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 1, 2020

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: POA-2005-01948, Wetland 1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Alaska County/parish/borough: Kenai Peninsula Borough City: Soldotna
Center coordinates of site (lat/long in degree decimal format): Lat. 60.4764° N., Long. 151.0551° W.
Universal Transverse Mercator: Zone 5
Name of nearest waterbody: Kenai River
Name of watershed or Hydrologic Unit Code (HUC): 1902030218 Lower Kenai River

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

☐Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form

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

☒Office (Desk) Determination. Date: March 4, 2020
☐Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. *[Required]*

- ☐ Waters subject to the ebb and flow of the tide.
- ☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are not *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. *[Required]*

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):[1]

☐TNWs, including territorial seas
☐Wetlands adjacent to TNWs
☐Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
☐Non-RPWs that flow directly or indirectly into TNWs
☐Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐Impoundments of jurisdictional waters
☐Isolated (interstate or intrastate) waters, including isolated wetlands

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

[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.

c. Limits (boundaries) of jurisdiction based on:
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: This is an isolated, intra-state, and non-navigable wetland created by the excavation of a material site. This wetland is publicly owned but not susceptible to commercial navigation or recreation and therefore has no connection to interstate or foreign commerce. There is no evidence of a surface water connection or shallow, sub-surface water connection from this wetland to any water of the U.S. This wetland is not physically proximate to jurisdictional waters.

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: NA
Summarize rationale supporting determination: NA

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

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[4] 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: NA

[3] Supporting documentation is presented in Section III F.

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

(i) General Area Conditions:
Watershed size:
Drainage area:

Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐Tributary flows directly into TNW.
☐Tributary flows through [] tributaries before entering TNW.

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

Identify flow route to TNW[5]: NA
Tributary stream order, if known: NA

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

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

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

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

(c) Flow:
Tributary provides for: NA
Subsurface flow: NA
☐Dye (or other) test performed: No

Tributary has (check all that apply): NA

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

(iii) Chemical Characteristics: NA

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

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

(i) Physical Characteristics:

(a) General Wetland Characteristics: NA

(b) General Flow Relationship with Non-TNW: NA
Flow is: NA
Surface flow is: NA
Subsurface flow: NA
☐Dye (or other) test performed: No

[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.

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

(d) Proximity (Relationship) to TNW NA

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

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

3. Characteristics of all wetlands adjacent to the tributary (if any)
All wetland(s) being considered in the cumulative analysis: NA
Summarize overall biological, chemical and physical functions being performed: NA

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.

1. No Significant Nexus from subject wetland to a TNW.

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

1. TNWs and Adjacent Wetlands. NA

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: NA
☐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: NA

Provide estimates for jurisdictional waters in the review area (check all that apply): NA
☐Tributary waters: NA
☐Other non-wetland waters: NA

3. Non-RPWs[6] that flow directly or indirectly into TNWs. NA

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

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs. NA

Provide acreage estimates for jurisdictional wetlands in the review area: NA

[6] See Footnote #3.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.** NA
   Provide acreage estimates for jurisdictional wetlands in the review area: NA

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

   Provide estimates for jurisdictional wetlands in the review area: NA

7. **Impoundments of jurisdictional waters.**[7] NA

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]

☐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: NA
☐Other factors. Explain: NA

Identify water body and summarize rationale supporting determination: NA

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐Tributary waters: NA.
☐Other non-wetland waters: NA.
Identify type(s) of waters:
☐Wetlands: NA

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: This is an isolated, intra-state, and non-navigable wetland. This wetland is not susceptible to commercial navigation or recreation and therefore has no connection to interstate or foreign commerce. There is no evidence of a surface water connection or shallow, sub-surface water connection from this wetland to any water of the U.S. This wetland is not physically proximate to jurisdictional waters.
☐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):
☐Lakes/ponds:
☐Other non-wetland waters:
☒Wetlands: 2.11

[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*.

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):

☐Lakes/ponds:

☐Other non-wetland waters:

☒Wetlands: 2.11 acres

SECTION IV: DATA SOURCES.

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

☐Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

☒Data sheets prepared/submitted by or on behalf of the applicant/consultant. December 2006 JDR by Three Parameters Plus, Inc

☒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: Western Kenai Peninsula Soil Survey; Version 18, Oct. 22, 2019; USDA Web Soil Survey

☐National wetlands inventory map(s). Cite name:

☐State/Local wetland inventory map(s):

☐FEMA/FIRM maps:

☐100-year Floodplain Elevation is:

☒Photographs: ☒Aerial (Name & Date): Jun 7, 2018 and Apr 1, 2019 (Digital Globe); Aug 26, 1996, Jul 19, 2003, and Apr 17, 2011 (Google Earth); Aug 19, 1983 (USACE); 1969 and mid-to-late-1970s (City of Soldotna)

or ☐Other:

☒Previous determination(s). File no. and date of response letter: POA-2005-01948; January 22, 2007

☐Applicable/supporting case law:

☐Applicable/supporting scientific literature:

☒Other information (please specify): LiDAR imagery, https://gis.kpb.us/map/index.html?viewer=terrain, accessed March 2, 2020, March 4, 2020 Memorandum of Record, and April 1, 2020 Findings MFR.

B. ADDITIONAL COMMENTS TO SUPPORT JD: There have been no substantial changes to the subject wetland since the 2006 wetland delineation. Other construction within the area has not created a hydrological connection from the subject wetland to any other water of the U.S. via additional ditches or culverts.