

**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):** April 29, 2019

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Alaska District, POA-2013-01381

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: Alaska                      Borough: Kodiak                      City: Port Lions  
Center coordinates of site (lat/long in degree decimal format): Lat. 57.884954 ° N., Long. 152.847819 °W.  
Universal Transverse Mercator: Zone 5  
Name of nearest waterbody: Settler Cove  
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Settler Cove  
Name of watershed or Hydrologic Unit Code (HUC): 190207011302, Settler Cove-Frontal Kizhuyak Bay

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: April 29, 2019

Field Determination.                      Date(s):

**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. [Required]

Waters subject to the ebb and flow of the tide.

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

**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):<sup>1</sup>**

TNWs, including territorial seas

Wetlands adjacent to TNWs

Relatively permanent waters<sup>2</sup> (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

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<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> 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).

- b. **Identify (estimate) size of waters of the U.S. in the review area:**  
Non-wetland waters: 25,797 linear feet perennial & intermittent streams; 38.3 acres estuarine waters  
Wetlands: 12.16 acres.
- c. **Limits (boundaries) of jurisdiction based on:** 1987 Delineation Manual/2007 AK Regional Supplement;  
Established by the OHWM (streams); Established by High Tide Line (HTL)  
Elevation of established HTL (if known): +12.18 feet above mean lower low water

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: A culvert and ditch are located on the southwest end of the existing runway. These non-tidal drainages were excavated in and drain uplands. No OHWM is present. The site is dominated by FACU plants. Topography precludes water in the ditch from having a surface connection to Settler Cove

### **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: Settler Cove

Summarize rationale supporting determination: Settler Cove is subject to the ebb and flow of the tide; 33 CRF 328.3(a)(1) and (a)(6).

**2. Wetland adjacent to TNW**

Summarize rationale supporting conclusion that wetland is "adjacent": The wetlands at the east end of the existing runway are only separated from Settler cove by a man-made barrier or by beach dunes. As such, these wetlands are (a)(7) wetlands.

#### **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<sup>4</sup> 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

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<sup>3</sup> Supporting documentation is presented in Section III F.

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

**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: HUC 12 55,156 acres

Drainage area: 2428 acres

Average annual precipitation: 75.4 inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through 1 tributary before entering TNW.

Project waters are 0.5 river miles from TNW.

Project waters are 577 river feet from RPW.

Project waters are 400 aerial (straight) feet from TNW.

Project waters are 577 aerial (straight) feet from RPW.

Project waters cross or serve as state boundaries. Explain: NA

Identify flow route to TNW<sup>5</sup>: Water flowing off of Mount Ellison form multiple perennial and intermittent stream. The intermittent streams coalesce and contribute flow to the lower portions of the perennial streams. The perennial streams flow into Settler Cove.

Tributary stream order, if known: first order

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

**Tributary is:**  Natural

Artificial (man-made). Explain:

Manipulated (man-altered). The lower portion of the un-named stream that flows around the east end of the runway was likely re-routed during initial airport construction.

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

Average width: 5 feet

Average depth: 0.5feet

Average side slopes: 2-5%.

**Primary tributary substrate composition (check all that apply):**

Silts  Sands  Concrete

Cobbles  Gravel  Muck

Bedrock  Vegetation. Type/% cover:

Other. Explain:

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

Presence of run/riffle/pool complexes. Explain: none

Tributary geometry: Meandering

Tributary gradient (approximate average slope): 2-15%

**(c) Flow:**

Tributary provides for: Seasonal and Perennial Flow

Estimate average number of flow events in review area/year: unknown

Describe flow regime: There are both intermittent and perennial non-TNW streams. The intermittent streams stop flowing during dry conditions.

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<sup>5</sup> 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.

Other information on duration and volume: No additional stream flow data available  
Surface flow is: Discrete and Confined  
Characteristics: Very obvious and incised channels are present.  
Subsurface flow: Yes

Explain findings: Several intermittent streams were observed by the consultant to end at the slope break at the base of Mount Ellison. The Jurisdictional Determination Report (JDR) states that flow from these streams likely infiltrates into the thick layers of fine volcanic ash that was documented throughout the area, and likely continues as shallow subsurface flow before entering larger perennial streams, wetland complexes, or Settler Cove. The Corps finds no reason to doubt the consultant's assertion on this matter.

Dye (or other) test performed: NA

Tributary has (check all that apply):

Bed and banks

OHWM<sup>6</sup> (check all indicators that apply):

clear, natural line impressed on the bank

the presence of litter and debris

changes in the character of soil

destruction of terrestrial vegetation

shelving

the presence of wrack line

vegetation matted down, bent, or absent

sediment sorting

leaf litter disturbed or washed away

scour

sediment deposition

multiple observed or predicted flow events

water staining

abrupt change in plant community

other (list):

Discontinuous OHWM.<sup>7</sup> 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: contour data

Mean High Water Mark indicated by:

oil or scum line along shore objects

survey to available datum;

fine shell or debris deposits (foreshore)

physical markings;

physical markings/characteristics

vegetation lines/changes in vegetation types.

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: The tributaries are fairly untouched. Water levels were down during the consultant's site visit. The water quality appeared to be high. The upper portions of the streams flow quickly off of Mount Ellison or from wetlands higher up in the landscape.

Identify specific pollutants, if known: No known pollutants

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

Riparian corridor. Characteristics (type, average width): The riparian areas are primarily alder patches of various widths.

Wetland fringe. Characteristics:

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings: Airport Creek on the west end of the runway is anadromous.

Other environmentally-sensitive species. Explain findings:

<sup>6</sup> 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.

<sup>7</sup> Ibid.

Aquatic/wildlife diversity. Explain findings: brown bear (*Ursus arctos middendorffi*), red fox (*Vulpes vulpes*), river otter (*Lontra canadensis*), short-tailed weasel (*Mustela erminea*), little brown bat (*Myotis lucifugus*), tundra vole (*Microtus oeconomus*), Sitka black-tailed deer (*Odocoileus hemionus sitkensis*), Mountain goats (*Oreamnos americanus*) red squirrels (*Tamiasciurus hudsonicus*), Arctic ground squirrels (*Citellus undulatus*), reindeer (*Rangifer tarandus*), muskrat (*Ondatra zibethica*), beaver (*Castor canadensis*), and snowshoe hares (*Lepus americanus*)

**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: 6.57 acres

Wetland type: PSS/EM

Wetland quality: Moderate to high

Project wetlands cross or serve as state boundaries: No

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

Flow is: Choose an item. Wetlands directly abut the RPWs flowing directly or indirectly into the TNW.

Surface flow is: Overland Sheetflow

Characteristics: Wetlands AA3 and AA4 have a seasonal stream flowing through the middle of the wetland.

Wetland AA5 extends beyond the review area with only 0.26 acres of the wetland in the review area. On the mapping provided in the JDR, AA5 appears as two separate wetlands. The consultant supplied functional assessment shows their connectedness as part of a headwater wetland perched on a mountainside bench.

Subsurface flow: Yes Explain findings: The location of the wetlands directly abutting the streams is strong evidence of subsurface flow from the wetlands into the RPW.

Dye (or other) test performed: No

**(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 no more than 0.5 river miles from TNW.

Project waters are no more than 2,000 feet from TNW.

Flow is from: Wetland to Navigable Water

Estimate approximate location of wetland as within the 500-year or greater. 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: Wetland AA3 & AA4 are both small but contribute to sediment/nutrient/toxicant removal. AA4 has been impacted by the disturbance of a nearby material site. AA5 is a high quality wetland and is located in a relatively undisturbed area.

Identify specific pollutants, if known: No known pollutants

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

Riparian buffer. Characteristics (type, average width): The riparian areas are primarily alder patches of various widths.

Vegetation type/percent cover. Explain: Willow and alder are the dominant vegetation.

Habitat for:

Federally Listed species. Explain findings:

Fish/spawn areas. Explain findings:

Other environmentally-sensitive species. Explain findings:

Aquatic/wildlife diversity. Explain findings: brown bear (*Ursus arctos middendorffi*), red fox (*Vulpes vulpes*), river otter (*Lontra canadensis*), short-tailed weasel (*Mustela erminea*), little brown bat (*Myotis lucifugus*),

tundra vole (*Microtus oeconomus*), Sitka black-tailed deer (*Odocoileus hemionus sitkensis*), Mountain goats (*Oreamnos americanus*) red squirrels (*Tamiasciurus hudsonicus*), Arctic ground squirrels (*Citellus undulatus*), reindeer (*Rangifer tarandus*), muskrat (*Ondatra zibethica*), beaver (*Castor canadensis*), and snowshoe hares (*Lepus americanus*)

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

All wetland(s) being considered in the cumulative analysis: 3

Approximately (6.57) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y	0.05	Y/N	#
Y	0.31	Y/N	#
Y	6.21	Y/N	#
Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: These wetland contribute flow to the RPWs. They provide contaminant removal. They provide habitat for wildlife.

**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? Yes
- 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? Yes
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs? Yes
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW? No

*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: 38.68 acres.
- Wetlands adjacent to TNWs: 11.54 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: 10,177 linear feet of perennial stream as described in the April 9, 2019 Consultant Supplied Delineation by HDR. This report was based, in part, on a site visit that occurred on 22 July, 2018. During June 2018, the subject site received slightly less than average precipitation. During July 2018, the subject site received substantially less precipitation than normal. The observed flow during this relatively dry period indicates the perennial nature of the 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: 15,621 linear feet of intermittent streambeds were indicated in the April 9, 2019 report. The report includes numerous examples of dry streambeds. These locations had obvious beds & banks. These sites contain water during certain times of the year. It is expected that these streams would be dry during periods of if reduced precipitation.

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

- Tributary waters: 25,798 linear feet; 5 foot average width.
- Other non-wetland waters: # acres.

Identify type(s) of waters:

**3. Non-RPWs<sup>8</sup> 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: The seasonal RPWs flow through wetlands AA3 & AA4. Wetland AA5 is the source for a seasonal RPW.

Provide acreage estimates for jurisdictional wetlands in the review area: 12.16 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.

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<sup>8</sup> See Footnote #3.

**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.<sup>9</sup>**

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):<sup>10</sup>**

- 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: There is no significant nexus between the ditch paralleling the western portion of the runway and Settler Cove. While water may collect there following rain events, it neither flows into the cove nor remains in place sufficiently long enough for a wetland to form.
- 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.

<sup>9</sup> To complete the analysis refer to the key in Section III D.6 of the Instructional Guidebook.

<sup>10</sup> 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 Jurisdiction Following Rapanos.



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: 0.32 acres. List type of aquatic resource: Roadside ditch
- Wetlands: # acres.

#### **SECTION IV: DATA SOURCES.**

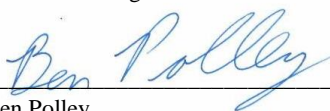
**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Project scoping document dated 4 March, 2019
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- Alaska District's Approved List of Navigable Waters
- U.S. Geological Survey map(s). Cite scale & quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): Google Earth (6 Apr 2006); Digital Globe (13 Jul, 2017) or  Other (Name & Date): Consultant supplied, (Mar, July, & Sept 2018)
- Previous determination(s). File no. and date of response letter: POA-2003-1381-9; 12-APR-2007
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): Jurisdictional Determination Report (9 Apr 2019) and Wetland and Waterbody Functional Assessment Report (25 Jan, 2019) prepared by HDR. Jurisdictional Determination Report (March 2006) prepared by HDR.

**B. ADDITIONAL COMMENTS TO SUPPORT JD:** The primary focus of the jurisdiction determination is on those areas impacted by the proposed Port Lions Airport Improvement Project, specifically the waters at the east and west ends of the existing runway. The applicant acknowledges the connection between the mountainside streams and Settler Cover.

The two delineation reports had similar wetland & stream findings. A small area that was labeled as a wetland in the 2006 report was found to not contain all three wetland parameters. The consultant stated that particular area (data point 21) had experienced changes in hydrology since the previous delineation. No primary indicators of hydrology were found on this site. The secondary indicators found there are based on land form and vegetation, not the actual presence of water. These indicators would persist without the continued presence of hydrology. Additionally, no indicators of hydric soils were found on site during the 2018 site investigation.

There is nothing to indicate that those areas determined to be uplands in the 2006 report have become a water of the U.S.

  
\_\_\_\_\_  
Ben Polley  
Regulatory Specialist  
Southeast Section

April 29, 2019  
Date