



Norfolk District

US Army

Corps of Engineers

November 4, 2008

Subject: Local Processing Procedures for Jurisdictional Determinations

Beginning November 10, 2008 preliminary jurisdictional determinations (JDs) issued by the Norfolk District Regulatory Office will be valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date. This means that preliminary JDs issued on or after November 10, 2008 will typically be honored by the Norfolk District for a five year period. Prior to this, preliminary JDs could not be relied upon by recipients except in association with ongoing permit applications. Should a recipient disagree with the findings of a preliminary JD, they may request preparation of an approved JD, which they may then appeal if desired.

Background

Preliminary JDs are written indications that there may be wetlands or other waters of the United States on a parcel, or indications of the approximate location(s) of wetlands or other waters of the United States on a parcel, based on a preliminary investigation. Preliminary JDs are advisory in nature and may not be appealed. An approved JD is an official written determination that jurisdictional “navigable waters of the United States” or “waters of the United States” are present or absent and identifies the limits of such waters. An approved JD may be appealed through the Corps’ administrative appeals process (33 CFR 331). Approved JDs require substantially more investigation, coordination, and documentation than preliminary JDs due to the need to perform a significant nexus determination (SNX) in many cases as a result of Corps and EPA guidance interpreting the 2006 Supreme Court’s decision in the consolidated cases Rapanos v. United States and Carabell v. United States, and therefore they take longer to complete.

On June 26, 2008, the U.S. Army Corps of Engineers (Corps) issued Regulatory Guidance Letter (RGL) 08-02 to clarify the use of preliminary and approved jurisdictional determinations (JDs). A new form has been provided with the RGL 08-02 for use with preliminary JDs. Consistent with RGL 08-02, the Norfolk District will streamline the permit process for applicants who want to move ahead expeditiously to obtain a Corps permit authorization or stand-alone JD in streams and wetlands subject to a significant nexus determination (SNX). Norfolk District will provide a preliminary JD to a landowner, permit applicant, or other “affected party” who seeks permit authorization and has voluntarily waived or set aside questions regarding jurisdiction over a particular site, unless an approved JD is requested or required. The public is encouraged to sign a copy of the *Preliminary Jurisdictional Determination Form* attached to the enclosed RGL with your JD request or application package to help streamline the permit process.

All Corps permits will generally be processed using preliminary JDs. The Norfolk District will continue to provide approved JDs in any waters for those circumstances when an approved JD is required or requested by a landowner, permit applicant, or “other affected party”, or in any circumstance where the District determines that an approved JD is appropriate, such as a final enforcement action, permit denial, or declination of jurisdiction over a water body or wetland (e.g., isolated). Examples of new information that might warrant revision of a JD before the expiration date include new well monitoring data and permanent changes in drainage affecting hydrology on the site.

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Chief, Regulatory Branch

Attachment: [RGL 08-02](#)