

APPENDIX J—PRELIMINARY JURISDICTIONAL DETERMINATION LETTERS



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

Regulatory Division
POA-2017-271

Mr. James Fueg
Pebble Limited Partnership
3201 C Street, Suite 501
Anchorage, Alaska 99503

Dear Mr. Fueg,

This letter is in response to your October 30, 2019 request for a Department of the Army (DA) preliminary jurisdictional determination (PJD) for the study area defined in Appendix A of the October 2019 PJD package you submitted. The study area included the proposed mine site, transportation corridors, port site and gas pipeline corridor.

Based on our review of the information you provided on November 1, 2019 (2019_Update_Rev_3_PJD_Revision_3.pdf appendices A-N), and the information you provided November 21, 2019 (PLP_Wetland_Mapping_Report_Alternatives_2_3.pdf and appendices A-J) we have preliminarily determined the subject study areas contains 8,691.3 acres and 2,507.8 acres respectively, of waters of the U.S., including wetlands, under the Corps of Engineers (Corps) regulatory jurisdiction.

See the attached Preliminary Jurisdictional Determination (PJD) Form. Please sign and return the form to our office. A PJD is not appealable, however, if you have additional information you would like the Corps to consider you may submit at any time. In addition, at any time you have the right to request and obtain an Approved Jurisdictional Determination (AJD), which can be appealed. If it is your intent to request an AJD, we recommend that work not commence until one is obtained.

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 via email at poaspecialprojects@usace.army.mil, by mail at the address above, by phone at (907) 753-2715. For more information about the Regulatory Program, please visit our website at www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane McCoy", is written over the word "Sincerely,".

Shane McCoy
Program Manager

Enclosure

Preliminary Jurisdictional Determination Form

Page 1 of 2

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	Dec 6, 2019	
State	AK	City/County	Various	Name and Address of Person Requesting PJD Mr. James Fueg Pebble Limited Partnership 3201 C Street, Suite 505 Anchorage, Alaska 99503		
Nearest Waterbody	See project file					
Project Location	Section(s)	See project file	Township			S
Meridian	See project file	Range	E			
USGS Quad Map	See project file	Latitude		N	Longitude	E
Subdivision Name, Block, Lot, Directions to Project Site	See project file					

Identify (Estimate) Amount of Waters in the Review Area	Stream Flow	Name of Any Water Bodies on the Site Identified as Section 10 Waters:	Tidal:
Non-Wetland Waters:			
Linear ft	Width	Acres	Non-Tidal:
Wetlands		<input checked="" type="checkbox"/> Office (Desk) Determination Date of Site Visit:	
See Project File	Acres	Cowardin Class:	N/A
		<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: "2019_Update_Rev_3_App_L_Data_Forms_and_Photos_+"
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report. *USACE Concurs w/ 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: See Project File
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: See Project File
- ☒ National Wetlands Inventory map(s):
- ☒ State/Local Wetland Inventory map(s): Cook Inlet Wetlands
- ☐ FEMA/FIRM map(s):
- ☐ 100-year Floodplain Elevation:
- ☒ Photographs:
 - ☒ Aerial (Name & Date) See Project File
 - ☐ Other (Name & Date)
- ☒ Previous determination(s). File # and date of response letter: Letter dated Mar 20, 2018 (POA-2017-271)
- ☐ 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.



Signature and Date of Regulatory Project Manager
(REQUIRED)



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.



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', with a long horizontal flourish extending to the right.

Jeremy Grauf
Regulatory Specialist

Enclosure

Preliminary Jurisdictional Determination Form

Page 1 of 2

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)				

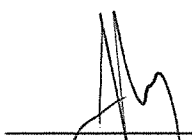
Identify (Estimate) Amount of Waters in the Review Area	Stream Flow	Name of Any Water Bodies on the Site Identified as Section 10 Waters:	Tidal:
Non-Wetland Waters:			
Linear ft	Width	Acres	
Wetlands			
15,591.99	Acres	Cowardin Class:	
		<input checked="" type="checkbox"/> Office (Desk) Determination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

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



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

June 10, 2020

Regulatory Division
POA-2017-271

Mr. James Fueg
Pebble Limited Partnership
3201 C Street, Suite 501
Anchorage, Alaska 99503

Dear Mr. Fueg,

This letter is in response to your June 4, 2020, submittal of the delineation of additional study areas along the transportation corridor and Diamond Point Port site. We have reviewed of the information you provided on November 21, 2019 (Data sheets- "PLP_Wetland_Mapping_Report_Alternatives_2_3.pdf and appendices A-J"), and June 4, 2020 (Study area and mapping- "Wetland and Waterbody Mapping- Addendum"). Based on our review, we have preliminarily determined the study area in the June 4, 2020, submittal contains an additional 10.2 acres of wetlands and 166.8 acres of open waters including streams, freshwater water-bodies, and the intertidal areas under the Corps of Engineers (Corps) regulatory jurisdiction.

See the attached PJD form. Please sign and return the form to our office. A PJD is not appealable. However, if you have additional information you would like the Corps to consider, you may submit at any time. In addition, at any time you, have the right to request and obtain an Approved Jurisdictional Determination (AJD), which can be appealed. If it is your intent to request an AJD, we recommend that work not commence until one is obtained.

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 via email at poaspecialprojects@usace.army.mil, by mail at the address above, or by phone at (907) 753-2715.

Sincerely,

A handwritten signature in black ink that reads "Shane McCoy". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Shane McCoy
Program Manager

Enclosure

CC:

jamesfueg@pebblepartnership.com

Tim Havey <timhavey@pebblepartnership.com>

Preliminary Jurisdictional Determination Form

Page 1 of 2

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		Jun 8, 2020			
State		AK		City/County				Name and Address of Person Requesting PJD Mr. James Fueg Pebble Limited Partnership 3201 C Street, Suite 505 Anchorage, Alaska 99503					
Nearest Waterbody													
Project Location		Section(s)		Township		S							
Meridian				Range		W							
USGS Quad Map				Latitude				N		Longitude		W	
Subdivision Name, Block, Lot, Directions to Project Site <div style="border: 1px solid black; height: 30px; width: 100%;"></div>													

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

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: "Wetlands and Waterbodies Mapping- Ademdum" June 202
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report.
 - ☐ 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:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National Wetlands Inventory map(s):
- ☐ State/Local Wetland Inventory map(s):
- ☐ FEMA/FIRM map(s):
- ☐ 100-year Floodplain Elevation:
- ☐ Photographs:
 - ☐ Aerial (Name & Date)
 - ☐ Other (Name & Date)
- ☐ Previous determination(s). File # and date of response letter:
- ☒ Other Information: USACE concurs with the conclusions of the wetland delineation sheets

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.

Shane McCoy

Signature and Date of Regulatory Project Manager
(REQUIRED)



6/10/2020

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.