

APPROVED JURISDICTIONAL DETERMINATION FORM  
U.S. Army Corps of Engineers

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 21-Apr-2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Norfolk District, NAO-2007-04668-kab-JD1

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State : VA - Virginia  
County/parish/borough: New Kent  
City:  
Lat: 37.495479  
Long: -77.161602  
Universal Transverse Mercator: []  
Name of nearest waterbody: Chickahominy River  
Name of nearest Traditional Navigable Water (TNW): Chickahominy River  
Name of watershed or Hydrologic Unit Code (HUC): 02080206

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION:**

- Office Determination Date: 21-Apr-2008
- Field Determination Date(s):  18-Dec-2007

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There [ ] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area:<sup>1</sup>**

Water Name	Water Type(s) Present
2007-4668 Horseley Route 60 streams	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
2007-4668 Horseley Route 60 wetlands	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Area:  
Linear: 120

**c. Limits (boundaries) of jurisdiction:**

based on: 1987 Delineation Manual.  
OHWM Elevation: 8 (if known)

**2. Non-regulated waters/wetlands:<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

**1. TNW**  
Not Applicable.

**2. Wetland Adjacent to TNW**  
Not Applicable.

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**



2007-4668 Horseley Route 60 streams	X	X	X	X	X	X	-	X	-	X	X	X	-	-	X	-
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If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:  
Not Applicable.

Mean High Water Mark indicated by:  
Not Applicable.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Tributary Name	Explain	Identify specific pollutants, if known
2007-4668 Horseley Route 60 streams	no visual indications of pollution.	VOCs from roadways (oil, gas), pollutants from air (sulfates and nitrates and heavy metals), pet wastes, agricultural wastes.

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2007-4668 Horseley Route 60 streams	X	forested - varies	-	-	X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
2007-4668 Horseley Route 60 streams	1	-	-	-	-	-	-	1	Wetlands and waters provide habitat and food for amphibians, reptiles, and possible fish, as well as many species of birds. The flow of organics from this site also provides organics to all downstream waters and wetland ecosystems.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2007-4668 Horseley Route 60 wetlands	.2	PFO	relatively good.	-

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
2007-4668 Horseley Route 60 wetlands	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2007-4668 Horseley Route 60 wetlands	Overland sheetflow	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2007-4668 Horseley Route 60 wetlands	Unknown	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2007-4668 Horseley Route 60 wetlands	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain

2007-4668 Horseley Route 60 wetlands	20-25	10-15	Wetland to navigable waters	-
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**(ii) Chemical Characteristics:**

**Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).**

Wetland Name	Explain	Identify specific pollutants, if known
2007-4668 Horseley Route 60 wetlands	-	VOCs from roadways (oil, gas), pollutants from air (sulfates and nitrates and heavy metals), pet wastes, agricultural wastes.

**(iii) Biological Characteristics. Wetland supports:**

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2007-4668 Horseley Route 60 wetlands	X	forested - varies	-	-

**Habitat for:**

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
2007-4668 Horseley Route 60 wetlands	X	-	-	-	-	-	-	X	Wetlands and waters provide habitat and food for amphibians, reptiles, and possible fish, as well as many species of birds. The flow of organics from this site also provides organics to all downstream waters and wetland ecosystems.

**3. Characteristics of all wetlands adjacent to the tributary (if any):**

**All wetlands being considered in the cumulative analysis:**

Not Applicable.

**Summarize overall biological, chemical and physical functions being performed:**

Not Applicable.

**C. SIGNIFICANT NEXUS DETERMINATION**

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

**Findings for:** 2007-4668 Horseley Route 60 streams, 2007-4668 Horseley Route 60 wetlands

The RPW with "seasonal" flow in combination with its adjacent wetlands have the capacity to carry and reduce the amount of pollutants, transfer, breakdown, and removal of nutrients and organic compounds, and support aquatic / wildlife habitat and ecology. The tributary provides water storage and reduces flooding. The stream also serves to and increase water quality of storm water run off from agricultural fields and residential sites, thus reducing the amounts of pollutants from reaching the TNW. The stream contributes to and supports commerce in the TNW.

**D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:**

**1. TNWs and Adjacent Wetlands:**

Not Applicable.

**2. RPWs that flow directly or indirectly into TNWs:**

Wetland Name	Flow	Explain
2007-4668 Horseley Route 60 streams	SEASONAL	One stream shown as solid blue line (perennial) on quad sheet. The other stream is very similar in nature. Both were flowing at the time of the site visit, during an extended drought.

**Provide estimates for jurisdictional waters in the review area:**

Wetland Name	Type	Size (Linear)	Size (Area)
2007-4668 Horseley Route 60 streams	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	36.576	-
<b>Total:</b>		<b>36.576</b>	<b>0</b>

**3. Non-RPWs that flow directly or indirectly into TNWs:<sup>8</sup>**

Not Applicable.

Provide estimates for jurisdictional waters in the review area:  
Not Applicable.

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

Wetland Name	Flow	Explain
2007-4668 Horseley Route 60 wetlands	SEASONAL	seasonally saturated wetlands directly abutting the stream.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear)	Size (Area)
2007-4668 Horseley Route 60 wetlands	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	809.3712
<b>Total:</b>		<b>0</b>	<b>809.3712</b>

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:**  
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:  
Not Applicable.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:**  
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:  
Not Applicable.

**7. Impoundments of jurisdictional waters:<sup>9</sup>**  
Not Applicable.

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:<sup>10</sup>**  
Not Applicable.

Identify water body and summarize rationale supporting determination:  
Not Applicable.

Provide estimates for jurisdictional waters in the review area:  
Not Applicable.

**F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):
  
- Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:  
Not Applicable.

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.  
Not Applicable.

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<sup>1</sup>-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup>-For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least seasonally (e.g., typically 3 months).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

<sup>4</sup>-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup>-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup>-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

<sup>9</sup> -To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>.Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.