

**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): 10/09/2019

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Alaska District, POA-2019-00566

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alaska Borough: Municipality of Anchorage City: Eagle River
Center coordinates of site (lat/long in degree decimal format): Lat. 61.30396 ° N., Long. 149.46832 °W.
Name of nearest waterbody: Unnamed Tributary
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Eagle River
Name of watershed or Hydrologic Unit Code (HUC): 1902040103

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Field Determination. Date(s): 09/27/2019; 10/01/2019

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.

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:¹

- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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

Non-wetland waters: linear feet: 380; width (ft): 2
Wetlands: 1.45 acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual and established by the OHWM

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: Review area contains two water pits (0.001-acre) in the upland portion of the lot that had been excavated as potential test holes and have filled with water due to recent rainfall and ground water infiltration.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

N/A

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.

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 waterbody⁴ 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: 236.853 sq miles (Eagle River Watershed)
Drainage area: Cook Inlet
Average annual rainfall: 1.18 inches
Average annual snowfall: 7.87 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

Tributary flows directly into TNW.
Project waters are 0.645 river miles from TNW.
Project waters are 0.44 aerial (straight) miles from TNW.

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

Tributary is: Natural
Tributary properties with respect to top of bank (estimate):
Average width: 2 feet
Average depth: 1 feet

Primary tributary substrate composition:

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation.

Tributary condition/stability: Tributary is incised but is stable. Would be classified as a G stream type using Rosgen Classification

Presence of run/riffle/pool complexes: Not Present

Tributary geometry: Relatively straight through property but does meander slightly

Tributary gradient (approximate average slope): 3%

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

(c) Flow:

Tributary provides for: Seasonal Flow

Other information on duration and volume: The applicant stated the stream is dry in the summer and the portion in the delineated area is mapped as “intermittent” turning into a perennial portion before flowing into Eagle River.

Surface flow is: Discrete and Confined

Subsurface flow: Not present in review area

Tributary has (check all that apply):

Bed and banks

OHWM⁵ (check all indicators that apply):

clear, natural line impressed on the bank

shelving

leaf litter disturbed or washed away

scour

(iii) Chemical Characteristics:

Characterize tributary: The water was clear and did not look discolored, oily, or contaminated.

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

Habitat for:

Federally Listed species. Explain findings: N/A

Fish/spawn areas. Explain findings: N/A

Other environmentally-sensitive species. Explain findings: N/A

Aquatic/wildlife diversity. Explain findings: Animals such as birds, bear and moose may use the area as both bear and moose sign were observed on site.

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: 1.45 acres

Wetland type: Palustrine Forested Wetlands

Wetland quality: The wetlands are mapped by the Municipality of Anchorage as class B wetlands.

(b) General Flow Relationship with Non-TNW:

Flow is: Subsurface flow

Explain findings: No dye tests were performed. However, the water table was hit at each of the delineation points showing a subsurface connection with the RPW to the wetlands.

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

(d) Proximity (Relationship) to TNW

Project wetlands are 0.645 river miles from TNW.

Project waters are 0.4 aerial (straight) miles from TNW.

Flow is from: Wetland to Navigable Water

Estimated approximate location of wetland is 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: Water observed when holes were dug was muddy do to sediments. However, no signs of contamination were seen.

⁵ 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.

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.

N/A

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. N/A

2. RPWs that flow directly or indirectly into TNWs.

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional.

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

Tributary waters: 380; width (ft): 2

3. Non-RPWs⁶ that flow directly or indirectly into TNWs.

N/A

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. Data and rationale indicating that tributary is perennial is provided in Section III.D.2, above.

Wetlands directly abutting an RPW where tributaries typically flow “seasonally.” Data indicating that tributary is seasonal is provided in Section III.B and rationale in Section III.D.2, above.

Provide acreage estimates for jurisdictional wetlands in the review area: 1.45 acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

N/A

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

N/A

7. Impoundments of jurisdictional waters.⁷

N/A

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):⁸ N/A

⁶ See Footnote #3.

⁷ To complete the analysis refer to the key in Section III D.6 of the Instructional Guidebook.

⁸ 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.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS:

See Section II.B.2 above.

SECTION IV: DATA SOURCES.

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

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: Wetland Delineation Forms completed 9/27/2019 and 10/01/2019
- 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:
<https://websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx>
- National wetlands inventory map(s). Cite name: <https://www.fws.gov/wetlands/data/Mapper.html>
- State/Local wetland inventory map(s): Municipality of Anchorage Wetland Mapping
- FEMA/FIRM maps: <https://msc.fema.gov/portal/search?AddressQuery=eagle%20River%2C%20AK#searchresultsanchor>
- 100-year Floodplain Elevation is:
 - Photographs: Aerial (Name & Date): Google Earth; July 2019
- Previous determination(s). File no. and date of response letter:
- Applicable/supporting case law:
- Applicable/supporting scientific literature:
- Other information (please specify): SimSuite

B. ADDITIONAL COMMENTS TO SUPPORT JD: The review area contains 0.001-acre of recently excavated, artificially created, upland cut test pits. The pits are a class of water not regulated by Sec. 404 per 33 CFR 323.2(b).



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10/09/2019
Date