



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): 02-OCT-2020

ORM Number: POA-2008-00550

Associated JDs: N/A or ORM numbers and identifiers (e.g. HQS-2020-00001-MSW-MITSITE)

Review Area Location¹:

State/Territory: AK City: North Pole County/Parish/Borough: Fairbanks North Star Borough
Center Coordinates of Review Area: Latitude 64.76466 Longitude -147.365489

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: N/A or describe rationale.
- 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 independent 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.

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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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12))⁴:

Exclusion Name	Exclusion Size	Exclusion ⁵	Rationale for Exclusion Determination
Lot 3 Universal Welding NWPR	23 acres	(b)(1) Non-adjacent wetland	The original jurisdictional determination was based on a Significant Nexus determination. It stated that the subject wetland was a Water of the United States (WOTUS) based upon its significant contributions of baseflow support and biogeochemical influence which had a significant effect on the physical, chemical and biological integrity of the C Channel (RPW) and Chena Slough (TNW). The new NWPR does not recognize these contributions as grounds for defining a WOTUS.

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: *N/A.*
- Data sheets prepared by the Corps: *Approved Jurisdictional Determination, POA-2008-00550, Channel C site visit and data sheets completed on 15 July, 2010. Office determination completed on 19 July, 2010.*
- Photographs: *28 June, 2007 (Google Earth), onsite photographs (Ellen Lyons, USACE PM, April 2008).*
- Corps Site visit(s) conducted on: *15 July, 2010 by Greg Mazor, PM.*
- Previous Jurisdictional Determinations (AJDs or PJDs): *POA-2008-00550, Universal Welding LLC. JD issued 23 July, 2010. JD Appealed on 25 May, 2010 and upheld in court on 21 January, 2011.*
- Antecedent Precipitation Tool: *N/A*
- USDA NRCS Soil Survey: *Soil Survey of the Greater Fairbanks Area (2004)*
- USFWS NWI maps: *Chena River Wetlands_HUC19080306 GIS layer (USFWS accsd online 2020)*
- USGS topographic maps: *Fairbanks D-1, 1:63,360*

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	N/A.
Other Sources	Hillshade_2010_LiDAR_DEM.img (FNSB 2010)

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

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- B. Typical year assessment(s):** N/A or provide typical year assessment for each relevant data source used to support the conclusions in the AJD.

Additional comments to support AJD: A significant nexus finding for Waters of the U.S. was defined from the *Rapanos vs. Carabel* Supreme Court Decision (2006) and allowed for the geographic extent of Federal jurisdiction under the Clean Water Act to include non-abutting, non-adjacent wetlands if the exhibited a significant nexus with a TNW. It maintained that 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.

The prior JD found that the subject wetland had “non-jurisdictional conveyances” supporting non-intermittent surface flow to the north which, in some years, would connect with the C Channel and potentially even to the Chena Slough directly. These conveyances were not themselves jurisdictional and therefore did not place the subject wetland in the category of abutting an RPW or a TNW. Rather, the wetland’s jurisdictional status was based on its significant nexus to the Chena Slough via the C Channel as defined by the *Rapanos* case.

The Navigable Waters Protection Rule does not protect waters of this category, and therefore the subject wetlands are no longer jurisdictional Waters of the U.S.

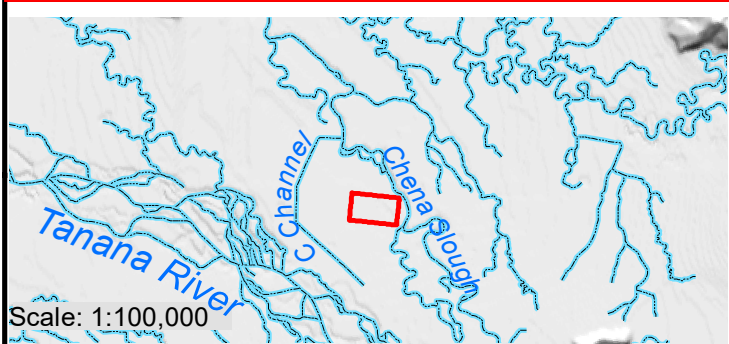
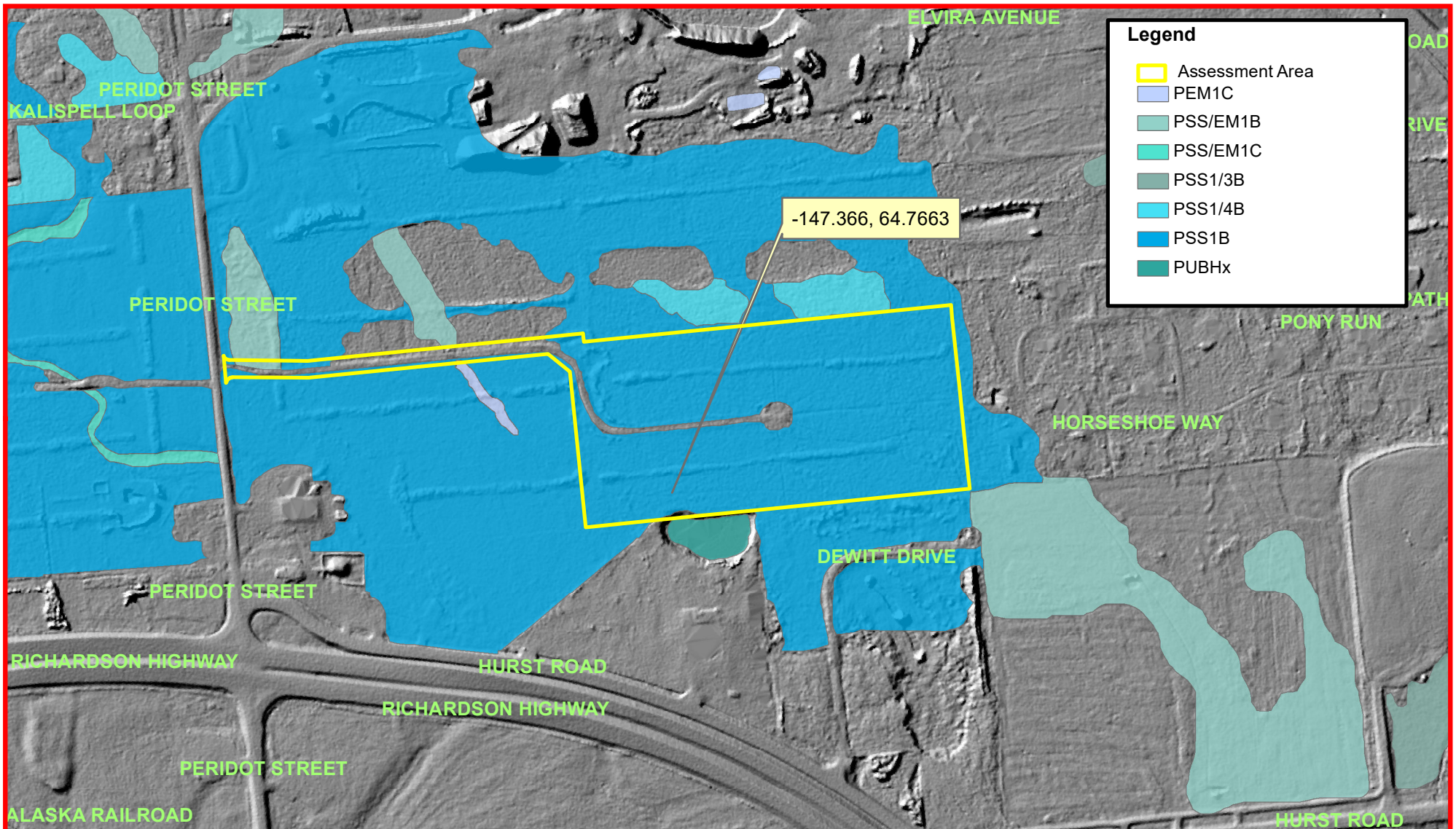
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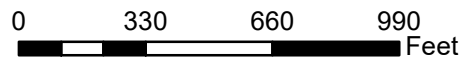
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 Contact: amy.c.tippery@usace.army.mil
 Citation: USFWS 2014, accsd online 2020
 Imagery: Hillshade_2010_LiDAR_DEM.img
 (FNSB 2010)
 Scale: 1:6,000 Date:10/6/2020



 **POA-2008-00550**
Universal Welding
National Wetlands
Inventory (Chena River Wetlands
HUC19080306)