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): 2/29/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Aurora Tollview Apartments, LRC-2007-692

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Tollview Ave
State: Illinois County/parish/borough: Kane City: Aurora
Center coordinates of site (lat/long in degree decimal format): Lat. 41.7804°N, Long. 88.2797°W
Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Indian 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: 2/28/2008
☐ Field Determination. Date(s): 10/9/2007

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: 310 linear feet: width (ft) and/or acres.
      Wetlands: 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): 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:
         - Trixbuary flows directly into TNW.
         - Trixbuary 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
- [ ] Gravel
- [ ] Concrete
- [ ] Cobble
- [ ] Muck
- [ ] 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
  - [ ] OHWM⁶ (check all indicators that apply):
    - __ the presence of litter and debris
    - __ destruction of terrestrial vegetation
    - __ the presence of wrack line
    - __ sediment sorting
    - __ scour
    - __ multiple observed or predicted flow events
    - __ abrupt change in plant community
    - [ ] 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:
  - [ ] 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:

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⁶A 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.

⁷Ibid.
(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 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: Indian 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:

5
Provide estimates for jurisdictional waters in the review area (check all that apply):

☐ Tributary waters: **310** 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 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 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).

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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: ______.
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 items below:
☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Report dated December 5, 2005.
☐ 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. Report does not include the eastern portion of site.
☐ Data sheets prepared by the Corps:
☐ Corps navigable waters’ study:
☐ USGS NHD data.
☐ USGS 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: Pick List.
☐ State/Local wetland inventory map(s): Kane County ADID. Pick List.
☐ FEMA/FRM 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: Indian Creek is present in the eastern portion of the subject site. Indian Creek is a perennial stream which flows directly 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): 3/12/2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Keyes Avenue, LRC-2007-594

C. PROJECT LOCATION AND BACKGROUND INFORMATION: Keyes Avenue, industrial Drive
State: Illinois  County/parish/borough: Kane  City: Hampshire
Center coordinates of site (lat/long in degree decimal format): Lat. 42.05527°N, Long. 88.314854°W.
Universal Transverse Mercator: NAD 83
Name of nearest waterbody: Hampshire Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Pick List
Name of watershed or Hydrologic Unit Code (HUC): Pick List
☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☐ Office (Desk) Determination. Date: 3/12/2008
☐ Field Determination. Date(s): 9/18/2007

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): 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: 0.36 acres.

c. Limits (boundaries) of jurisdiction based on: ¹ Nineteen Seventy Delineation Manual
Elevation 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: 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 stee 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/ % 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
- [ ] OHWM6 (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 OHWM7. 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, 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: Hampshire Creek 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\(^5\) 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 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. **Hampshire Creek 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: **Over 1.5 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.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ which are or could be used for fish or shellfish are or could be taken and sold in interstate or foreign 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):
- 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: Hampshire 7.5” 1968, Pick List, Pick List,
- National wetlands inventory map(s). Cite name: Hampshire,
- 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): in EE1 report.
  - or ☑ Other (Name & Date): from site visit 9/18/2007.
- Previous determination(s). File no. and date of response letter: __________
- Applicable/supporting scientific literature: __________
- Other information (please specify): __________

B. ADDITIONAL COMMENTS TO SUPPORT JD: Wetlands A, B, and C are part of a wetland complex that is tributary to Hampshire Creek. Hampshire Creek drains to Coon Creek, which drains to the Kishwaukee River and the Rock River, a navigable waterway, and is therefore subject to Department of the Army regulations.
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): 2/29/08

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, LRC-2B07-451, Geneva Bus Maintenance Facility, Area 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION: North of Keslinger Road, West of Brundige Drive  
State: Illinois  
County/parish/borough: Kane  
City: Unincorporated, Blackberry Township  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.883709°N, Long. 88.388905° W.  
Universal Transverse Mercator: NAD 83  
Name of nearest waterbody: Unnamed Tributary to 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): 10/9/2007

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. 890 linear feet: width (ft) and/or acres.  
      Wetlands: 0.32 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 “seasonal” (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:

---

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
- [ ] Concrete
- [ ] Cobble
- [ ] Gravel
- [ ] Muck
- [ ] Bedrock
- [ ] Vegetation. Type/ % cover:
- [ ] Other. Explain: ________________

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

Presence of run/tide/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/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, 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: Water flows all year in this tributary.
   - 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: 890 linear feet width (ft)
☐ Other non-wetland waters: acres

Identify type(s) of waters: .

3. Non-RPWs\(^{\text{5}}\) 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 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 tributary flows 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.\(^{\text{9}}\)

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):\(^{\text{10}}\)

☐ 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: .

\(^{\text{5}}\)See Footnote # 3.

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

\(^{\text{10}}\)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: V3 Delineation.
☒ 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: Elburn 7.5”, 1993, Pick List, Pick List,
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: Soil Survey of Kane County, Illinois (2003).
☐ National wetlands inventory map(s). Cite name: Elburn.
☐ State/Local wetland inventory map(s): Pick List, NRCS Swampbuster Map.
☐ 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: Area 1 contains of wetland fringe and a tributary to Mill Creek, which flows to the Fox 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): 11 March 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:  Chicago District, Sharp Estates, LRC-2006-1307

C. PROJECT LOCATION AND BACKGROUND INFORMATION:  Wetland 1/Cedar Creek; Farmed Wetlands 1 & 2
State:  Illinois  County/parish/borough:  Will  City:  Joliet
Center coordinates of site (lat/long in degree decimal format):  Lat. 41.461°N, Long. -88.091° W.
Universal Transverse Mercator:  NAD 83

Name of nearest waterbody:  Cedar 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: 11 March 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): 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: 0.88 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: 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):**
- □ 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 ⁴ (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:
  - □ survey to available datum;
  - □ physical markings;
  - □ 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:

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⁴A 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.

⁵Ibid.
(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: **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 **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: Channel is 13 feet wide and flows shown on aerials indicates year-round flow.
   - 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 13 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: Wetland is part of both banks of the creek for wetland 1; farmed wetlands 1 & 2 are also directly abutting off the side of the creek.

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: .

---

8 See Footnote # 7.
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 plats submitted by or on behalf of the applicant/consultant: November 14, 2006 Wetland Delineation Report by EnCAP, Inc.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:.
- Corps navigable waters’ study:.
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Elwood 7.5", 1993, Pick List, Pick List, Pick List,.
- National wetlands inventory map(s). Cite name: Elwood,
- 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): April 10, 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: All wetlands are directly abutting Cedar Creek with perennial flow and a direct connection to the Des Plaines River approximately 5 miles to the west; the Des Plaines River is navigable in-fact.
FINAL JURISDICTIONAL DETERMINATION DECISION DOCUMENT  
U.S. Army Corps of Engineers, Chicago District

APPLICANT: Waukegan Park District  PROJECT LOCATION/WATERWAY: Waukegan River

FILE NUMBER: LRC-2007-515  PROJECT REVIEW COMPLETED: ☑ Office ☐ Field

Final Jurisdictional Determination (JD) (For sites regulated under 33 CFR 320-330).
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)(1))
☒ 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 US. (33 CFR 328.3 (a)(5))
☐ The presence of wetlands adjacent (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., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or 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 Lake County.
☐ U. S. Geological Survey 7.5 Minute Historic Quadrangles:
☒ U. S. Geological Survey 15 Minute Historic Quadrangles:
☒ Aerials (Name & Date): Lake County and PhotoMapper
☒ Advanced Identification Wetland Maps: LAKE COUNTY.
☐ Site Visit Conducted on:
☐ Other information:

Rationale for Basis (applies to any boxes checked above): The Waukegan River is an RPW that is tributary to Lake Michigan and therefore a water of the United States under the jurisdiction of the Department of the Army.

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 to 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 March 31, 2005, prepared by Applied Ecological Services, Inc.
☐ This office does not confirm your wetland boundary

Date of Final Determination: 2-27-06

1 Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (SW 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

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 27, 2008
B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Chicago District, Chicago River, LRC-2008-146
C. PROJECT LOCATION AND BACKGROUND INFORMATION: Chicago River: Main Branch, South Branch, South Fork of South Branch, North Branch, and North Branch Canal.

State: Illinois
County: Cook, Lake
City: Multiple
Center coordinates of site (lat/long in degree decimal format): Lat. 42.048002° N, Long. 87.7813892° W.
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Chicago River
Name of watershed or Hydrologic Unit Code (HUC): Chicago (07120003)
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

D. REVIEW PERFORMED FOR SITE EVALUATION: Office (Desk) Determination. Date: 10/19/2007

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.
There Are “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

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

Explain: The Main Branch, South Branch, South Fork of South Branch, and the North Branch of the Chicago River are designated as navigable waterways in People of State of Ill. ex rel. Scott v. Hoffman, No. P-CIV-76-45, slip op. at 7 (S.D.III. Jan. 20, 1979). The North Branch Canal was created in the middle 1800’s as a source of clay for the nearby brickyards.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.
There Are “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
   a. Indicate presence of waters of U.S. in review area: ☑ TNWs, including territorial seas
   b. Identify (estimate) size of waters of the U.S. in the review area:
      Non-navigable waters: 2606600 linear feet
      width (ft) and/or acres:
   c. Limits (boundaries) of jurisdiction based on: Established by OHWM.
      Elevation of established OHWM (if known):

SECTION III: CWA ANALYSIS

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

1. TNW
   a. Identify TNW: Chicago River, including the Main Branch, South Branch, South Fork of South Branch, North Branch, and the North Branch Canal.
   b. Summarize rationale supporting determination: The Main Branch, South Branch, South Fork of South Branch, and the North Branch of the Chicago River are defined as a navigable waterway in People of State of Ill. ex rel. Scott v. Hoffman, No. P-CIV-76-45, slip op. at 7 (S.D.III. Jan. 20, 1979). The North Branch Canal was created in the mid 1800’s as a source of clay for the brickyards.

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: 2606600 linear feet width (ft), Or, 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: See below.
   ☐ Corps navigable waters’ study: .
   ☐ USGS 8 and 12 digit HUC maps: .
   ☑ U.S. Geological Survey map(s). Cite scale & quad name: Multiple 7.5" quads.
   ☐ FEMA/FIRM maps: .
   ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
   ☐ Photographs: ☐ Aerial (Name & Date): , or ☐ Other (Name & Date): .
   ☐ Previous determination(s). File no. and date of response letter: multiple.
   ☒ Other information (please specify): The North Branch Canal was created in the mid 1800’s as a source of clay for the brickyards..