Appendix E: Wetland Delineation and Jurisdictional Determination

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NORTHLINK SOUTH AIRPARK CARGO EXPANSION PROJECT

Desktop Wetland Reconnaissance and Memo Report

Project 1133.63467.01

Prepared for:

NorthLink Aviation 549 W Intl Airport Rd, Ste A10 - 370 Anchorage, Alaska 99518

Prepared by:

DOWL 4041 B Street Anchorage, AK 99503

February 2022

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ACRONYMS AND ABBREVIATIONS

ADF&G	Alaska Department of Fish and Game
AWC	Anadromous Waters Catalog
CWA	Clean Water Act
LIDAR	Light Detection and Ranging
NRCS	Natural Resources Conservation Service
NWI	National Wetlands Inventory
Project	Northl ink South Airpark Cargo Expansion Project
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

EXECUTIVE SUMMARY

This Desktop wetland reconnaissance and Memo Report is based on readily available, online data. No fieldwork or field verification was conducted at the study area.

 The study area consists of 119.9 acres, with three areas totaling 1.1 acres identified by the National Wetland Inventory (NWI) as wetlands and no waterbodies. Wetlands were confirmed by DOWL vegetation mapping using the Viereck classification system. No wetlands or waterbodies are identified within the study area from the 2012 Anchorage Wetlands Management Plan Mapping. The NWI wetlands are not connected to each other or to waters of the U.S. through streams, wetlands, or other waterbodies.

1.0 INTRODUCTION

The NorthLink South Airpark Cargo Expansion Project (Project) is proposed on a lease area totaling 119.9 acres (Appendix 1: Figure 1). NorthLink Aviation contracted DOWL to develop a desktop wetland reconnaissance and memo under Section 404 of the Clean Water Act (CWA), in accordance with Level 1 of the 1987 U.S. Army Corps of Engineers (USACE) *Wetland Delineation Manual* (USACE 1987).

A Professional Wetland Scientist (Josh Grabel, PWS #2638) reviewed available data to determine the extent of wetlands and waterbodies within the study area and their connection to waters of the U.S. Available data used to conduct the review includes the following (detailed in Section 2.0):

- U.S. Fish and Wildlife Service (USFWS) Wetlands (National Wetland Inventory [NWI]) Mapping
- Municipality of Anchorage wetlands data (2012 Anchorage Wetlands Management Plan)
- Available aerial and ground level imagery from ESRI World Imagery, Google Earth Imagery, and Google Maps Street View
- Natural Resources Conservation Service (NRCS) Web Soil Survey
- U.S. Geological Survey (USGS) hydrography datasets
- Alaska Department of Fish & Game (ADF&G) anadromous waters catalog

The data herein is intended to provide USACE with information to determine regulatory jurisdiction of aquatic resources subject to Section 404 of the CWA.

1.1 Description of Study Area

The study area consists of Ted Stevens International Airport Lot 12, 13, 14, and 15, located north of Raspberry Road and south of Ted Stevens International Airport runway 7R/25L in Anchorage, Alaska (61.16304 North latitude 150.00269 West longitude; Section 4, Township 12N, Range 4W, Seward Meridian, USGS Quad Tyonek A-1 NE and Anchorage A-8 NW).

The study area is located within the Cook Inlet ecoregion which is characterized by level to rolling terrain shaped by ground moraine, drumlin fields, eskers, and outwash plains, remnants of Pleistocene glaciation (Gallant et al. 1995). Soils formed in loess blown from the floodplains of glacial streams and in volcanic ash blown from mountains to the west. Vegetation is dominated by needleleaf, broadleaf, and mixed forests.

2.0 METHODS AND DATA SOURCES

To conduct the analysis of the study area and determine the extent of aquatic resources, the following data were obtained and evaluated:

- Existing Wetland Mapping: USFWS NWI mapping from 2002 shows the extent and type of wetlands and waterbodies in the study area (at a scale of 1:24,000) and therefore were reviewed to establish a wetland mapping baseline as shown in Figure 2.
- Aerial Imagery: ESRI World Imagery (May 2022) was used for wetland review. Other available aerial imagery from Google Earth taken in 1996, 2002, 2005, 2010, 2014, and 2020 were referenced for changes in vegetation signature. Google Maps Street View

imagery from August 2021 was used in several locations to provide ground level vegetation photos.

• NRCS Web Soil Survey: Four soil types were described in the study area, with all four strongly indicative of well drained to somewhat excessively drained conditions (NRCS 2022). Soil types are listed in Table 1 as a percentage of the study area. Figure 3 shows the mapped soil types for the study area.

Мар			Percent of
Unit	Map Unit Name	Draining Class	Study Area
407	Cryorthents and Urban land, 5 to 20 percent slopes	Somewhat excessively drained	10.5
448	Smithfha loamy very fine sand, 3 to 7 percent slopes	Well drained	3.7
450	Smithfha loamy very fine sand, undulating and steep	Well drained	48.5
451	Smithfha- Anchorpark complex, undulating and hilly	Well drained	37.1

Table 1: Natural Resources Conservation Service Soil Types

- USGS Hydrography Datasets: The National Hydrography Dataset identified no streams within the study area (USGS 2022).
- ADF&G Anadromous Waters Catalog (AWC): No anadromous streams are mapped in the AWC within the study area.
- MOA Terrain GIS Data: Topographic mapping (i.e., Light Detection and Ranging [LiDAR]) with 1-foot contours for the study area was used to determine topographic changes.

In addition, DOWL mapped Viereck classifications for vegetation types within the study area to confirm NWI mapping results (Viereck 1992). Vegetation mapping was based on best professional judgement and was conducted as a scale of 1:3,000.

3.0 RESULTS

3.1 Wetland Mapping

USFWS Wetlands NWI Mapping: Wetland types in the study area were mapped by the NWI using a landscape scale desktop assessment that includes palustrine emergent saturated, seasonally flooded, and semi-permanently flooded wetlands (USFWS 2022). The NWI mapping identified 1.1 acres of wetlands and no waterbodies in the study area. The wetlands are described by Cowardin type in Table 2 as a percentage of the study area (USFWS 2022) and shown on Figure 2.

Table 2: National Wetlands Inventory Acres in the Study Areas by Cowardin
Classification

Cowardin Classification	Acres (Percent)
PEM1B	0.5 (0.4)
PEM1C	0.4 (0.4)
PEM1F	0.2 (0.1)
Total	1.1 (0.9)

DOWL Vegetation Mapping: Vegetation aerial signatures are consistent with NWI mapping with closed mixed forest, open tall scrub, mesic forb herbaceous, and dry graminoid herbaceous in upland areas and wet graminoid herbaceous in wetland areas (Table 3; Figure 2).

Viereck Classification	Acres
Closed Mixed Forest	67.5
Dry Graminoid Herbaceous	27.8
Disturbed	15.9
Mesic Forb Herbaceous	0.6
Open Tall Scrub	7.0
Wet Graminoid Herbaceous	1.1
Grand Total	119.9

 Table 3: DOWL Vegetation Mapping

The 2012 Anchorage Wetlands Management Plan Mapping: The plan's mapping identified no wetlands and no waterbodies in the study area (Figure 3) (MOA 2022). Little Campbell Lake and adjacent wetlands are within 0.6 mile of the study area, and Sullivan Pond is within 0.5 mile of the study area. There is no connection to these waters through streams, wetlands, or other waterbodies to study area wetlands.

Wetlands mapped by NWI in the study area are: (1) not "navigable waters" as defined by Federal law, (2) not interstate waters, (3) not part of a tributary system to (1), (2), or (4) not wetlands adjacent to any of the foregoing, and (5) not impoundments of any of the above.

3.1 Disturbance

During vegetation mapping, several areas were identified with existing disturbance in the study area. There are two fill pads in the study area that are accessed from the airport. These areas are absent in vegetation and topped with gravel. There is a snow dump near Taxiway B in the northeast corner of the study area (Photo 1). The snow comes off the ramps and parking areas. This area drains to a low area to the west before seeping into the ground; discoloration is evident from the glycol in the snow (Chemtrack 2021). The melt water does not flow off property and there is no connection to a water of the U.S.





4.0 DISCUSSION

The primary method of identifying wetland characteristics of southcentral Alaska lowlands is the analysis of topography, geomorphic characteristics, and vegetation communities through imagery interpretation. The NWI wetland mapping reviewed for this report identifies 1.1 wetland acres that have been confirmed by desktop based on topography, vegetation communities, and geomorphic position. No streams or waterbodies were identified within the study area based on readily available data. Three disturbed areas were discovered during vegetation mapping, including two fill pads and an airport snow dump with non-natural hydrologic conditions contributing to a low area with no connection to waters of the U.S.

Wetlands mapped within the study area are not navigable waters, interstate waters, part of a tributary system, adjacent wetlands, or impoundments. Therefore, it is recommended that the interstate commerce nexus to these wetlands be considered insufficient to establish Clean Water Act jurisdiction.

5.0 REFERENCES

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- USGS. 2022. NHDPlus High Resolution (National Hydrography Dataset). Data downloaded Feburary 2022: https://www.usgs.gov/core-sciencesystems/ngp/nationalhydrography/nhdplus-high-resolution.
- Viereck, L.A.; Dyrness, C.T.; Batten, A.R.; Wenzlick, K.J. 1992. The Alaska vegetation classification. Gen. Tech. Rep. PNW-GTR-286. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 278 p

APPENDIX 1: FIGURES





150° W

149.9944° W





DEPARTMENT OF THE ARMY ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS REGULATORY DIVISION P.O. BOX 6898 JBER, AK 99506-0898

September 7, 2022

Regulatory Division POA-2022-00136

Sean Dolan NorthLink Aviation 549 West International Airport Road Suite A10-370 Anchorage, Alaska 99518

Dear Mr. Dolan:

This is in response to your July 26, 2022, letter requesting an approved jurisdictional determination (AJD) for a parcel of land located within Section 4, T. 12 N., R. 4 W., Seward Meridian; USGS Quad Tyonek A-1; Latitude 61.16307° N., Longitude 150.00269° W.; Municipality of Anchorage, NorthLink Aviation, 549 West International Road, Suite A10-370, Ted Steven International Airport, in Anchorage, Alaska.

Based on our review of the information you provided and available to us, on-site inspections dated June 23, 2023, and July 27, 2022, and Wetland Delineation Report provided by DOWL on July 29, 2022, we have determined that the subject parcel contains wetlands which are not a water of the U.S. under our regulatory jurisdiction. The wetlands on your property are isolated, intrastate, non-navigable, and have no connection to interstate or foreign commerce. Therefore, pursuant to the federal guidance on the Solid Waste Agency of Northern Cook County versus U.S. Army Corps of Engineers, a Department of the Army (DA) permit is not required for any activities which may occur on your property.

A copy of the AJD form is enclosed and will be available at the following address: www.poa.usace.army.mil/Missions/Regulatory/JurisdictionalDeterminations under the above file number.

This jurisdictional determination does not establish any precedent with respect to any other jurisdictional determination under Section 404 of the Clean Water Act.

The wetlands on your parcel were reviewed pursuant to Section 404 of the Clean Water Act which requires that a DA permit be obtained for the placement or discharge of dredged and/or fill material into waters of the U.S., including wetlands, prior to conducting the work (33 U.S.C. 1344).

For regulatory purposes, the U.S. Army Corps of Engineers defines wetlands as those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

This AJD is valid for a period of five (5) years from the date listed on the AJD form, unless new information supporting a revision is provided to us before the expiration date. Also, enclosed is a Notification of Administrative Appeals Options and Process and Request for Appeal form regarding this approved jurisdictional determination (see section labeled "Approved Jurisdictional Determination").

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

Please contact me via email at Estrella.f.campellone@usace.army.mil, by mail at the address above, by phone at (907) 753-2518, or toll free from within Alaska at (800) 478-2712, if you have questions. For more information about the Regulatory Program, please visit our website at www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

Estil Consiline

Estrella Campellone Project Manager

Enclosures

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): August 26, 2022

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Alaska District, POA-2022-00136

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: AlaskaBorough: AnchorageCity: AnchorageCenter coordinates of site (lat/long in degree decimal format):Lat. 61.16307° N., Long. 150.00269° W.Universal Transverse Mercator: North American Datum (NAD) of 1983Name of nearest waterbody:Cook Inlet.Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: NoneName of watershed or Hydrologic Unit Code (HUC):19020401

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

 \Box 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:	February 15, 2022
⊠Field Determination.	Date(s):	July 20, 2022, and July 29, 2022 (final Wetland Delineation Report Revision)

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are not "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]

- $\hfill\square$ 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: n/a

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

- \Box TNWs, including territorial seas
- □Wetlands adjacent to TNWs

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

□Non-RPWs that flow directly or indirectly into TNWs

UWetlands directly abutting RPWs that flow directly or indirectly into TNWs

UWetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs

UWetlands 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: 0 linear feet.

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.

Wetlands: 0 acres.

c. Limits (boundaries) of jurisdiction based on: Not Applicable.

Elevation of established OHWM (if known): n/a.

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: The 1.21 acres of palustrine wetlands delineated in the review area are in depressions surrounded by higher ground and lack a clear and direct surface water connection, or shallow subsurface connection. The wetlands are not abutting or adjacent to a relatively permanent water (RPW) or a traditional navigable water (TNW). Therefore, the Corps has determined that these wetlands are not jurisdictional. See attached supporting information.

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.

 TNW Identify TNW: n/a.
 Summarize rationale supporting determination: n/a.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": n/a.

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: TEXT

 $^{^{3}}$ 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.

Drainage area: TEXT

Average	annual rainfall: # inches
Average	annual snowfall: # inches
(ii) Ph	nysical Characteristics:
(a)) <u>Relationship with TNW:</u>
	Tributary flows directly into TNW.
	\Box Tributary flows through CHOOSE: Enter # or 10 or more tributaries before entering TNW.
	Project waters are CHOOSE: Enter # or 30 or more river miles from TNW.
	Project waters are CHOOSE: Enter # or 30 or more river miles from RPW.
	Project waters are CHOOSE: Enter # or 30 or more aerial (straight) miles from TNW.
	Project waters are CHOOSE: Enter # or 30 or more aerial (straight) miles from RPW.
	Project waters cross or serve as state boundaries. Explain: TEXT
	Identify flow route to TNW ⁵ : TEXT
	Tributary stream order, if known: TEXT
(b)) General Tributary Characteristics (check all that apply):
	Tributary is: 🗆 Natural
	\Box Artificial (man-made). Explain: TEXT
	□Manipulated (man-altered). Explain: TEXT
	Tributary properties with respect to top of bank (estimate):
	Average width: # feet
	Average depth: # feet
	Average side slopes: Choose an item.
	Primary tributary substrate composition (check all that apply):
	\Box Silts \Box Sands \Box Concrete
	\Box Cobbles \Box Gravel \Box Muck
	Bedrock Degetation Type% cover: TFXT
	Other Explain: TEXT
	Tributery condition/stability [a.g. highly grading sloughing banks] Explain: TEYT
	Presence of run/riffle/nool complexes Explain: TEXT
	Tributary geometry: CHOOSE: Relatively Straight/Meandering
	Tributary gradient (approximate average slope): #%
(c)) Flow:
(•)	Tributary provides for: CHOOSE: Seasonal Flow/Intermittent but not Seasonal Flow/Ephemeral Flow
	Estimate average number of flow events in review area/year: CHOOSE: Enter # or 20 (or greater)
	Describe flow regime: TEXT
	Other information on duration and volume: TEXT
	Surface flow is: CHOOSE: Discrete/Confined/Discrete and Confined/Overland Sheetflow
Ch	naracteristics: TEXT
	Subsurface flow: CHOOSE: Yes/No/Unknown Explain findings: TEXT
	\Box Dye (or other) test performed: TEXT
	Tributary has (check all that apply):
	\Box Bed and banks

 \Box OHWM⁶ (check all indicators that apply):

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.

 $^{^{6}}$ A natural or man-made discontinuity in the OHWM does not necessarily server 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.

\Box clear, natural line impressed on the bank	\Box the presence of litter and debris
\Box changes in the character of soil	destruction of terrestrial vegetation
□shelving	\Box the presence of wrack line
□vegetation matted down, bent, or absent	□ sediment sorting
□leaf litter disturbed or washed away	□scour
□ sediment deposition	□multiple observed or predicted flow events
□water staining	□abrupt change in plant community TEXT
□other (list): TEXT	
Discontinuous OHWM. ⁷ Explain: TEXT	Г

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

□High Tide Line indicated by:
□Mean High Water Mark indicated by:
□oil or scum line along shore objects

☐ fine shell or debris deposits (foreshore) ☐ physical markings/characteristics ☐ tidal gauges ☐ other (list): TEXT □ physical markings; □ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: TEXT Identify specific pollutants, if known: TEXT

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

□Riparian corridor. Characteristics (type, average width): TEXT □Wetland fringe. Characteristics: TEXT □Habitat for:

Federally Listed species. Explain findings: TEXT
 Fish/spawn areas. Explain findings: TEXT
 Other environmentally-sensitive species. Explain findings: TEXT

□Aquatic/wildlife diversity. Explain findings: TEXT

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

(i) Physical Characteristics:

 (a) <u>General Wetland Characteristics:</u> Properties: Wetland size: # acres Wetland type. Explain: TEXT Wetland quality. Explain: TEXT

Project wetlands cross or serve as state boundaries. Explain: TEXT

(b) General Flow Relationship with Non-TNW:

Flow is: Choose an item. Explain: TEXT Surface flow is: CHOOSE: Discrete/Confined/Discrete and Confined/Overland Sheetflow Characteristics: TEXT Subsurface flow: CHOOSE: Yes/No/Unknown Explain findings: TEXT

Dye (or other) test performed: TEXT

(c) <u>Wetland Adjacency Determination with Non-TNW:</u>

□ Directly abutting
 □ Not directly abutting
 □ Discrete wetland hydrologic connection. Explain: TEXT

⁷ Ibid.

□Ecological connection. Explain: TEXT □Separated by berm/barrier. Explain: TEXT

(d) Proximity (Relationship) to TNW

Project wetlands are CHOOSE: Enter # or 30 or more river miles from TNW.

Project waters are CHOOSE: Enter # or 30 or more aerial (straight) miles from TNW.

Flow is from: CHOOSE: Wetland to Navigable Water/Navigable Water to Wetland/Wetland to/from Navigable Water/No Flow

Estimate approximate location of wetland as within the CHOOSE: Enter # or 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: TEXT

Identify specific pollutants, if known: TEXT

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

□Riparian buffer. Characteristics (type, average width): TEXT

□Vegetation type/percent cover. Explain: TEXT

□Habitat for:

□Federally Listed species. Explain findings: TEXT

□Fish/spawn areas. Explain findings: TEXT

Other environmentally-sensitive species. Explain findings: TEXT

□Aquatic/wildlife diversity. Explain findings: TEXT

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: CHOOSE: Enter # or 30 or more Approximately (#) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Y/N	#	Y/N	#
Y/N	#	Y/N	#
Y/N	#	Y/N	#
Y/N	#	Y/N	#

Summarize overall biological, chemical and physical functions being performed: TEXT

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.

Draw connections between the features documented and the effects on the TNW, as identified in the Rapanos Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

• Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?

- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

- Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
- 2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
- 3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

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

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:

TNWs: # linear feet # width (ft), Or, # acres.

□Wetlands adjacent to TNWs: # acres.

2. RPWs that flow directly or indirectly into TNWs.

 \Box Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: TEXT

 \Box 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: TEXT

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

□Tributary waters: # linear feet # width (ft).

 \Box Other non-wetland waters: # acres.

Identify type(s) of waters: TEXT

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

 \Box Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

 \Box Tributary waters: # linear feet # width (ft).

 \Box Other non-wetland waters: # acres.

Identify type(s) of waters: TEXT

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

□Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.

Uketlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: TEXT

⁸ See Footnote #3.

Uketlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: TEXT

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

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

□Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

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

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

 \Box Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

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

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional. Demonstrate that impoundment was created from "waters of the U.S.," or Demonstrate that water meets the criteria for one of the categories presented above (1-6), or Demonstrate that water is isolated with a nexus to commerce (see E below).

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):¹⁰

which are or could be used by interstate or foreign travelers for recreational or other purposes.

 \Box 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: TEXT

□Other factors. Explain: TEXT

Identify water body and summarize rationale supporting determination: TEXT

Provide estimates for jurisdictional waters in the review area (check all that apply): □Tributary waters: # linear feet # width (ft). □Other non-wetland waters: # acres. Identify type(s) of waters: TEXT □Wetlands: # acres.

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.

⊠Bird Rule" (MBR).

Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory

Ukaters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

⁹ To complete the analysis refer to the key in Section III D.6 of the Instructional Guidebook.

¹⁰ 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*.

Other: (explain, if not covered above): n/a

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): n/a

 $\Box O ther non-wetland waters: n/a$

⊠Lakes/ponds:0.05 acre ⊠Wetlands:1.16 acres

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):

 \Box Non-wetland waters (i.e., rivers, streams): n/a

□Lakes/ponds:.

□Other non-wetland waters: n/a □Wetlands:.

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: Desktop Wetland Delineation dated February 15, 2022, and Wetland Delineation Report dated July 29, 2022.

 \boxtimes Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Solution of the second state of the second sta

 \Box Office does not concur with data sheets/delineation report.

 \Box Data sheets prepared by the Corps: n/a.

Corps navigable waters' study: n/a.

U.S. Geological Survey Hydrologic Atlas: <u>https://water.usgs.gov/wsc/cat/19020301.html</u>

□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: n/a

SUSDA Natural Resources Conservation Service Soil Survey. Citation: Smithfha loamy very find sand, undulating and steep

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

State/Local wetland inventory map(s): n/a

□FEMA/FIRM maps: n/a

□100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date): Wetland delineation report in file.

or ØOther (Name & Date): Wetland delineation report and field verifications (attached figures 1-11).

 \Box Previous determination(s). File no. and date of response letter: n/a

□Applicable/supporting case law: n/a

Applicable/supporting scientific literature: Informal JD Summary Sheet dated August 26, 2022.

□Other information (please specify): n/a

B. ADDITIONAL COMMENTS TO SUPPORT JD: See attached supporting information for details.

September 6, 2022

Date

POA-2022-00136



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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

		-				
Applic	Date: 9/7/2022					
Attach	See Section below					
	INITIAL PROFFERED PERMIT (Standard Per	А				
	PROFFERED PERMIT (Standard Permit or Letter of permission)		В			
	PERMIT DENIAL		С			
Х	APPROVED JURISDICTIONAL DETERMINA	ATION	D			
	PRELIMINARY JURISDICTIONAL DETERMINATION		Е			
 SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331. A: INITIAL PROFFERED PERMIT: You may accept or object to the permit. ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit. OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) 						
mo the dis B: PR	modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.					
AC aut sig to a	ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.					
• AP ma for dat	APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.					
C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.						
D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.						
• AC of t	ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.					
• AP Ap by	APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.					
E: PR regard	E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved					

regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the
record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to
clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However,
you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal	If you only have questions regarding the appeal process you may			
process you may contact:	also contact:			
ESTRELLA CAMPELLONE	Ms. Kate Bliss			
Alaska District Corps of Engineers	Regulatory Program Manager			
CEPOA-RD-S	U.S. Army Corps of Engineers, Pacific Ocean Division			
P.O. Box 6898	CEPOD-PDC, Bldg 525			
JBER, AK 99506-0898	Fort Shafter, HI 96858-5440			
(907) 753-2518	(808) 835-4626			
	kate.m.bliss@usace.army.mil			
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government				
consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day				
notice of any site investigation, and will have the opportunity to participate in all site investigations.				
	Date:	Telephone number:		
		1		
Signature of one allowed on or out				
Signature of appellant or agent.				