



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 8/19/2020
 ORM Number: POA-2020-00360
 Associated JDs: POA-2019-00477 (Sept 2019) POA-1986-901-D (July 2007)
 Review Area Location¹: State/Territory: AK City: Homer County/Parish/Borough: Kenai Peninsula
 Center Coordinates of Review Area: Latitude 59.6556 N Longitude 151.6162 W

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: NA
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
N/A.	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
POA-2020-00360	2.57	acre(s)	(b)(1) Non-adjacent wetland.	The subject site consists of a depression wetland surrounded by a wetland upland complex. Previous determinations indicate the majority of the wetland/upland complex is upland. Authorized construction around the subject property severed any connection, if one existed, between the depression wetland and any jurisdictional water feature. See Section III 3 for additional information.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

- Information submitted by, or on behalf of, the applicant/consultant: [Title\(s\) and date\(s\)](#)
This information [Select](#). sufficient for purposes of this AJD.
Rationale: [N/A or describe rationale for insufficiency \(including partial insufficiency\)](#).
- Data sheets prepared by the Corps: [Title\(s\) and/or date\(s\)](#).
- Photographs: [Aerial and Other: Google Earth 2 July 2019, Site visit photos 2 July 2020](#)
- Corps site visit(s) conducted on: [July 2, 2020](#)
- Previous Jurisdictional Determinations (AJDs or PJDs): [POA-2019-00477 \(Sept 2019\) POA-1986-901-D \(July 2007\)](#)
- Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)
- USDA NRCS Soil Survey: [Title\(s\) and/or date\(s\)](#).
- USFWS NWI maps: [Title\(s\) and/or date\(s\)](#).
- USGS topographic maps: [Title\(s\) and/or date\(s\)](#).

Other data sources used to aid in this determination:

Data Source (select)	Name and/or date and other relevant information
USGS Sources	N/A.
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	Wetland Mapping and Classification of the Kenai Lowland, Alaska. 21 March 2008. Gracz, Mike, Noyes, K., North, P., and Tande, G.; cookinletwetlands.info
Other Sources	Kenai Peninsula Borough Terrain Viewer

B. Typical year assessment(s): [N/A](#)

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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C. Additional comments to support AJD: No wetland delineation was required as part of this AJD. The site was modified by logging prior to 2000 and again in 2020 by ditching reportedly conducted by the applicant. The best available information was sufficient to conclude that wetlands were present on the subject parcel prior to ditching. The evidence indicates the wetland boundaries on the subject parcel, as mapped by Gracz et. al, are sufficient for this AJD.

A 2007 delineation found that the Bidarka Heights Subdivision, within which the subject lot is a part of, contained 0.49 acres of depression wetlands, 9.34 acres of wetland/upland complex, and 2.58 acres of forested depression wetland. The wetland/upland complex was found to be comprised of 2.4 acres of wetlands and 6.94 acres of uplands. Use of a NWP 29 was verified on Aug 7, 2007 (POA-1986-901-D) to construct Highland Drive and three driveways. The construction of these features has severed jurisdiction of any wetland upslope of Highland Drive. A culvert was installed beneath Highland Drive that allows hydrology to pass through the road and into a platted drainage easement. The easement is located at the edge of the mapped wetland/upland complex. However, a Sept. 2019 delineation (POA-2019-00477) found the lot containing the drainage easement to be dominated by uplands. The only aquatic feature noted by the 2019 delineation was immediately abutting a stream on the eastern edge of the parcel. No channelized or wetland connection between the drainage easement and the stream was documented. There is no evidence that the drainage easement is capable of providing channelized surface flow beyond the terminus of artificially constructed ditch. This severs jurisdiction upstream of the excluded feature. Note that under the NWPR, a ditch cannot render an otherwise isolated wetland an "adjacent wetland" and thus jurisdictional on that basis, unless the ditch itself is a tributary. A July 2, 2020 site visit found the ditch does not meet the requirements to be a tributary. It would be more appropriate to describe the it as a drainage ditch constructed in uplands. It is expect the ditch loses any flow it receives from upslope wetlands/precipitation/snowmelt to groundwater and/or diffuse overland flow. LiDAR indicates the ground generally slopes downward from the drainage easement toward the perennial stream. A channel is not evident in the imagery until nearly 300 feet downslope and closer to the perennial stream.

While the Corps has jurisdiction over jurisdictional wetland complexes that are crossed by roads and similar structures if those structures allow for a surface water connection between the segregated wetland portions (such as through a culvert through a roadway) in a typical year, a surface connection must exist between the wetland complex and a jurisdictional water. Such a connection is not apparent in this case and the subject wetland is not inseparably bound up with the un-named tributary to Kachemak Bay.