



US Army Corps
of Engineers
Seattle District

Special Public Notice

**Regulatory Branch
Post Office Box 3755
Seattle, Washington 98124-3755
Telephone (206) 764-3495**

Public Notice Date: February 21, 2020

For Immediate Implementation:

This special public notice (SPN) is to clarify that, in the absence of adjacent non-tidal waters of the United States, Clean Water Act (CWA) Section 404 jurisdiction in tidal waters extends to the high tide line (HTL). The HTL is defined in U.S. Army Corps of Engineers (Corps) regulations at 33 C.F.R. § 328.3.

Consistent with a recent court order, the Corps, Seattle District (District) has rescinded any policy, and removed from the District website and from District regulatory tools, any language that states or suggests the District uses mean higher high water (MHHW) as the sole consideration for determining the extent of CWA jurisdiction in tidal waters.

In the absence of MHHW as the sole consideration, the definitions and processes in Corps regulations, including the “high tide line” (HTL) definition at 33 C.F.R. § 328.3, continue to apply to future permitting and other contexts in which jurisdictional determinations are made. The District will locate the HTL through case/location-specific consideration of the factors identified in the definition at 33 C.F.R. § 328.3. The District may consider all available tidal data relevant to the HTL definition when making jurisdictional determinations.

Permit applicants and other parties with a legal interest in the subject parcel have a range of options for addressing CWA geographic jurisdiction. Regulatory Guidance Letter No. 16-01 provides additional information on these options, including requesting the Corps’ views on jurisdiction through a site-specific determination. See *also* 33 C.F.R. § 331.2 (defining relevant terms). Questions about the extent of CWA geographic jurisdiction in tidal waters in Washington State should be directed to the Seattle District, Regulatory Branch.

A public outreach event will be held to discuss the actions described in this SPN and information that applicants/requesters will be invited to submit for consideration in the case/location-specific application of the HTL definition. The public outreach event will be at the Seattle District Office of the U.S. Army Corps of Engineers, Oxbow Building 1202 at 4735 E. Marginal Way South, Seattle, Washington, 98124 on March 19, 2020, from 9:30-10:30am. If you are interested in attending, please email your name and organization name (if applicable) to our Regulatory Support Assistant, Ms. Marcy Wyatt at marcy.m.wyatt@usace.army.mil; please use the email subject line: HTL Outreach Event RSVP. If you have any questions, regarding this SPN, please contact Ms. Kristina Tong at kristina.g.tong@usace.army.mil.