



**US Army Corps
of Engineers**

Alaska District
Regulatory Division (1145)
Post Office Box 6898
Anchorage, Alaska 99506-0898
(907) 753-2712
(800) 478-2712 (AK Toll Free)

Date: January 29, 2010

Identification No: _____

SPN 2010-45

No expiration date unless rescinded or replaced

SPECIAL PUBLIC NOTICE (SPN) 2010-45

**Corps of Engineers Regulatory Program
Consultant-Supplied Jurisdictional Determination Reports**

The Alaska District Regulatory Division, U.S. Army Corps of Engineers (Corps) receives approximately 2000 requests annually for jurisdictional determinations and/or Department of the Army permits for placement of fill and/or structures/work in waters of the U.S. The initial procedure for managing these requests is to identify and locate which portions of a proposed project area would be regulated by the Corps under Section 404 of the Clean Water Act and/or under Section 10 of the Rivers and Harbors Act. This is called a Jurisdictional Determination (JD).

The Corps determines jurisdiction by documenting the presence or absence of waters of the U.S., including wetlands¹. Jurisdiction is determined by identifying the boundaries of jurisdictional waters and wetlands; physical, chemical and/or biological connections of wetlands and waters with downstream navigable waters; connections to interstate commerce; and adjacency of wetlands to other waters of the U.S.

The Corps generally performs JDs as a free service available to the public upon request, generally excluding those JD requests involving areas greater than 5 acres in size and/or requiring considerable labor hours. However, due to the large size of Alaska, limited staff and resources, and a compressed field season, the response time can be several months or longer. To expedite this process, the Corps encourages applicants to use consultants to submit Jurisdictional Determination Reports (JDRs), especially for large and/or complex areas. JDRs are then submitted to the Corps for review and verification, and then become the Corps' approved JD, completing this process. A list of consultants² is available on our web page at: <http://www.poa.usace.army.mil/reg/conslist.htm>.

To assist consultants, the Corps provides the following lists, showing the minimum information to include when submitting JDRs, as well as a list of additional information that can be provided to further expedite the JD process. The Corps will determine on a case-by-case basis whether or not the supplied information is adequate. Submittal of incomplete information may result in time delays and/or requests for additional information.

As they become available, examples of consultant-supplied JDRs will be displayed on our web page at: <http://www.poa.usace.army.mil/reg/SPNNew.htm>, under this SPN.

Please note this information replaces Special Public Notice (SPN) 1992-9, *Applicant Supplied Jurisdictional Determinations*.

¹ This includes delineating the boundaries of wetlands determined to be under Corps jurisdiction via a multi-parameter approach defined in the 1987 "Corps of Engineers Wetlands Delineation Manual" and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual, Alaska Region". The Corps' determination that an area is a wetland generally requires positive evidence of hydrophytic vegetation, hydric soils, and wetland hydrology.

² Click on the green button "List of Consultants". A hard copy can be provided upon request. This list contains only firms who requested listing, and may not be complete. The Corps of Engineers neither endorses nor accepts responsibility for work performed by any firm on this list.

**Jurisdictional Determination Report (JDR) Minimum Requirements:
Mapping and Delineation only**

(This list is intended for consultants with current training and experience performing wetland delineations)

SUPPORTING INFORMATION

1. A **Cover Letter** that includes:

- Names (including a point of contact if the applicant is a corporation or other entity), complete mailing addresses and phone numbers of the following:
 - CURRENT PROPERTY OWNER
 - APPLICANT (Project Sponsor)
 - WETLAND DELINEATOR (Consultant)
- A description of the purpose of the request (e.g., permit application, enforcement action, jurisdictional determination request); a general description of the proposed project; location of the site (USGS Quad, Section, Township, Range and Meridian, and latitude and longitude of the center of the parcel in decimal degrees, NAD83 datum); directions to the site; the size (acres) of the parcel³; and the size of the limits of the project area⁴ or review area (if smaller than the parcel).
- Written landowner permission to the Corps for access to review the parcel. This should be signed by the landowner and any associated land users (e.g. renter).

2. **Narrative**

- Dates of field work and personnel involved
- Methods used (simply cite the appropriate sections of the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual, Alaska Region" (Regional Supplement) and the 1987 "Corps of Engineers Wetlands Delineation Manual" (Corps Manual), but describe any deviations from standard methods)
- Verification/certification statement that all delineation of wetlands has been conducted in accordance with the Regional supplement and Corps Manual. These manuals can be found on our web page at:
<http://www.poa.usace.army.mil/reg/NeedPermit.htm#Delineating>.
- Supporting materials used:
 - National List of Plant Species That Occur in Wetlands: Alaska (Region A)
 - Soil survey report (the Exploratory Soil Survey of Alaska is not sufficient for delineation purposes)
 - Hydric soil list
 - Aerial photography
 - USGS topographic map
 - National Wetland Inventory (NWI) map
 - National Technical Committee on Hydric Soils (NTCHS) field indicators
 - Color photographs of all representative areas of the parcel (taken during the growing season), including any connections between tributaries or between tributaries and wetlands
 - Etc.
- Important findings:
 - Kinds and locations of any wetlands present
 - Rationale for wetland boundary locations based on vegetation, soils, and hydrologic conditions
 - Description of any current and/or historic land uses on the parcel
 - Topography and/or geomorphology
 - Description of potential pollutants or other environmental hazards

- Description of species habitat
- Summary and conclusions
 - Summary of what was found on the parcel, including any contrasts between what is suggested by research information and what was found on the ground
 - Description of the wetlands and vegetative cover types, including justification for the wetland boundaries, and accompanied by complete and accurate Wetland Delineation Forms (Appendix D of the Regional Supplement) for each cover type. Data points should be documented on either side of the boundary line for each wetland type. Additional data forms may be necessary depending on various factors including the size and shape of the wetlands on the parcel, difficulty in identifying a precise wetlands/uplands boundary, and the width of any transition zones.

3. **Location Map** (showing vicinity, parcel boundaries and project area):

- Sized on 8 ½ by 11-inch paper
- Preferably a copy of the USGS Quad with the site identified on it
- Use standard mapping conventions (such as north arrow, location map, etc.), and other symbols which facilitate the correlation of map locations with ground features (e.g. buildings, fence lines, roads, right-of-ways, trees, streams, topographic features, etc.)
- Title block providing the following information: name of the USGS quadrangle, Section, Township, Range, Meridian, and latitude and longitude in decimal degrees (datum NAD83)
- Other pertinent maps
- For those projects crossing numerous potentially jurisdictional waters of the U.S., include an excel spreadsheet, which can be found on our web page at: <http://www.poa.usace.army.mil/reg/SPNNew.htm>, under this SPN

4. **Delineation map** (showing boundaries of jurisdictional areas throughout the entire parcel, not just the proposed project area. It is necessary to delineate the entire parcel to explore alternatives analysis, cumulative effects, and mitigation needs)

- **Map Format:** Sized on 8 ½ by 11-inch paper.
 - Use standard mapping conventions (such as north arrow, vicinity map, etc.) and other symbols which facilitate the correlation of map locations with ground features (e.g. buildings, fence lines, roads, right-of-ways, trees, streams, topographic features, etc.).
 - Title block providing the following information: name of the USGS quadrangle, Section, Township, Range, Meridian, and latitude and longitude in decimal degrees.
- **Map Scale:** Generally one inch to 100 or 200 feet for best readability, maximum one inch to 400 feet. Maps using a photographic base must be corrected for distortions, and any overlays must be the same scale.
- **Map Coordinates:** Coordinates should be represented in the decimal degree format, out to four decimal places, ex. XXX:XXXX ° N., XXX.XXXX° W. (NAD 83), to be compatible with our database. Generally, a centerpoint coordinate is used to represent the entire parcel, with additional coordinates used to represent each potentially jurisdictional water of the U.S. Other features which may include coordinate information, including locations and identification of: data points, and surveyed or GPS established flags, stakes, or wetland boundaries.
- **The map should include:**
 - The boundary of the entire parcel, including the project area if smaller, and boundaries between wetlands/uplands, OHW, etc., on the entire parcel.
 - A depiction of all waters of the U.S. on the entire parcel, including but not limited to, interstate waters, tributaries, wetlands, and all other waters such as intrastate lakes, rivers, streams, mudflats, etc., as described in 33 CFR 328.3. Differentiate between different Cowardin

or HGM types of wetlands; this may be important in making compensatory mitigation calculations. Include features which meet wetlands criteria or are potential waters of the U.S., but which may be isolated and lacking an interstate or foreign commerce connection, or non-jurisdictional for other reasons. Include features which may show connections between waters (e.g. culverts, ditches and/or swales). Some situations may require identifying and locating stream order and stream reach.

- Visual representation of jurisdictional features on the entire parcel: Identify the extent of jurisdictional areas by appropriate hatching, shading, or outlines.
- Location and labels for each transect, upland/wetland data points and photo points, etc., including latitude and longitude for each data point.

▪ **Supporting map information that may best be shown in a table includes:**

- A table displaying the respective sizes (in acres) of each water and the cumulative acreage of each type of water.
- Watershed size, drainage area size (for any relevant stream reach), average annual rainfall/snowfall.
- Tables showing locations and sizes of culverts.
- Summary of tributaries on the parcel, and their aerial and straight distances, in miles, from the nearest traditionally navigable water.
- Description of tributary substrate composition (e.g. silts, sands, gravel, etc.).

5. **Verification:** The delineation elements should be clearly displayed on an aerial photograph and mapping, with measures taken to ensure they can be identified in the field by a Corps representative, as necessary. Coordination with the Corps is recommended prior to field work, to clarify the extent of verification measures necessary for your project, as well as necessary accuracy requirements when using GPS equipment. GPS metadata should be included with the JDR to reflect GPS field accuracy.

Unless a written exception is obtained from the Corps, flags or stakes should be individually numbered and surveyed by traditional methods or by GPS equipment. The survey data must specify the geographic coordinate system used in referencing the data, including projections and datum (e.g., Latitude-Longitude: NAD 83). Data should be provided in a digital geographic information system (GIS) format to expedite review, with ESRI Shapefiles being the preferred format. Flagging or staking should include the following, with identifying symbols to denote:

- Boundary lines of the parcel, AND of the project area, if smaller.
- Wetland boundaries.
- All tributaries.
- All other waters of the U.S., including potentially isolated or potentially non-jurisdictional waters.

Jurisdictional Determination Report (JDR²)

Additional Information Not Required, but may be Included to Further Expedite the Corps' Official Jurisdictional Determination Process

- (Note: There is a lot of associated legal terminology involved with this information, further defined in the footnotes below. This list is intended for consultants with current knowledge and experience in the meaning of this terminology. Additional guidance is available on the Corps Headquarters web page: (http://www.usace.army.mil/CECW/Pages/cwa_guide.aspx)
- On the JDR mapping, identify the waters depicted as: traditionally navigable waters (TNWs⁵); non-navigable perennial relatively permanent waters [perennial (RPWs⁶)]; non-navigable seasonal relatively permanent waters [seasonal RPWs]; or non-navigable tributaries that do not typically flow year-round or do not have continuous flow at least seasonally [non-RPWs].
- Provide a brief discussion of why the tributaries (streams) on the parcel are TNWs, perennial RPWs, seasonal RPWs, or non-RPWs. Information that may be used includes: hydrographic studies or calculations, general flow patterns, volume and frequencies, historic information documenting use, etc.
- Description of tributary connections to a TNW for each aquatic resource on the parcel, including a discussion of wetland and/or other connections (e.g. Wetland B connects to Wetland A via a culvert under Elm St. Wetland B abuts an unnamed tributary to Canyon Creek, which is a TNW). Include a description of general flow patterns, volume and frequency. Certain non-aquatic geographic features (e.g. swales, ditches, pipes) may contribute to a surface hydrologic connection where they connect one water of the US to another, replace or relocate a water of the US, or provide relatively permanent flow to a water of the U.S.
- Description of whether each wetland on the parcel either abuts or is adjacent⁷ to a tributary, identify which tributary (e.g. Wetland A directly abuts an unnamed tributary to Canyon Creek), and a brief discussion of the justification for this determination.
- Also describe any observed and/or documented examples of an interstate or foreign commerce connection. Examples include, but are not limited to:
 - Recreational or other use by interstate or foreign travelers.
 - Sale of fish or shellfish in interstate or foreign commerce.
 - Use by industries, including agriculture, operating in interstate or foreign commerce.
- Significant nexus⁸: For seasonal RPWs, non-RPWs and wetlands adjacent to non-RPWs that require a significant nexus determination, provide information regarding whether the stream and/or wetland have more than insubstantial or speculative effects on the chemical, physical and/or biological integrity of TNWs, such as a functional assessment of the aquatic resource functions that the stream and its adjacent wetlands provide.
- Finally, if you believe the Corps should not take jurisdiction over an area from a legal perspective, please include the justification in the report.

¹ Wetlands are defined as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." Wetlands generally include swamps, marshes, bogs, and similar areas. Three diagnostic environmental characteristics are used when making wetland determinations: vegetation, soil, and hydrology. Greater than 50% of the vegetation present must be considered hydrophytic. Hydric soil must be present. The hydrology requirement is satisfied when an area is saturated within 12 inches of the surface at some time during the growing season of the prevalent vegetation. Unless an area has been altered or is a rare natural situation, wetland indicators of all three characteristics must be present during some portion of the growing season for an area to be a wetland.

² A JDR is a report documenting the potential extent of jurisdictional waterbodies and/or wetlands within the boundaries of a parcel of land, including the project. The Corps must independently review and verify the information in all JDRs in making an official jurisdictional determination.

³ A parcel is a distinct, continuous portion or tract of land, such as a defined subdivision.

⁴ A project area is the limits of all lands expected to be disturbed for a single and complete project.

⁵ TNWs are defined as: All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. TNWs include the following waters:

- Water bodies that are navigable-in-fact under federal law;
- Waters currently being used for commercial navigation, including commercial waterborne recreation (e.g., boat rentals, guided fishing trips, water ski tournaments, etc.);
- Waters that have historically been used for commercial navigation, including commercial water-borne recreation;
- Waters that are susceptible to being used in the future for commercial navigation, including commercial water-borne recreation. Susceptibility for future use may be determined by examining a number of factors, including the physical characteristics and capacity of the water (e.g., size, depth, and flow velocity, etc.) to be used in commercial navigation, including commercial recreational navigation, and the likelihood of future commercial navigation or commercial water-borne recreation. Evidence of future commercial navigation use, including commercial water-borne recreation (e.g., development plans, plans for water dependent events, etc.), must be clearly documented. Susceptibility to future commercial navigation, including commercial water-borne recreation, will not be supported when the evidence is insubstantial or speculative. Use of average flow statistics may not accurately represent streams with "flashy" flow characteristics. In such circumstances, daily gage data is more representative of flow characteristics.

⁶ RPWs: a non-navigable water body whose waters flow into a traditional navigable water either directly or indirectly by means of other tributaries. "Relatively permanent" - waters typically (e.g., except due to drought) flow year-round or have a continuous flow at least seasonally (e.g., typically three months). Perennial RPWs do not include ephemeral tributaries which flow only in response to precipitation and intermittent streams which do not typically flow year-round or have continuous flow at least seasonally. However, CWA jurisdiction over these waters will be evaluated under the significant nexus standard described below. The agencies will assert jurisdiction over relatively permanent non-navigable tributaries of traditional navigable waters without a legal obligation to make a significant nexus finding. In addition, the agencies will assert jurisdiction over those adjacent wetlands that have a continuous surface connection with a relatively permanent, non-navigable tributary, without the legal obligation to make a significant nexus finding.

The agencies will assert jurisdiction over the following types of waters when they have a significant nexus with a traditional navigable water:

- (1) non-navigable tributaries that are not relatively permanent,
- (2) wetlands adjacent to non-navigable tributaries that are not relatively permanent, and
- (3) wetlands adjacent to, but not directly abutting, a relatively permanent tributary (e.g., separated from it by uplands, a berm, dike or similar feature).

⁷ The term adjacent means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands" (see 33 CFR 328.3). Under

this definition, the agencies consider wetlands adjacent if one of following three criteria is satisfied. First, there is an unbroken surface or shallow sub-surface connection to jurisdictional waters. This hydrologic connection may be intermittent. Second, they are physically separated from jurisdictional waters by man-made dikes or barriers, natural river berms, beach dunes, and the like. Or third, their proximity to a jurisdictional water is reasonably close, supporting the science-based inference that such wetlands have an ecological interconnection with jurisdictional waters.

⁸ Significant nexus: Seasonal RPWs, non-RPWs and wetlands adjacent to non-RPWs possess the required nexus, and thus come within the statutory phrase 'navigable waters,' if they either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable'.