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Special Public Notice

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PACIFIC OCEAN DIVISION REGULATORY ACTION PRIORITIZATION

The purpose of this notice is to provide an update on the Regulatory Program of the United States Army Corps of Engineers (USACE), Pacific Ocean Division, Alaska District and Honolulu District (henceforth referenced collectively as POD). Under Section 404 of the Clean Water Act, USACE regulates the discharge of dredged and/or fill material in waters of the United States (U.S.), including wetlands. Under Section 10 of the Rivers and Harbors Act of 1899, USACE regulates work and/or structures in navigable waters of the U.S. Effective immediately, POD Regulatory is refining its process to emphasize review of DA permit applications and requests associated with pending DA permit applications.

This process refinement will enable POD Regulatory to direct greater resource emphasis toward its fundamental mission of regulating activities in the nation's waters and wetlands and provide the public with more efficient, timely service when reviewing DA permit applications for projects that propose impacts to waters of the U.S. As a result, this refinement effort will also allow POD Regulatory to more effectively support an anticipated increase in program volume from infrastructure related project authorizations.

Preliminary JDs (PJDs), approved JDs (AJDs), delineation concurrences (DCs) and other documentation verified by POD Regulatory are not prerequisites for submitting a DA permit application. These approvals and verifications are also not intended to be prerequisites for development approvals by state and local government(s).

POD Regulatory is aware of a growing trend among funding agencies and local governments to require USACE-verified delineations and/or JDs for activities and transactions that are not directly related to DA permits, which by law require USACE action. To enhance public service, allow reasonable development, and help preserve the nation's aquatic resources, POD

Regulatory will continue working closely with non-governmental organizations, government agencies, and local authorities to better inform them of POD Regulatory's mission, along with our concerns about the unintended consequences of such requirements, which hinder Regulatory's ability to efficiently review and process DA permit applications and associated PJDs, AJDs, or DCs.

POD Regulatory project managers consult the 1987 Army Corps of Engineers Wetland Delineation Manual and applicable regional supplement to delineate wetlands and waters prior to determining federal jurisdiction. Private sector environmental consultants who properly rely upon and apply these documents are generally equipped to provide accurate and expeditious delineations to their clients. Over the past eight years, and in accordance with Regulatory Guidance Letter No. 16-01 (link below), POD Regulatory has routinely engaged requesters in response to stand-alone requests to discuss what level of verification, if any, is appropriate for the circumstances of a given stand-alone request. In many cases, the services of private sector environmental consultants may be sufficient to identify the location, limits, and size(s) of waters of the U.S. to respond to state or local requirements in the absence of POD Regulatory's review of a DA permit application. In furtherance of these efforts, POD Regulatory strongly encourages members of the public seeking support not associated with a project requiring a DA permit application to leverage the community of environmental consultants in Alaska, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa in response to independent requirements of state and local government(s).

I. POD Regulatory Prioritization of Work: To serve the regulated community in the most effective and efficient manner possible, this process refinement will allow POD Regulatory to direct greater resource emphasis toward its fundamental mission of regulating activities in the nation's waters and wetlands. Doing so will provide the public with more efficient, timely service when reviewing DA permit applications for projects that propose impacts to waters of the U. S. Effective immediately, POD Regulatory will prioritize incoming requests in the following order:

1. **Review and processing of new DA permit applications (Standard Permits/Nationwide Permits/Regional General Permits/Letters of Permission).**
2. **DA Permit Transfers or DA Permit Modifications.**
3. **JD Requests and/or DCs Not Associated with a DA permit application (Stand-alone JDs/DCs), submitted with sufficient supporting information. (NOTE: Supporting information is identified within the [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Alaska District](#) and the [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Honolulu District](#). See Section III for information and prioritization of Stand-alone JDs/DCs**

II. Timeframes Associated with DA Permit Actions: Timeframes for processing DA permit applications are contingent upon the receipt of a complete application, as well as any supporting information that may be required to make a final decision on the DA permit application. In general, POD Regulatory strives to review and process complete DA permit applications according to the following timelines:

- Standard Permits (120 days);
- Nationwide Permits (45-60 days); and
- Regional General Permits (45-60 days).

Deficiencies or delays by an applicant in providing sufficient supporting information will impact POD Regulatory's ability to process DA permit applications as efficiently as possible.

Project complexity, coordination/consultation requirements, and the applicant's ability to obtain requisite state authorizations also directly affect POD Regulatory's timeframes for processing DA permit applications. Compliance with other requirements such as Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnuson-Stevens Fishery Conservation and Management Act, Coastal Zone Management Program, Section 401 of the Clean Water Act, Section 106 of the National Historic Preservation Act, and other legal requirements that are outside of our direct control may cause delays to our desired processing timelines.

NOTE: Pre-approved Wetland Delineations and/or JDs are NOT a pre-requisite for submitting a DA permit application. When submitting a DA permit application, a depiction that accurately reflects the geographic limits of aquatic resources should be included. A Depiction of Aquatic Resources should consist of a drawing or map showing the location and geographic extent of aquatic resources located in the review area. The extent of each aquatic resource within the review area must be identified and quantified (i.e., acreage and/or linear feet). A depiction of aquatic resources is required for all DA permit applications as well as for "no permit required" requests. Depictions of aquatic resources should include supporting information/documentation, but do NOT have to be pre-approved by USACE. Submitting a depiction of aquatic resources with a permit application is the most effective manner to expedite permit review.

Newly updated information and guidance for preparing delineations and submittals with sufficient supporting information for the Alaska District is available here: [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Alaska District](#). The checklist for the Honolulu District is available here: [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Honolulu District](#).

III. Delineations/ JDs: As noted above, stand-alone JDs and/or Delineations are not pre-requisites for submitting DA permit applications. As such, these stand-alone requests are not subject to mandatory processing timeframes. Requests not associated with a DA permit application, including stand-alone JDs and DCs, will still be accepted by POD Regulatory, but the review and processing of such stand-alone requests will be based on available resources, which will likely result in extended timelines for these requests to be fully processed.

a. Types of Wetland Delineations / JDs:

- **Delineation Concurrence (DC):** A DC provides confirmation that the delineated boundaries of wetlands and other waters on a property are a reasonable representation of the location, geographic extent/size(s) and description, as appropriate, of aquatic resources in a review area. A DC does not address the jurisdictional status of the aquatic resources, however, may be sufficient for permitting. A DC is the most efficient and routine type utilized by our Districts for any Department of the Army permit. (NOTE: In addition, a DC is generally the quickest type of stand-alone request for USACE to review and process.)
- **Preliminary Jurisdictional Determination (PJD):** A PJD is defined in USACE regulations at 33 CFR 331.2. As explained in further detail in RGL No. 16-01, a PJD is used to indicate that the wetlands and/or other aquatic resources identified in a review area are presumed to be subject to regulatory jurisdiction of USACE. Unlike an AJD, a PJD does not represent a definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a site, and does not have an expiration date. However, a PJD may be sufficient for permitting.

- **Approved Jurisdictional Determination (AJD):** An AJD is defined in Corps regulations at 33 CFR 331.2. As explained in further detail in RGL No. 16-01, an AJD is used to indicate that the wetlands and/or other aquatic resources identified in a review area are subject to regulatory jurisdiction of USACE. An AJD provides confirmation that the location, geographic extent/size and description, as appropriate, of aquatic resources are accurate. AJDs are valid for 5 years and are sufficient for permitting.
- **Wetland Delineations Performed by USACE:** Per Alaska District current policy (as detailed in [Special Public Notice \(SPN\) 2020-00399](#), dated September 11, 2020), Regulatory performs JDs as a free service to the public upon request, generally excluding those JD requests involving areas greater than 5 acres in size and/or requiring considerable labor hours on a case-by-case basis; see section III.b. for POD Regulatory priority of stand-alone wetland delineation requests. **Due to current workload and priorities, POD Regulatory will only provide this service on a limited, case-by-case basis for private individuals on small tracts of land.**

b. Priorities for Stand-alone JD / DC Requests (in descending order of priority)

1. Dry Land AJD Requests submitted with sufficient supporting information depicting all uplands.
2. DC requests submitted with sufficient supporting information.
3. PJD requests submitted with sufficient supporting information.
4. AJD requests submitted with sufficient supporting information.
5. Requests for wetland delineations to be performed by USACE.

NOTE: Due to the volume of DA permit applications, this office is unable to provide approximate processing timeframes for Stand-alone JD/DC requests. At this time, Stand-alone JD/DC requests may have extended timelines (e.g., one year or longer) based on the size and complexity of the site, the quality of information submitted, and other Regulatory Division priorities. After submittal of a stand-alone request, if additional information is required, you will be contacted by the project manager.

It is recommended that stand-alone requests be prepared and submitted by an environmental consultant. This is not a requirement, but it should help expedite the process.

Alaska District's [SPN 2020-00399](#), provides detailed information needed in consultant supplied jurisdictional determination reports. This SPN contains general information that applies to any location and should be helpful whether in Alaska District or Honolulu District. Additionally, detailed information and guidance for preparing delineations and submittals with sufficient supporting information can be found by clicking on the [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Alaska District](#) or [Jurisdictional Determination \(JD\)/Delineation Request and Checklist for Honolulu District](#).

As noted above, the process refinement announced today further enables POD Regulatory to better serve the state's regulated community in the most efficient manner possible (please see [Regulatory Guidance Letter No. 16-01](#) for more details).