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): 2/26/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Bike Path at Fish Lake Drain, LRC-2007-714

C. PROJECT LOCATION AND BACKGROUND INFORMATION: South of Molidor Road, East of Kelly Lane
   State: Illinois  County/parish/borough: Lake  City: Volo and Unincorporated Grant Township
   Center coordinates of site (lat/long in degree decimal format): Lat. 42.346456", Long. 88.157311° W.
   Universal Transverse Mercator: NAD 83
   Name of nearest waterbody: Fish Lake Drain
   Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River
   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: 2/26/2008
   □ Field Determination. Date(s):

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

There Are 80 “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.

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
      □ 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: 0.02 acres.

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

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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: Pick List


2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW
   (i) General Area Conditions:
      Watershed size: Pick List
      Drainage area: Pick List
      Average annual rainfall: inches
      Average annual snowfall: inches
   (ii) Physical Characteristics:
      (a) Relationship with TNW:
         □ Tributary flows directly into TNW.
         □ Tributary flows through Pick List tributaries before entering TNW.
         Project waters are Pick List river miles from TNW.
         Project waters are Pick List river miles from RPW.
         Project waters are Pick List aerial (straight) miles from TNW.
         Project waters are Pick List aerial (straight) miles from RPW.
         Project waters cross or serve as state boundaries. Explain:
         Identify flow route to TNW:
         Tributary stream order, if known:

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4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

**Tributary** is:
- [ ] Natural
- [ ] Artificial (man-made). Explain:  
- [ ] Manipulated (man-altered). Explain:  

**Tributary properties with respect to top of bank (estimate):**
- Average width: ___ feet
- Average depth: ___ feet
- Average side slopes: **Pick List**

**Primary tributary substrate composition (check all that apply):**
- [ ] Silts
- [ ] Sands
- [ ] Cobble
- [ ] Gravel
- [ ] Bedrock
- [ ] Vegetation. Type/percent cover:  
- [ ] Other. Explain:  

**Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:  
Presence of run/tumble/pool complexes. Explain:  
Tributary geometry: **Pick List**  
Tributary gradient (approximate average slope): __%

(c) **Flow:**
- **Tributary provides for:** **Pick List**
- Estimate average number of flow events in review area/year: **Pick List**
- Describe flow regime:  
- Other information on duration and volume:  

**Surface flow is:** **Pick List**. Characteristics:  

**Subsurface flow:** **Pick List**. Explain findings:  
- [ ] Dye (or other) test performed:  

**Tributary has (check all that apply):**
- [ ] Bed and banks
- [ ] OHWM\(^6\) (check all indicators that apply):
  - [ ] Clear, natural line impressed on the bank
  - [ ] Changes in the character of soil
  - [ ] Shallowing
  - [ ] Vegetation matted down, bent, or absent
  - [ ] Leaf litter disturbed or washed away
  - [ ] Sediment deposition
  - [ ] Water staining
  - [ ] Other (list):  
- [ ] Discontinuous OHWM\(^7\). Explain:  

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- [ ] High Tide Line indicated by:  
- [ ] Mean High Water Mark indicated by:
  - [ ] Oil or scum line along shore objects
  - [ ] Fine shell or debris deposits (foreshore)
  - [ ] Physical markings/characteristics
  - [ ] Tidal gauges
  - [ ] Other (list):

(iii) **Chemical Characteristics:**
- Characterize tributary (e.g., water color is clear, discolored, oily film; water quality, general watershed characteristics, etc.). Explain:  
- Identify specific pollutants, if known:

\(^6\) A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody’s flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

\(^7\) Ibid.
(iv) Biological Characteristics. Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
- Wetland size: ______ acres
- Wetland type. Explain:
- Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: Pick List. Explain:
- Surface flow is: Pick List
- Characteristics:
- Subsurface flow: Pick List. Explain findings:
  - Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW:
Project wetlands are Pick List river miles from TNW.
Project waters are Pick List aerial (straight) miles from TNW.
Flow is from: Pick List.
Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
- Riparian buffer. Characteristics (type, average width)
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: Pick List
Approximately (___) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed:  

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, resting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS AWETLANDS 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. Fish Lake Drain is a perennial stream.
   - □ 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\(^9\) 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 abutting 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: .

   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 jurisdictional. 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.\(^9\)
   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):\(^10\)

□ 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: .

\(^9\)See Footnote #3.
\(^10\)To complete the analysis refer to the key in Section III.D.6 of the Instractive Guidebook.
\(^10\)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 Rupana.
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 wetlands 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: 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: Wetland Delineation Plans.
☐ 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.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Lake County, Illinois (2005).
☐ National wetlands inventory map(s). Cite name: Pick List.
☐ State/Local wetland inventory map(s): Lake County ADID, Lake County Wetland Inventory.
☐ FEMA/FRMS maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☐ Photographs: ☐ Aerial (Name & Date): 2005.
 or ☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Fish Lake Drain and abutting wetlands flow to Wooster Lake, Duck Lake, Squaw Creek, and to the Fox River, a navigable waterway.
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): 2/26/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Bike Path at Fish Lake Drain, LRC-2007-714

C. PROJECT LOCATION AND BACKGROUND INFORMATION: South of Molidor Road, East of Kelly Lane
State: Illinois        County/parish/borough: Lake        City: Volo and Unincorporated Grant Township
Center coordinates of site (lat/long in degree decimal format): Lat. 42.346456°N, Long. 88.157311°W.
Universal Transverse Mercator: NAD 83

Name of nearest waterbody: Fish Lake Drain
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River
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: 2/26/2008
☐ Field Determination. Date(s):

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 III, 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 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: 0.62 acres.

   c. Limits (boundaries) of jurisdiction based on: ¹987 Delineation Manual
      Elevation of established OIWM (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:

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: Pick List

2. Wetland adjacent to TNW
   - Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
- Watershed size: Pick List
- Drainage area: Pick List
- Average annual rainfall: inches
- Average annual snowfall: inches

(ii) Physical Characteristics:
- Relationship with TNW:
  - Tributary flows directly into TNW.
  - Tributary flows through Pick List tributaries before entering TNW.

Project waters are Pick List river miles from TNW.
Project waters are Pick List river miles from RPW.
Project waters are Pick List aerial (straight) miles from TNW.
Project waters are Pick List aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: Identify flow route to TNW:
Tributary stream order, if known:

Note: the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

2. Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

Tributary is:
- Natural
- Artificial (man-made). Explain:
- Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
- Average width: feet
- Average depth: feet
- Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
- Silt
- Sands
- Cobble
- Gravel
- Bedrock
- Vegetation. Type/% cover:
- Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:
Tributary geometry: Pick List
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime:
Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:
- Dye (or other) test performed:

Tributary has (check all that apply):
- Bed and banks
- OHWM\(^4\) (check all indicators that apply):
  - clear, natural line impressed on the bank
  - changes in the character of soil
  - shelving
  - vegetation rooted down, bent, or absent
  - leaf litter disturbed or washed away
  - sediment deposition
  - water staining
  - other (list):
- Discontinuous OHWM\(^7\). Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- High Tide Line indicated by:
- Mean High Water Mark indicated by:
  - oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gauges
  - other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

---

\(^4\)A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody’s flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

\(^7\)Ibid.
(iv) Biological Characteristics. Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
- Wetland size: acres
- Wetland type. Explain:
- Wetland quality. Explain:
Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
Flow is: Pick List. Explain:
Surface flow is: Pick List
Characteristics:
Subsurface flow: Pick List. Explain findings:
- Dye (or other) test performed.

(c) Wetland Adjacency Determination with Non-TNW:
- Directly abutting
- Not directly abutting
- Discrete wetland hydrologic connection. Explain:
- Ecological connection. Explain:
- Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW:
Project wetlands are Pick List river miles from TNW.
Project waters are Pick List, (straight) miles from TNW.
Flow is from: Pick List.
Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: Pick List
Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed:  

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to, the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructural Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:  

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:  

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:  

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; Fish Lake Drain is a perennial stream.
   - [ ] 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** 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 II.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: Fish Lake Drain is a perennial Stream.
   - 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: 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 jurisdictional. Data supporting this conclusion is provided at Section II.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.**
   - 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):**
   - 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:

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*See footnote # 3.

To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

*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.*
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 solely under 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: 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 plats submitted by or on behalf of the applicant/consultant: Wetland Delineation, Plans.
☒ 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 NH data.
☐ USGS 8 and 12 digit HUC maps.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Lake County, Illinois (2005).
☐ National wetlands inventory map(s). Cite name: Pick List.
☒ State/Local wetland inventory map(s): Lake County ADID, Lake County Wetland Inventory, FEMA/FIRM maps.
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: Aerial (Name & Date): 2005.
☐ Other (Name & Date): .
☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Fish Lake Drain and abutting wetlands flow to Waconia Lake, Duck Lake, Squaw Creek, and to the Fox River, a navigable waterway.
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): 2/20/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, 8N711 Wildwood Dr., LRC-2007-708

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Wildwood Dr
State: Illinois  County/parish/borough: Kane  City: Unincorporated Elgin
Center coordinates of site (lat/long in degree decimal format): Lat. 41.9952929°N, Long. 88.356596° W.  Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Otter Creek  Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River
Name of watershed or Hydrologic Unit Code (HUC): Lower Fox (07120007)
☐ 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: 11/21/2007
☐ Field Determination. Date(s): 

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.


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): 
      ☐ 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: 200 linear feet: width (ft) and/or acres.
      Wetlands: acres.

   c. Limits (boundaries) of jurisdiction based on: Not established at this time.
      Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable): 
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
      Explain: 

---

\(^1\) 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: Pick List.

2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

   (i) General Area Conditions:
      Watershed size: Pick List
      Drainage area: Pick List
      Average annual rainfall: inches
      Average annual snowfall: inches

   (ii) Physical Characteristics:
      (a) Relationship with TNW:
         ☐ Tributary flows directly into TNW.
         ☐ Tributary flows through Pick List tributaries before entering TNW.

         Project waters are Pick List river miles from TNW.
         Project waters are Pick List river miles from RPW.
         Project waters are Pick List aerial (straight) miles from TNW.
         Project waters are Pick List aerial (straight) miles from RPW.
         Project waters cross or serve as state boundaries. Explain:

         Identify flow route to TNW:
         Tributary stream order, if known:

---

4 Note that the instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):
- **Tributary is:**
  - Natural
  - Artificial (man-made). Explain:
  - Manipulated (man-altered). Explain:

**Tributary properties with respect to top of bank (estimate):**
- Average width: feet
- Average depth: feet
- Average side slopes: **Pick List**

**Primary tributary substrate composition (check all that apply):**
- **Silt**
- **Sands**
- **Cobble**
- **Gravel**
- **Bedrock**
- **Vegetation. Type/layer cover:**
- **Other. Explain:**

**Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:**

Presence of run/off, riprap, pool complexes. Explain:

**Tributary geometry. ****Pick List**

**Tributary gradient (approximate average slope):**

(c) **Flow:**
- **Tributary provides for:** **Pick List**
- Estimate average number of flow events in review area/year: **Pick List**
- **Describe flow regime:**
- Other information on duration and volume:

**Surface flow:** **Pick List. Characteristics:**

**Subsurface flow:** **Pick List. Explain findings:**
- Dye (or other) test performed:

- **Tributary has (check all that apply):**
  - Bed and banks
  - **OHWM** (check all indicators that apply):
    - clear, natural line impressed on the bank
    - changes in the character of soil
    - shelving
    - vegetation matted down, bent, or absent
    - leaf litter disturbed or washed away
    - sediment deposition
    - water staining
    - other (list):
  - **Discontinuous OHWM.** Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- **High Tide Line indicated by:**
  - oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings/characteristics
  - tidal gauges
  - other (list):
- **Mean High Water Mark indicated by:**
  - survey to available datum;
  - physical markings;
  - vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**
- Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
- **Explain:**
- Identify specific pollutants, if known:

---

*A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.*

(iv) **Biological Characteristics.** Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**
(a) **General Wetland Characteristics:**
Properties:
- Wetland size: acres
- Wetland type. Explain:
- Wetland quality. Explain:
- Project wetlands cross or serve as state boundaries. Explain:

(b) **General Flow Relationship with Non-TNW:**
Flow is: Pick List. Explain:
- Surface flow is: Pick List
- Characteristics:
- Subsurface flow: Pick List. Explain findings:
  - Dye (or other) test performed:

(c) **Wetland Adjacency Determination with Non-TNW:**
- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:
  - Separated by berm/barrier. Explain:

(d) **Proximity (Relationship) to TNW**
Project wetlands are Pick List river miles from TNW.
Project waters are Pick List aerial (straight) miles from TNW.
Flow is from Pick List.
Estimate approximate location of wetland as within the Pick List floodplain.

(ii) **Chemical Characteristics:**
Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
Identify specific pollutants, if known:

(iii) **Biological Characteristics.** Wetland supports (check all that apply):
- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**
All wetland(s) being considered in the cumulative analysis: Pick List
Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
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<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
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Summarize overall biological, chemical and physical functions being performed:  

C. **SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanui Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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.**
   - [X] Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial. Otter Creek maintains water year round.
   - [ ] 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: \(200\) linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .

3. **Non-RPWs** 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: .

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 jurisdictional. 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 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.**

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):**

- 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:

---

*See Footnote # 3.

* To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

* 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.*
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: 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, when checked and requested, appropriately reference sources below):
☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: See file.
☐ 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: Pick List,
☐ 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,
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: Pick List.
☐ National wetlands inventory map(s). Cite name: Pick List,
☐ State/Local wetland inventory map(s): Kane County ADID, Pick List,
☐ FEMA/FIRM maps:
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: Otter Creek flows to Ferson Creek and to the Fox River, a navigable waterway.
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): 2/13/2008

B. DISTRICT'S OFFICE, FILE NAME, AND NUMBER: Chicago District, Wildflower Lake, LRC-2007-650

C. PROJECT LOCATION AND BACKGROUND INFORMATION: West of Del Webb Blvd.
   State: Illinois   County/parish/borough: Kane   City: Huntley
   Center coordinates of site (lat/long in degree decimal format): Lat. 42.151100°N, Long. 88.493290° W.
   Universal Transverse Mercator: NAD 83
   Name of nearest waterbody: Wildflower Lake, Eakin Creek
   Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Reck River
   Name of watershed or Hydrologic Unit Code (HUC): Kishwaukee (07090006)
   ☒ 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: 2/13/2008
   ☐ Field Determination. Date(s):

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.

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): ^
      ☐ 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 (W) and/or 14 acres.
      Wetlands^3 acres.

   c. Limits (boundaries) of jurisdiction based on: Established by OHWM.
      Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable): ^
   □ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

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^ 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: Pick List.


2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offshore. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
- Watershed size: Pick List
- Drainage area: Pick List
- Average annual rainfall: inches
- Average annual snowfall: inches

(ii) Physical Characteristics:
- Relationship with TNW:
  - Tributary flows directly into TNW.
  - Tributary flows through Pick List tributaries before entering TNW.
- Project waters are Pick List river miles from TNW.
- Project waters are Pick List river miles from RPW.
- Project waters are Pick List aerial (straight) miles from TNW.
- Project waters are Pick List aerial (straight) miles from RPW.
- Project waters cross or serve as state boundaries. Explain:
  - Identify flow route to TNW:
  - Tributary stream order, if known:

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4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

Tributary is:

- [ ] Natural
- [ ] Artificial (man-made). Explain:
- [ ] Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

- Average width: __________ feet
- Average depth: __________ feet
- Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):

- [ ] Silts
- [ ] Sand
- [ ] Cobble
- [ ] Gravel
- [ ] Bedrock
- [ ] Vegetation. Type/percent cover:
- [ ] Other. Explain:
- [ ] Concrete
- [ ] Mud

Tributary condition/stability (e.g., highly eroding, sloughing banks). Explain:
Presence of riffle/pool complexes. Explain:
Tributary geometry: Pick List
Tributary gradient (approximate average slope): __________

(c) Flow:

Tributary provides flow: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime:
Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:
- [ ] Dye (or other) test performed:

Tributary has (check all that apply):

- [ ] Bed and banks
- [ ] OHWM (check all indicators that apply):
  - [ ] clear, natural line impressed on the bank
  - [ ] changes in the character of soil
  - [ ] shelving
  - [ ] vegetation matted down, bent, or absent
  - [ ] leaf litter disturbed or washed away
  - [ ] sediment deposition
  - [ ] water staining
  - [ ] other (list):

- [ ] Discontinuous OHWM. Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- [ ] High Tide Line indicated by:
- [ ] Mean High Water Mark indicated by:
  - [ ] oil or scum line along shore objects
  - [ ] fine shell or debris deposits (foreshore)
  - [ ] physical markings (foreshore)
  - [ ] tidal gauges
  - [ ] other (list):

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

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*A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody’s flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.*

(iv) Biological Characteristics. Channel supports (check all that apply):
   - Riparian corridor. Characteristics (type, average width):
   - Wetland fringe. Characteristics:
   - Habitat for:
     - Federally Listed species. Explain findings:
     - Fish/spawn areas. Explain findings:
     - Other environmentally-sensitive species. Explain findings:
     - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
   (a) General Wetland Characteristics:
      Properties:
      - Wetland size: acres
      - Wetland type. Explain:
      - Wetland quality. Explain:
      - Project wetlands cross or serve as state boundaries. Explain:

   (b) General Flow Relationship with Non-TNW.
      Flow is: Pick List. Explain:
      Surface flow is: Pick List
      Characteristics:
      Subsurface flow: Pick List. Explain findings:
      - Dye (or other) test performed:

   (c) Wetland Adjacency Determination with Non-TNW:
      - Directly abutting
      - Not directly abutting
        - Discrete wetland hydrologic connection. Explain:
        - Ecological connection. Explain:
        - Separated by barrier. Explain:

   (d) Proximity (Relationship) to TNW
      Project wetlands are Pick List river miles from TNW.
      Project waters are Pick List aerial (straight) miles from TNW.
      Flow is from: Pick List.
      Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:
      Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics, etc.). Explain.
      Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
      - Riparian buffer. Characteristics (type, average width):
      - Vegetation type/percent cover. Explain:
      - Habitat for:
        - Federally Listed species. Explain findings:
        - Fish/spawn areas. Explain findings:
        - Other environmentally-sensitive species. Explain findings:
        - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
   All wetland(s) being considered in the cumulative analysis: Pick List
   Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g., between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanes Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D.

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D.

3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D.

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. Eakin Creek 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: 2500 linear feet width (ft).
- Other non-wetland waters: 14 acres.

Identify type(s) of waters: Wildflower Lake.

3. Non-RPWs\* 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’s 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:

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 jurisdictional. 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.\^*

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):\*+*\*

- 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: .

---

\*See Footnote # 3.
\^To complete the analysis refer to the key in Section IIID.6 of the Instructional Guidebook.
\*+*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.
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: 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. Delineation dated August 2007.
☒ 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.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Pick List.
☒ National wetlands inventory map(s). Cite name. Huntley.
☒ State/Local wetland inventory map(s): Kane County ADID, Kane County Fea Study.
☒ FEMA/FIRM maps:.
☒ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929).
☐ or ☐ Other (Name & Date):.
☒ Previous determination(s). File no. and date of response letter: 199901177.
☒ Applicable/supporting scientific literature:.
☒ Other information (please specify):.

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wildflower Lake drains to Eakin Creek, a relatively permanent water that flows to the South Branch of the Kishwaukee River.
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): 1/9/08

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, LRC-2007-525, Wetland 6, Kishwaukee River

C. PROJECT LOCATION AND BACKGROUND INFORMATION: West of Route 47 and Dean Street
   State: Illinois  County/parish/borough: McHenry  City: Huntley
   Center coordinates of site (lat/long in degree decimal format): Lat. 42.155676°N, Long. -88.436388° W.
   Universal Transverse Mercator: NAD 83
   Name of nearest waterbody: Kishwaukee River
   Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rock River
   Name of watershed or Hydrologic Unit Code (HUC): Kishwaukee (07090006)
   ☒ 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:
   ☒ Field Determination. Date(s): 11/29/07

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

There Are 0 "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.

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 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: 1.80 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: .

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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 C.
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

2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent water” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW
   (i) General Area Conditions:
      Watershed size: Pick List
      Drainage area: Pick List
      Average annual rainfall: inches
      Average annual snowfall: inches
   
   (ii) Physical Characteristics:
      (a) Relationship with TNW:
         ☐ Tributary flows directly into TNW.
         ☐ Tributary flows through Pick List tributaries before entering TNW.

         Project waters are Pick List river miles from TNW.
         Project waters are Pick List river miles from RPW.
         Project waters are Pick List aerial (straight) miles from TNW.
         Project waters are Pick List aerial (straight) miles from RPW.
         Project waters cross or serve as state boundaries. Explain:

         Identify flow route to TNW:
         Tributary stream order, if known:

4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):
Tributary is:  
☐ Natural
☐ Artificial (man-made). Explain:
☐ Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):
Average width:  feet
Average depth:  feet
Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
☐ Sills  ☐ Sands  ☐ Concrete
☐ Cobbles  ☐ Gravel  ☐ Mark
☐ Bedrock  ☐ Vegetation. Type % cover:
☐ Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/off or pool complexes. Explain:
Tributary geometry: Pick List
Tributary gradient (approximate average slope):  %

(c) Flow
Tributary provides for: Pick List
Estimate average number of flow events in review area/year. Pick List
Describe flow regime:
Other information on duration and volume:
Surface flow is: Pick List. Characteristics:
Subsurface flow. Pick List. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM\(^6\) (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ sheathing
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ Discontinuous OHWM\(^7\). Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
☐ Mean High Water Mark indicated by:
☐ oil or shallow line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

\(^6\) A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

\(^7\) Ibid.
(iv) **Biological Characteristics.** Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(c) **General Wetland Characteristics:**
- Properties:
  - Wetland size: acres
  - Wetland type. Explain:
  - Wetland quality. Explain:
  - Project wetlands cross or serve as state boundaries. Explain:

(b) **General Flow Relationship with Non-TNW:**
- Flow is: **Pick List.** Explain:
  - Surface flow is: **Pick List**
  - Characteristics:
  - Subsurface flow: **Pick List.** Explain findings:
    - Dye (or other) test performed:

(c) **Wetland Adjacency Determination with Non-TNW:**
- Directly abutting
- Not directly abutting
  - Discrete wetland hydrologic connection. Explain:
  - Ecological connection. Explain:
  - Separated by berms/barrier. Explain:

(d) **Proximity (Relationship) to TNW:**
- Project wetlands are **Pick List** river miles from TNW:
- Project waters are **Pick List** aerial (straight) miles from TNW.
- Flow is from: **Pick List.**
- Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**
- Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
- Identify specific pollutants, if known:

(iii) **Biological Characteristics.** Wetland supports (check all that apply):
- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any).**
- All wetland(s) being considered in the cumulative analysis. **Pick List**
- Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g., between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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. The Kishwaukee River is shown as a perennial river on the USGS Topographic 7.5' Quadrangle.
   - 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: 3,000 linear feet 18-15 width (ft).
- Other non-wetland waters: acres.
Identify type(s) of waters:

3. Non-RPWs\(^5\) 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 an 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.

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 jurisdictional. 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 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.\(^9\)

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):\(^10\)
- 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:

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\(^5\) See Footnote 3.

\(^9\) To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

\(^10\) 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.
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: 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:.
☒ 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.
☒ National wetlands inventory map(s). Citations: Huntley, State/Local wetland inventory map(s). McHenry County ADID, Pick List.
☒ FEMA/FIRM maps:.
☒ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☐ Other (Name & Date):.
☐ Previous determination(s). File no. and date of response letter:.
☐ Applicable/supporting scientific literature:.
☐ Other information (please specify):.

B. ADDITIONAL COMMENTS TO SUPPORT JD: The Kishwaukee River is a relatively permanent water. The Kishwaukee River is shown as a perennial river on the USGS Topographic 7.5' Quadrangle.
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):

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, LRC-2007-805

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Illinois County/parish/borough: Will City: Unincorporated Manhattan Center coordinates of site (lat/long in degree decimal format): Lat. 41°N, Long. 87° W.
Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Jackson 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: January 30, 2008
☐ Field Determination. Date(s):

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. F-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 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: 1500 linear feet: 15 width (ft) and/or acres.
   Wetlands: 3 acres.

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

---
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 Section III.D.1.; otherwise, see Section III.B below.

1. TNW
   Identify TNW: Pick List.
   

2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

(ii) Physical Characteristics:
   (a) Relationship with TNW:
      [ ] Tributary flows directly into TNW.
      [ ] Tributary flows through Pick List tributaries before entering TNW.

      Project waters are Pick List river miles from TNW.
      Project waters are Pick List river miles from RPW.
      Project waters are Pick List aerial (straight) miles from TNW.
      Project waters are Pick List aerial (straight) miles from RPW.
      Project waters cross or serve as state boundaries. Explain:

      Identify flow route to TNW:
      Tributary stream order, if known.

4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

Tributary is:  
- Natural
- Artificial (man-made). Explain:  
- Manipulated (man-rafted). Explain:

Tributary properties with respect to top of bank (estimate):
- Average width: feet
- Average depth: feet
- Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
- Silts
- Sands
- Cobble
- Gravel
- Bedrock
- Vegetation. Type/% cover:
- Concrete
- Muck
- Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of ripples/riffles/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year. Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:
- Dye (or other) test performed:

Tributary has (check all that apply):
- Bed and banks
- OHWM* (check all indicators that apply):
  - clear, natural line impressed on the bank
  - changes in the character of soil
  - shelving
  - vegetation matted down, bent, or absent
  - leaf litter disturbed or washed away
  - sediment deposition
  - water staining
  - other (list):
- Discontinuous OHWM. Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- High Tide Line indicated by:
- Mean High Water Mark indicated by:
  - oil or scum line along shore objects
  - fine shell or debris deposits (foreshore)
  - physical markings
  - tidal gauges
  - other (list):

(ii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Identify specific pollutants, if known:

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*A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

*ibid.
(iv) Biological Characteristics. Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
   (a) General Wetland Characteristics:
       Properties:
       - Wetland size: acres
       - Wetland type. Explain:
       - Wetland quality. Explain:
       - Project wetlands cross or serve as state boundaries. Explain:

   (b) General Flow Relationship with Non-TNW:
       Flow is: Pick List. Explain:
       Surface flow is: Pick List. Explain:
       Subsurface flow: Pick List. Explain findings:
       - Dye (or other) test performed:

   (c) Wetland Adjacency Determination with Non-TNW:
       - Directly abutting
       - Not directly abutting
       - Discrete wetland hydrologic connection. Explain:
       - Ecological connection. Explain:
       - Separated by barrier. Explain:

   (d) Proximity (Relationship) to TNW:
       Project wetlands are Pick List river miles from TNW.
       Project waters are Pick List aerial (straight) miles from TNW.
       Flow is from: Pick List.
       Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:
   Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:
   Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)

   All wetland(s) being considered in the cumulative analysis: Pick List
   Approximately (   ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed: .

C. **SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW.

Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos Guidance* and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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.**
   - [X] Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial; Jackson Creek flows year-round and is labeled as a solid blue line on both the topographic survey and hydrologic atlas.
   - [ ] 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:

5
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 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 abutting 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 is directly abutting RPW and is therefore hydrologically connected.

☐ 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: ____________ 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 jurisdictional. 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.⑨

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):⑩
☐ 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: ____________.

⑨See Footnote # 3.
⑩To complete the analysis refer to the key in Section III.D.6 of the Instructial Guidebook.
⑩ 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.
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: 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: JFNew.
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☐ 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: Manhattan HA 211, 1966,
☒ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Will County, Illinois (1962).
☐ National wetlands inventory map(s). Cite name: Manhattan,
☐ 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): Manhattan, 1997.
or ☐ Other (Name & Date):
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting scientific literature: 
☐ Other information (please specify): 

B. ADDITIONAL COMMENTS TO SUPPORT JD:
APPROVED JURISDICTIONAL DETERMINATION DECISION DOCUMENT
U.S. Army Corps of Engineers, Chicago District

APPLICANT: LRC-2007-320  PROJECT LOCATION/WATERWAY: 13 Acre Property Located southwest of Morgan and 117th Street in Chicago, Cook County, Illinois (Section 26, T37N, R14E)

FILE NUMBER: LRC-2007-320  PROJECT REVIEW COMPLETED:  ☑ Office ☑ Field

Approved Jurisdictional Determination (JD) (For Sites regulated under 33 CFR 320-330). An approved JD is an appealable action. (33 CFR 331.2)

   Based on available information:
   ☐ There are no waters on the project site.
   ☐ There are non-jurisdictional waters on the project site.
   ☑ There are waters of the United States on the project site.
   ☐ There are both waters of the United States and non-jurisdictional waters on the project site.

Basis of Jurisdictional Determination:

   ☐ There are no jurisdictional waters of the United States present on the project site.
   ☐ The presence of waters which are currently used, or were used in the past, or may be susceptible for use to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e., navigable waters of the U.S.) (33 CFR 328.3(a)(2))
   ☐ The presence of interstate waters (including interstate wetlands) (33 CFR 328.3(a)(2))
   ☐ The presence of a tributary to an interstate water or other water of the U.S. (33 CFR 328.3(a)(5))
   ☑ The presence of wetlands adjacent to (bordering, contiguous, or neighboring) to interstate or other waters of the US, except for those wetlands adjacent to other wetlands. (33 CFR 328.3(a)(7))
   ☐ The presence of an isolated water (e.g., instate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds)
   ☐ Other:
   ☐ Section 10 waterway.

Information Reviewed

   ☐ U. S. Fish and Wildlife Service National Wetland Inventory:
   ☐ U. S. Geological Survey Hydrologic Atlas:
   ☐ USDA Natural Resources Conservation Service Soil Survey for Cook County.
   ☐ U. S. Geological Survey 7.5 Minute Topographic Maps:
   ☐ U. S. Geological Survey 7.5 Minute Historic Quadrangles:
   ☐ U. S. Geological Survey 15 Minute Historic Quadrangles:
   ☐ Aerials (Name & Date):
   ☐ Advanced Identification Wetland Maps:
   ☐ Site Visit Conducted on: November 29, 2007
   ☐ Other information:

Rationale for Basis (applies to any boxes checked above): Wetland W-1, as referenced in your submittal, drains into a storm sewer then to the Little Calumet River, a navigable water.

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

   Ordinary High Water Mark indicated by:
   ☐ clear, natural line impressed on the bank ☐ destruction of terrestrial vegetation
   ☐ the presence of litter and debris ☐ shelving
   ☐ changes in the character of soil ☐ other:
   ☑ wetland boundary

Basis for Declining Jurisdiction:

   ☐ Unable to confirm the presence of waters listed in 33 CFR 328.3(a)(1), 328.3(a)(2), or 328.3(a)(4) through 328.3(a)(7)
   ☐ Area under consideration is likely to have been jurisdictional under pre-SWANCC Migratory Bird Rule criteria
   ☐ Area under consideration is not likely have been jurisdictional under pre-SWANCC Migratory Bird Rule criteria

   ☐ Headquarters declined to approve jurisdiction on the basis of 328.3(a)(3) [attach copy of HQ rationale]

Confirmation of Wetland Boundaries

   ☐ This office concurs with your wetland delineation report dated , prepared by
   ☑ This office does not confirm your wetland boundary

Recommended by: ___________________________ Date: ___________________________

Approved by: ___________________________ Date: ___________________________

1 Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). Processes for determining wetlands on agricultural lands may vary from methods described in the Corps Wetland Delineation Manual (1987).

2 Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.
Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology. Processes for determining wetlands on agricultural lands may vary from methods described in the Corps Wetland Delineation Manual (1987).

2 Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.
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

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago, IDOT file #LRC-2007-705

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Illinois  County/parish/borough: Lake  City: Vernon Hills
Center coordinates of site (lat/long in degree decimal format): Lat. 42.218971° N, Long. -87.968097° W.
Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Seavey Ditch
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 River
☐ 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: 12/3/2007
☐ Field Determination. Date(s): 10/11/2007

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 and foreign commerce. Explain: .

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
      ☐ 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: 3,500 width (ft) and/or acres. Wetlands: 5 acres.

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

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:
   
   Summarize rationale supporting determination:
   
2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”:
   
B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

   (i) General Area Conditions:
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) Physical Characteristics:
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through Pick List tributaries before entering TNW.

   Project waters are Pick List river miles from TNW.
   Project waters are Pick List river miles from RPW.
   Project waters are Pick List aerial (straight) miles from TNW.
   Project waters are Pick List aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW:
   Tributary stream order, if known:

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4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

**Tributary is:**
- Natural
- Artificial (man-made). Explain:
- Manipulated (man-altered). Explain:

**Tributary properties with respect to top of bank (estimate):**
- Average width: _____ feet
- Average depth: _____ feet
- Average side slopes: **Pick List**

**Primary tributary substrate composition (check all that apply):**
- Silts
- Sands
- Cobbles
- Gravel
- Bedrock
- Vegetation. Type% cover:
- Concrete
- Muck

- Other. Explain:

**Tributary condition/stability** [e.g., highly eroding, sloughing banks]. Explain:

Presence of riffle/pool complexes. Explain:

**Tributary geometry:** **Pick List**

**Tributary gradient** (approximate average slope): _____%

(c) Flow:

**Tributary provides for** **Pick List**

Estimate average number of flow events in review area/year: **Pick List**

Describe flow regime:

Other information on duration and volume:

**Surface flow:** **Pick List**. Characteristics:

**Subsurface flow:** **Pick List**. Explain findings:

- Dye (or other) test performed:

**Tributary has** (check all that apply):
- Bed and banks
- OHWM* (check all indicators that apply):
  - clear, natural line impressed on the bank
  - changes in the character of soil
  - shelving
  - vegetation matted down, bent, or absent
  - leaf litter disturbed or washed away
  - sediment deposition
  - water staining
  - other (list):
- Discontinuous OHWM.** Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

- High Tide Line indicated by:
  - Mean High Water Mark indicated by:
    - oil or scum line along shore objects
    - fine shell or debris deposits (foreshore)
    - physical markings/characteristics
    - tidal gauges
    - other (list):

(ii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain:

Identify specific pollutants, if known:

---

*A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

**Ibid.**
(iv) Biological Characteristics. Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
   Properties:
   - Wetland size: acres
   - Wetland type. Explain:
   - Wetland quality. Explain:
   Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:
   Flow is: Pick List. Explain:
   Surface flow is: Pick List
   Characteristics:
   Subsurface flow: Pick List. Explain findings:
   Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:
   - Directly abutting
   - Not directly abutting
     - Discrete wetland hydrologic connection. Explain:
     - Ecological connection. Explain:
     Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW
   Project wetlands are Pick List river miles from TNW.
   Project waters are Pick List aerial (straight) miles from TNW.
   Flow is from: Pick List.
   Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:
   Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality, general watershed characteristics, etc.). Explain:
   Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
   - Riparian buffer. Characteristics (type, average width):
   - Vegetation type/percent cover. Explain:
   - Habitat for:
     - Federally Listed species. Explain findings:
     - Fish/spawn areas. Explain findings:
     - Other environmentally-sensitive species. Explain findings:
     - Aquatic/wildlife diversity. Explain findings:

3. Characteristics of all wetlands adjacent to the tributary (if any)
   All wetland(s) being considered in the cumulative analysis: Pick List
   Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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: The stream has continuous flowing water in a well-defined channel as evidenced in the 2001, 2002, 2004 and 2005 aerial photographs and is defined as a perennial stream on the USGS topo map.
   - 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\(^6\) 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: The wetlands within the project area directly abut a relatively permanent water.

☐ 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: 5 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 jurisdictional. 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.\(^9\)

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):\(^{10}\)
☐ 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: 

\(^6\)See Footnote # 3.
\(^9\) To complete the analysis refer to the key in Section III D.6 of the Instructional Guidebook.
\(^{10}\) 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 Reparos.
Identify water body and summarize rationale supporting determination:

Provide estimates forjurisdictional 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 Jun 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: 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 plot submitted by or on behalf of the applicant/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.
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☐ U.S. Geological Survey map(s). Cite scale & quad name.
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: Lake County, Vernon Township, Sheet 35.
☐ National wetlands inventory map(s). Cite name.
☐ State/Local wetland inventory map(s): Lake County Wetland Inventory Wheeling Quad.
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☐ Photographs: Aerial (Name & Date):
☐ 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: Seavey Ditch and abutting wetlands is tributary to the Des Plaines River which; has been determined to be a navigable waterway under the Department of the Army jurisdiction.
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): 1/9/08

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, LRC-2007-525, Wetland 5

C. PROJECT LOCATION AND BACKGROUND INFORMATION: West of Route 47 and Dean Street
   State: Illinois  County/parish/borough: McHenry  City: Huntley
   Center coordinates of site (lat/long in degree decimal format): Lat. 42.157620°N, Long. -88.436155° W.
   Universal Transverse Mercator: NAD 83
   Name of nearest waterbody: Kishwaukee River
   Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Rock River
   Name of watershed or Hydrologic Unit Code (HUC): Kishwaukee (07090006)
   ☑ 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:
   ☑ Field Determination. Date(s): 11/29/07

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.

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
      ☐ 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: 1500 linear feet: width (ft) and/or 1.98 acres.
      Wetlands: 9.86 acres.

   c. Limits (boundaries) of jurisdiction based on: Pick List
      Elevation of established OHWM (if known): A farmed wetland determination set the wetland boundaries.

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:

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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; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.2 and Section III.D.2; otherwise, see Section III.B below.

1. TNW
   Identify TNW: Pick List


2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e., tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

   (i) General Area Conditions:
      Watershed size: ~100 acres
      Drainage area: ~100 acres
      Average annual rainfall: 37 inches
      Average annual snowfall: unknown inches

   (ii) Physical Characteristics:
      (a) Relationship with TNW:
         □ Tributary flows directly into TNW.
         ☑ Tributary flows through Pick List tributaries before entering TNW.

         Project waters are 30 (or more) river miles from TNW.
         Project waters are 1 (or less) river miles from RPW.
         Project waters are 30 (or more) aerial (straight) miles from TNW.
         Project waters are 1 (or less) aerial (straight) miles from RPW.
         Project waters cross or serve as state boundaries. Explain: No.

         Identify flow route to TNW: The relatively permanent drainageway flows to the Kishwaukee River, which flows to the Rock River, a navigable waterway.

1 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

2 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
Tributary stream order, if known: 1.

(b) **General Tributary Characteristics (check all that apply):**

- **Tributary is:**  
  - [ ] Natural
  - [ ] Artificial (man-made). Explain:  
  - [x] Manipulated (man-altered). Explain: It appears that the drainage way was dredged within hydric soils (historic wetlands) to drain them after the drain tile failed.

- **Tributary properties with respect to top of bank (estimate):**
  - Average width: 5 feet
  - Average depth: 1 foot
  - Average side slopes: 2:1.

- **Primary tributary substrate composition (check all that apply):**
  - [x] Silts
  - [x] Sands
  - [ ] Gravel
  - [ ] Vegetation. Type/percent cover:
  - [ ] Other. Explain:

- **Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: stable.**

- **Presence of run/riffle/pool complexes. Explain: None.**

- **Tributary geometry:** Relatively straight

- **Tributary gradient (approximate average slope): 1%**

(c) **Flow:**

- **Tributary provides for: Seasonal flow**

  - Estimate average number of flow events in review area/year: 6-10

  - Describe flow regime: During rain events, water enters wetlands and abutting drainage way. Water discharges from drainageway into the Kishwaukee River through a 250 feet long and 12" diameter drain tile. Both the inlet and outlet of this drain tile were located.

  - Other information on duration and volume: None.

  - Surface flow is: Confined. Characteristics:

  - Subsurface flow: Yes. Explain findings: A 250 feet long and 12" diameter drain tile connects to drainageway and abutting wetlands to the Kishwaukee River.

  - Dye (or other) tests performed:

- **Tributary has (check all that apply):**
  - [x] Bed and banks
  - [x] OHWM\(^*\) (check all indicators that apply):
    - [x] clear, natural line impressed on the bank
    - [x] changes in the character of soil
    - [x] shelving
    - [x] vegetation matteed down, bent, or absent
    - [x] leaf litter disturbed or washed away
    - [x] sediment deposition
    - [x] water staining

  - in the channel where the concentrated flows occur.

  - [ ] other (list):

- **Discontinuous OHWM\(^*\) Explain:**

- **If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):**
  - [ ] High Tide Line indicated by:
    - [ ] oil or scum line along shore objects
    - [ ] fine shell or debris deposits (foreshore)
    - [ ] physical markings/characteristics
    - [ ] tidal gauges
  - [ ] other (list):

- **Mean High Water Mark indicated by:**
  - [ ] survey to available datum;
  - [ ] physical markings;
  - [ ] vegetation lines/changes in vegetation types.

(iii) **Chemical Characteristics:**

\(^*\) A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

\(^7\) Ibid.
Characterize tributary (e.g., water color is clear, discolored, oily film, water quality; general watershed characteristics, etc.).

Explain: Water was clear, water quality appears to be poor due to farming practices on property, watershed is farm land surrounded by residential and commercial land.

Identify specific pollutants, if known: unknown.
(iv) Biological Characteristics. Channel supports (check all that apply):
- Riparian corridor. Characteristics (type, average width): 
- Wetland fringe. Characteristics: low quality community dominated by Reed Canary Grass (Phalaris arundinacea).
- Habitat for:
  - Federally Listed species. Explain findings: 
  - Fish/spawn areas. Explain findings: 
  - Other environmentally-sensitive species. Explain findings: 
  - Aquatic/wildlife diversity. Explain findings: 

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
   (a) General Wetland Characteristics:
      Properties:
      - Wetland size: 10 acres
      - Wetland type. Explain: farmed wetland
      - Project wetlands cross or serve as state boundaries. Explain: No.

   (b) General Flow Relationship with Non-TNW:
      Flow is: Intermittent flow. Explain:
      - Surface flow is: Not present
      - Characteristics: wetland is abutting drainageway.
      - Subsurface flow: Unknown. Explain findings:
      - Dye (or other) test performed: 

   (c) Wetland Adjacency Determination with Non-TNW:
      - Directly abutting
      - Not directly abutting
      - Discrete wetland hydrologic connection. Explain:
      - Ecological connection. Explain:
      - Separated by berm/barrier. Explain:

   (d) Proximity (Relationship) to TNW
      Project wetlands are 30 (or more) river miles from TNW.
      Project waters are 30 (or more) aerial (straight) miles from TNW.
      Flow is from: Wetland to navigable waters.
      Estimate approximate location of wetland as within the 50 - 100-year floodplain.

(ii) Chemical Characteristics:
      Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics, etc.). Explain: No surface water.
      Identify specific pollutants, if known:

(iii) Biological Characteristics. Wetland supports (check all that apply):
      - Riparian buffer. Characteristics (type, average width): 
      - Vegetation type/percent cover. Explain: Phalaris arundinacea.
      - Habitat for:
      - Federally Listed species. Explain findings: 
      - Fish/spawn areas. Explain findings: 
      - Other environmentally-sensitive species. Explain findings: 
      - Aquatic/wildlife diversity. Explain findings: Aquatic invertebrates and amphibians may be present in the wetland and drainageway.

3. Characteristics of all wetlands adjacent to the tributary (if any)
   All wetland(s) being considered in the cumulative analysis: 1
   Approximately (12) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland 5</td>
<td>y</td>
<td>12</td>
</tr>
</tbody>
</table>

Summarize overall biological, chemical and physical functions being performed: .

C. **SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical, and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

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:
   - [x] 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: The subject drainageway and abutting wetlands were field verified on 11/29/07. At that time water was flowing through the drainageway. The drainageway exhibits bed and bank, destruction of terrestrial vegetation and is shown to have water in 2005, 2004 and 2002 aerial photography. The drainageway flows into a 12" wide and 250' long pipe and to the Kishwaukee River.
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* 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 abutting an 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: The wetlands are contiguous with the drainageway (RPW), forming a wetland complex. There is no upland or berms present between the drainageway and wetlands. Therefore, the wetlands are directly abutting a relatively permanent water.

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 jurisdictional. 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. *
- 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):
- 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: __________

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*See Footnote #3.
*To complete the analysis refer to the key in Section III.D,6 of the instructional Guidebook.
*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.
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: 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: Note that acreages of waters of the U.S. have not been verified by the Corps and were only estimated by the consultant. The estimated acreages need to be truth checked.
☒ 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.
☐ National wetlands inventory map(s). Cite name: Huntley.
☐ State/Local wetland inventory map(s): McHenry County ADD, Pick List.
☒ FEMA/FIRM maps: 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
    or ☐ Other (Name & Date):
☐ Previous determination(s). File no. and date of response letter:
☐ Applicable/supporting scientific literature:
☐ Other information (please specify):

B. ADDITIONAL COMMENTS TO SUPPORT JD: The subject drainageway and abutting wetlands were field verified on 11/29/07. At that time water was flowing through the drainageway. The drainageway exhibits bed and bank, destruction of terrestrial vegetation and is shown to have water in 2005, 2004 and 2002 aerial photography. Water within the drainageway flows into a 12" wide and 250' long pipe to the Kishwaukee River.
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): 2/7/2008
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, LRC-2007-484, Wennmorth Road Site
C. PROJECT LOCATION AND BACKGROUND INFORMATION: South of McKee Street, East of Wennmorth Road
   State: Illinois   County/parish/borough: Kane   City: Unincorporated Geneva Township
   Center coordinates of site (lat/long in degree decimal format): Lat. 41.852986°N, Long. 88.3629730°W,
   Universal Transverse Mercator: NAD 83
   Name of nearest waterbody: Mill Creek
   Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River
   Name of watershed or hydrologic Unit Code (HUC): Lower Fox (07120007)
   ☑ 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: 2/7/2008
   ☑ Field Determination. Date(s): 10/09/2007

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.

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):  
         ☐ TNWs, including territorial seas
         ☐ Wetlands adjacent to TNWs
         ☐ Relatively permanent waters2 (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: 1020 linear feet; 20 width (ft) and/or acres. 10 acres.
         Wetlands: 2.7 acres.

      c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual
         Elevation of established OSHM (if known): 

   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: .

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1 Boxes checked below shall be supported by completing the appropriate sections in Section IIId 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: Pick List.


2. Wetland adjacent to TNW
   Summarize rationale supporting conclusion that wetland is “adjacent”:

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under Rapanos have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.B.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW
   (i) General Area Conditions:
      Watershed size: Pick List
      Drainage area: Pick List
      Average annual rainfall: inches
      Average annual snowfall: inches
   (ii) Physical Characteristics:
      (a) Relationship with TNW:
         ☐ Tributary flows directly into TNW.
         ☐ Tributary flows through Pick List tributaries before entering TNW.

         Project waters are Pick List river miles from TNW.
         Project waters are Pick List river miles from RPW.
         Project waters are Pick List aerial (straight) miles from TNW.
         Project waters are Pick List aerial (straight) miles from RPW.
         Project waters cross or serve as state boundaries. Explain:

         Identify flow route to TNW6:
         Tributary stream order, if known:

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4 Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5 Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
(b) General Tributary Characteristics (check all that apply):

Tributary is:
☐ Natural
☐ Artificial (man-made). Explain: 
☐ Manipulated (man-altered). Explain: 

Tributary properties with respect to top of bank (estimate):
Average width: feet
Average depth: feet
Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
☐ Silts
☐ Sands
☐ Cobbles
☐ Gravel
☐ Bedrock
☐ Vegetation. Type/% cover:
☐ Other. Explain: 

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:
Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List
Tributary gradient (approximate average slope): %

(c) Flow:
Tributary provides for: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime:
Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:
☐ Dye (or other) test performed:

Tributary has (check all that apply):
☐ Bed and banks
☐ OHWM\(^2\) (check all indicators that apply):
☐ clear, natural line impressed on the bank
☐ changes in the character of soil
☐ shelving
☐ vegetation matted down, bent, or absent
☐ leaf litter disturbed or washed away
☐ sediment deposition
☐ water staining
☐ other (list):
☐ Discontinuous OHWM\(^3\). Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
☐ Mean High Water Mark indicated by:
☐ oil or scum line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ other (list):

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain:
Identify specific pollutants, if known:

\(^2\)A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

\(^3\)Ibid.
(iv) **Biological Characteristics.** Channel supports (check all that apply):

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

   (a) **General Wetland Characteristics:**

   Properties:
   - Wetland size: acres
   - Wetland type. Explain:
   - Wetland quality. Explain:
   - Project wetlands cross or serve as state boundaries. Explain:

   (b) **General Flow Relationship with Non-TNW:**

   Flow is: **Pick List**. Explain:

   Surface flow is: **Pick List**

   Characteristics:

   Subsurface flow: **Pick List**. Explain findings:
   - Dye (or other) test performed:

   (c) **Wetland Adjacency Determination with Non-TNW:**

   - Directly abutting
   - Not directly abutting
     - Discrete wetland hydrologic connection. Explain:
     - Ecological connection. Explain:
     - Separated by berm/barrier. Explain:

   (d) **Proximity (Relationship) to TNW**

   Project wetlands are **Pick List** river miles from TNW.
   Project waters are **Pick List** aerial (straight) miles from TNW.
   Flow is from: **Pick List**.
   Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

   Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics, etc.). Explain:

   Identify specific pollutants, if known:

(iii) **Biological Characteristics.** Wetland supports (check all that apply):

   - Riparian buffer. Characteristics (type, average width):
   - Vegetation type/percent cover. Explain:
   - Habitat for:
     - Federally Listed species. Explain findings:
     - Fish/spawn areas. Explain findings:
     - Other environmentally-sensitive species. Explain findings:
     - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

   All wetland(s) being considered in the cumulative analysis: **Pick List**

   Approximately ( ) acres in total are being considered in the cumulative analysis.
For each wetland, specify the following:

<table>
<thead>
<tr>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
<th>Name/ID</th>
<th>Directly abuts? (Y/N)</th>
<th>Size (in acres)</th>
</tr>
</thead>
</table>

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g., between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young; for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream food webs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself; then go to Section III.D:

2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

3. Significant nexus findings for wetlands adjacent to an RPW that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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 or 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; Mill Creek and the McKee Road tributary flow all year.
   - 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: **1020** linear feet 20 width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters:  

3. **Non-RPWs** 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: **Mill Creek and the McKee Road Tributary flow all year.**

☐ 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: 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 jurisdictional. 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.**

☐ 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):**

☐ 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:  

---

9See Footnote 3.
9To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
10Prior 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.
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: 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: ENCAP report dated 6/27/2007.
- 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.
  USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Kane County, Illinois (2003).
- National wetlands inventory map(s). Cite name: Aurora North.
- State/Local wetland inventory map(s): Kane County ADID, Pick List.
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): 2002.
  - or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting scientific literature:
- Other information (please specify):

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** Wetland 1 consists of Mill Creek, the McKee Road Tributary, and wetlands that directly abut the creeks. Mill Creek flows to the Fox River, a navigable waterway. Please note that Wetland 1 is ADID High Functioning Wetland #2738.