Hoffman, No. P-CIV-76-45, slip op. at 7 (S.D.Ill. Jan. 20, 1979).

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. [Required]

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 waters² (RPWs) that flow directly or indirectly into TNWs

Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 5000 linear feet: 10 width (ft) and/or 1.25 acres.

Wetlands: 11.5 acres.

c. Limits (boundaries) of jurisdiction based on: **1987 Delineation Manual**

Elevation of established OHWM (if known): .

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: **Pick List.**

Summarize rationale supporting determination: As defined in People of State of Ill. ex rel. Scott v. Hoffman, No. P-CIV-76-45, slip op. at 7 (S.D.Ill. Jan. 20, 1979).

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": .

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).

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: 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: Kress Creek is a Blue Line Stream on the USGS; and is over 10 feet wide and 2-3 feet deep.
 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: **5000** linear feet **10** 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: **Wetland extends east and west from both sides of Kress Creek.**
 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:

Provide acreage estimates for jurisdictional wetlands in the review area: **11.5** 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: CBBEL Wetland Assessment Report dated August 20, 2013.
 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: Geneva HA 142, 1965,
 USGS NHD data.
 USGS 8 and 12 digit HUC maps.
 U.S. Geological Survey map(s). Cite scale & quad name: Geneva 7.5", 1993, Pick List, Pick List, Pick List,
 USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of DuPage County, Illinois (1999).
 National wetlands inventory map(s). Cite name: Geneva,
 State/Local wetland inventory map(s): DuPage County ADID, Pick List,
 FEMA/FIRM maps:
 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
 Photographs: Aerial (Name & Date): 1980, 2000, 2008, 2012.
or Other (Name & Date):
 Previous determination(s). File no. and date of response letter:
 Applicable/supporting case law: People of State of Ill. ex rel. Scott v. Hoffman, No. P-CIV-76-45, (S.D.Ill. Jan. 20, 1979)
 Applicable/supporting scientific literature:
 Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Kress Creek is a blue line stream with permanent year-round flow. Wetland #12 directly abuts Kress Creek on both sides, including the vegetated swale along the RR tracks that flows into Kress Creek.

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C. PROJECT LOCATION AND BACKGROUND INFORMATION: Northeast of Route 38 and Kautz Road

State: Illinois County/parish/borough: **DuPage** City: West Chicago
Center coordinates of site (lat/long in degree decimal format): Lat. 41.88698°N, Long. -88.25435° W.
Universal Transverse Mercator: Zone 16

Name of nearest waterbody: Kress Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Des Plaines River**

Name of watershed or Hydrologic Unit Code (HUC): **Des Plaines (07120004)**

- 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: December 16, 2015
 Field Determination. Date(s): December 4, 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: **Wetland #5 is a depressional pocket of emergent wetland surrounded by trees, and would have to pond several feet for any water to leave the site; and there is no evidence it ever has. There is no surface water connection to any flowing water of the U.S.; therefore it is isolated.**

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

- 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.

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.

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: 0.7 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):

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- 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: Geneva HA 142, 1965, .
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Geneva 7.5", 1993, Pick List, Pick List, Pick List, .
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of DuPage County, Illinois (1999).
- National wetlands inventory map(s). Cite name: Geneva, .
- State/Local wetland inventory map(s): DuPage County ADID, Pick List, .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 1980, 2000, 2008, 2012.
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: DuPage County walked site and also found this wetland to be isolated.

- Area(s) are geographically isolated. Closed depression pocket surrounded by much higher ground.
- Area(s) do not have a hydrologic nexus. Water does not leave the site.
- 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.

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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: **Wetland/Waters #1 is a constructed stormwater management system for the DuPage Airport and surrounding commercial development that was incorporated into the golf course. Wetland areas #2, #3, and #4 are upland areas that occasionally hold water; Wetland area #6 is a large constructed detention basin pond; and Wetland area #7 is a smaller constructed detention basin pond. Wetland areas #7, #8, #9, #10 and #11 are all low spots in the upland graded areas of the golf course that collect rain water and occasionally pond, so are incidental to construction.**

SECTION III: CWA ANALYSIS

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.

Other: (explain, if not covered above): .

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):

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Office concurs with data sheets/delineation report.

¹ Supporting documentation is presented in Section III.F.

- 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: Geneva HA 142, 1965,

- USGS NHD data.
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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: DuPage County DEC did a site visit this fall and determined that these areas were exempt under their ordinance as well.

- Areas are ditches (check all that apply):
 - Non-tidal drainage and irrigation ditches excavated on dry land (51 FR 41217, Nov. 13, 1986).
 - Ditches (including roadside ditches) excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water (USACE JD Form Instructional Guidebook 5/30/2007).
 - Ditches that do not have a relatively permanent flow into waters of the U.S. or between two (or more) waters of the U.S. (USACE JD Form Instructional Guidebook 5/30/2007).
- Area(s) are artificial waters created in upland or dry land:
 - Artificially irrigated areas which would revert to upland if the irrigation ceased (51 FR 41217, Nov. 13, 1986).
 - Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing (51 FR 41217, Nov. 13, 1986).
 - Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons (51 FR 41217, Nov. 13, 1986).
 - 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 (51 FR 41217, Nov. 13, 1986).
 - Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet criteria of this definition) (33 CFR 328.3 (a)).
- Area(s) are swales (USACE JD Form Instructional Guidebook 5/30/2007).
- Area(s) are erosional features (including gullies) (USACE JD Form Instructional Guidebook 5/30/2007).
- Area(s) are prior converted cropland (33 CFR 328.3(a)(8)).
- Area(s) are uplands.
- Other: