

## **ATTACHMENT 5 – LETTER OF JURISDICTIONAL DETERMINATION**



**DEPARTMENT OF THE ARMY**  
NORFOLK DISTRICT, CORPS OF ENGINEERS  
FORT NORFOLK, 803 FRONT STREET  
NORFOLK, VIRGINIA 23510-1096

REPLY TO  
ATTENTION OF:

October 11, 2007

Northern Virginia Regulatory Section  
NAO-2007-03706 (Huntington Wetlands)

U.S. Army Corps of Engineers  
Baltimore District  
Planning Division  
Attn: Ms. Jo Ann Grundy  
P.O. Box 1715  
Baltimore, Maryland 21203-1715

Gentlemen:

This is regarding your request for verification of a jurisdictional wetlands delineation. The limits of the jurisdictional wetlands regulated under Section 404 of the Clean Water Act (33 C.F.R. 1344) are shown on the drawing entitled "Huntington Wetlands", dated July 2007, submitted to the Corps by the U.S. Army Corps of Engineers, Baltimore District, Planning Division. Nontidal and tidal wetlands and/or waters have been identified on the site. This jurisdictional determination is valid for a period of five years from the date of this letter.

Our basis for this determination is the application of the Corps' 1987 Wetland Delineation Manual and the positive indicators of wetland hydrology, hydric soils, and hydrophytic vegetation. The wetland is a water of the United States and is part of a tributary system to interstate waters (33 CFR 328.3(a)). These waters meet the Corps' definition of waters of the United States, are part of a tributary system to interstate waters (33 CFR 328.3 (a)) and have an ordinary high water mark.

Please be advised that work in the jurisdictional areas may require a Department of Army permit and possibly authorization by State and local authorities. Please note that this is simply a jurisdictional determination for the subject property. This letter does not authorize the placement of dredged or fill material or mechanized land clearing in wetlands or waters of the United States. Proposed work on the property, which would potentially result in the placement of dredged or fill material into wetlands or waters of the United States, would be subject to review by the Corps and any appropriate State and local agencies prior to the start of any fill activities. The term discharge of dredged material is defined as "any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity including mechanized landclearing, ditching, channelization, or other excavation (33 CFR Part 232.2(1)(iii)).

A condition of this jurisdictional determination is that you maintain the locations of the wetland delineation flags as they are now situated on the site. Once a plan of development is formulated, we recommend that you have the actual wetland boundary located by survey and superimposed on any future proposed plan to determine whether jurisdictional wetlands would be impacted by the proposed development, and to determine whether a Department of the Army permit would be required.

This letter contains an approved jurisdictional determination for your subject site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 33 1. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

James Haggerty, Regulatory Appeals Review Officer  
Phone: (718) 765-7150 Fax (718) 765-7210  
United States Army Corps of Engineers North Atlantic Division  
Building 301, General Lee Avenue  
Fort Hamilton Military Community  
Brooklyn, NY 11252

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 33 1.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **\*\*December 11, 2007.\*\*** It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

If you have any questions, please contact Ms. Theresita Crockett-Augustine in the Northern Virginia Field Office at 18139 Triangle Plaza, Suite 213, Dumfries, Virginia 22026, (703) 221-9736, for and on behalf of, Keith B. Lockwood, Chief, Northern Virginia Regulatory Section.

Sincerely,



Theresita Crockett-Augustine  
Project Manager  
Northern Virginia Regulatory Section

Copy Furnished: DEQ, Woodbridge.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: U.S. Army Corps of Engineers, Baltimore District, Planning Division		File Number: NAO-2007- 03706	Date: 10-11-2007
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.**

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

**Theresita Crockett Augustine**  
Environmental Scientist  
Phone: (703) 221-9736  
Fax: (703) 221-6575  
Email: [theresita.m.crockett-augustine@nao02.usace.army.mil](mailto:theresita.m.crockett-augustine@nao02.usace.army.mil)

If you only have questions regarding the appeal process you may also contact:

**United States Army Corps of Engineers**  
North Atlantic Division  
ATTN: James Haggerty, Regulatory Appeals Review Officer  
Building 301, General Lee Avenue  
Fort Hamilton Military Community  
Brooklyn, NY 11252  
Phone: (718) 765-7150

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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**DEPARTMENT OF THE ARMY**  
NORFOLK DISTRICT, CORPS OF ENGINEERS  
FORT NORFOLK, 803 FRONT STREET  
NORFOLK, VIRGINIA 23510-1096

REPLY TO  
ATTENTION OF:

October 15, 2007

**Supplemental Preapplication Information**

**1. A search of the Virginia Department of Historic Resources Data Sharing System revealed the following:**

No known historic properties are located on the property.

The following known architectural resources are located on the property (see attached map and listing)

The following known archaeological resources are located on the property (see attached map and listing)

**2. A search of the Virginia Department of Conservation and Recreation data revealed the following:**

No known populations of federally listed threatened or endangered species are located on the property.

The property is within a known concentration area for the following species:

**3. We suggest the following avoidance, minimization, and compensatory mitigation measures be incorporated into any plans you prepare for the property:**

*Please note this information is being provided to you based on the preliminary data you submitted to the Corps relative to project boundaries and project plans. Consequently, these findings and recommendations are subject to change if the project scope changes or new information becomes available and the accuracy of the data. Lastly, the Corps only consulted the federally-listed species in the Virginia Department of Conservation & Recreation's database. You may also want to consult the Virginia Department of Game and Inland Fisheries' database at [www.dgif.va.state.us](http://www.dgif.va.state.us)*