

APPENDIX J – PRELIMINARY JURISDICTIONAL DETERMINATION



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

MAR 20 2018

Regulatory Division
POA-2017-271

Pebble Limited Partnership
Attention: Mr. James Fueg
3201 C Street, Suite 505
Anchorage, Alaska 99503

Dear Mr. Fueg:

This letter is in response to your December 5, 2017 request for a Department of the Army (DA) preliminary jurisdictional determination (PJD) for land identified as the Pebble PJD Study Area. The study area is 44,969.37 acres and is located in southwestern Alaska near Iliamna Lake to Kenai, Alaska; the study area includes the proposed mine site, transportation corridor, port site, and power corridor. Your project has been assigned number POA-2017-271, which should be referred to in all future correspondence with us.

Based on our review of the information you provided (geodatabase titled PLP_PJDr1_04FEB2018.gdb with feature titles Wetlands_2017_Rev1, and geodatabase titled Wetlands_KPB_Crossings_DataDeliverable_Rev1.gdb with feature titled Wetlands_KPB_Crossings_Rev1_20180308) and other information available to our office, we have preliminarily determined the subject study area contains 15,591.99 acres of wetlands and other waters of the United States under the Corps of Engineers' regulatory jurisdiction. See the attached PJD Form. Please sign and return the attached form to our office. A PJD is not appealable. At any time you have the right to request and obtain an Approved Jurisdictional Determination, which can be appealed.

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

If you have questions please contact me by mail at the address above or via email at Jeremy.Grauf@usace.army.mil, by phone at (907) 753-2798, or toll free from within Alaska at (800) 478-2712. For more information about the Regulatory Program, please visit our website at <http://www.poa.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Grauf', written in a cursive style.

Jeremy Grauf
Regulatory Specialist

Enclosure

Preliminary Jurisdictional Determination Form

This preliminary JD find that there "may be" waters of the United States on the subject project site that could be affected by the proposed activity based on the following information:

District Office	Alaska District Office	File/ORM #	POA-2017-271	PJD Date	Mar 19, 2018		
State	AK	City/County					
Nearest Waterbody			Name and Address of Person Requesting PJD Mr. James Fueg Pebble Limited Partnership 3201 C Street, Suite 505 Anchorage, Alaska 99503				
Project Location	Section(s)	Township					
Meridian	Available in project file	Range					
USGS Quad Map		Latitude		N	Longitude		W

Subdivision Name, Block, Lot, Directions to Project Site: The study area includes 44,969.37 acres (geodatabase titled PLP_PJDr1_04FEB2018.gdb with feature titles Wetlands_2017_Rev1, and geodatabase titled Wetlands_KPB_Crossings_DataDeliverable_Rev1.gdb with feature titled Wetlands_KPB_Crossings_Rev1_20180308)

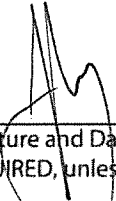
Identify (Estimate) Amount of Waters in the Review Area <u>Non-Wetland Waters:</u> Linear ft: <input type="text"/> Width: <input type="text"/> Acres: <input type="text"/> Stream Flow: <input type="text"/>	Name of Any Water Bodies on the Site Identified as Section 10 Waters: Tidal: <input type="text"/> Non-Tidal: <input type="text"/>
<u>Wetlands</u> Acres: <input type="text" value="15,591.99"/> Cowardin Class: <input type="text"/>	<input checked="" type="checkbox"/> Office (Desk) Determination Date of Site Visit: <input type="text"/> <input type="checkbox"/> Field Determination

SUPPORTING DATA: Data Review for Preliminary JD (check all that apply - checked items should 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: HDR (March 8, 2018) data available in file
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - Office concurs with data sheets/delineation report. (Office concurs with the conclusions)
 - Office does not concur with data sheets/delineation report.
- Data Sheet prepared by the Corps
- Corps navigable waters' study:
- USGS NHD Data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s) Cite quad name: USGS maps are listed and available in the project file
- USDA Natural Resources Conservation Service Soil Survey. Citation: Soil maps are listed and available in the project file
- National Wetlands Inventory map(s): NWI maps are listed and available in the project file
- State/Local Wetland Inventory map(s): Cook Inlet Wetlands
- FEMA/FIRM map(s):
- 100-year Floodplain Elevation:
- Photographs:
 - Aerial (Name & Date) Available in the project file
 - Other (Name & Date) Site photographs are available in the project file
- Previous determination(s). File # and date of response letter:
- Other Information:

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

 3-20-2018
Signature and Date of Regulatory Project Manager
(REQUIRED)

 3/20/2018
Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS: 1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time. 2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.