

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

## SECTION I: BACKGROUND INFORMATION

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 15-Aug-2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Norfolk District, NAO-2008-02144-krd-JD1

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

State : VA - Virginia  
 County/parish/borough: Hampton  
 City: Hampton  
 Lat: 37.060571239  
 Long: -76.326176129  
 Universal Transverse Mercator: [ ]  
 Name of nearest waterbody: Rice's Pit/Lake Rice  
 Name of nearest Traditional Navigable Water (TNW): n/a  
 Name of watershed or Hydrologic Unit Code (HUC): 02080108



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: 15-Aug-2008



Field Determination Date(s):  06-Aug-2008

## 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
Lake Rice/Rice's Pit	Isolated (interstate or intrastate) waters, including isolated wetlands

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

Area: 24948.68 (m<sup>2</sup>)

Linear: (m)

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

based on:            Established by OHWM.

OHWM Elevation: (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:  
Lake Rice or Rice's Pit (lake) is an isolated abandoned gravel pit, with depths up to -50-ft OHW. There are no wetlands associated with the edges of the lake. Some wetland vegetation was growing along the edges, but the three parameters of the 1987 Corps Wetland delineation manual were not met because there was no evidence of the presence of hydric soils or hydrology. The only connection was a outfall pipe located at the SW corner of the lake which serves to drain the lake during time of high water due to recent storm events. This lake is approximately 6.156-acres in total size, and has been identified on site and determined to be an isolated water. Isolated waters and/or wetlands are not considered jurisdictional wetlands in the Norfolk District light of the decision by the United States Court of Appeals for the Fourth Circuit in the case of United States v. Wilson, 133 F. 3d 251 ("Wilson Decision"). Any discharge of dredged and/or fill material into this isolated waters will not require a Department of the Army permit.

## 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):

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size:        [ ]

Drainage area:        [ ]

Average annual rainfall: inches

Average annual snowfall: inches

**(ii) Physical Characteristics**

**(a) Relationship with TNW:**

Tributary flows directly into TNW.

Tributary flows through [ ] tributaries before entering TNW.

:Number of tributaries

Project waters are [ ] river miles from TNW.

Project waters are [ ] river miles from RPW.

Project Waters are [ ] aerial (straight) miles from TNW.

Project waters are [ ] aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:<sup>5</sup>

**Tributary Stream Order, if known:**

Not Applicable.

**(b) General Tributary Characteristics:**

**Tributary is:**

Not Applicable.

**Tributary properties with respect to top of bank (estimate):**

Not Applicable.

**Primary tributary substrate composition:**

Not Applicable.

**Tributary (conditions, stability, presence, geometry, gradient):**

Not Applicable.

**(c) Flow:**

Not Applicable.

**Surface Flow is:**

Not Applicable.

**Subsurface Flow:**

Not Applicable.

**Tributary has:**

Not Applicable.

**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.).**

Not Applicable.

**(iv) Biological Characteristics. Channel supports:**

Not Applicable.

**2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW****(i) Physical Characteristics:****(a) General Wetland Characteristics:****Properties:**

Not Applicable.

**(b) General Flow Relationship with Non-TNW:****Flow is:**

Not Applicable.

**Surface flow is:**

Not Applicable.

**Subsurface flow:**

Not Applicable.

**(c) Wetland Adjacency Determination with Non-TNW:**

Not Applicable.

**(d) Proximity (Relationship) to TNW:**

Not Applicable.

**(ii) Chemical Characteristics:**

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).  
Not Applicable.

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

Not Applicable.

**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**

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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.

Significant Nexus: Not Applicable

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

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**1. TNWs and Adjacent Wetlands:**

Not Applicable.

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

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

**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.**

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

**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>

Waters Name	Interstate\Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Lake Rice/Rice's Pit	-	-	-	-	-	-	-

**Identify water body and summarize rationale supporting determination:**

Water Name	Adjacent To TNW Rationale	TNW Rationale
Lake Rice/Rice's Pit	-	-

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

Water Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Lake Rice/Rice's Pit	Isolated (interstate or intrastate) waters, including isolated wetlands	-	24948.86724
<b>Total:</b>		<b>0</b>	<b>24948.86724</b>

**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.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	-	Maps and site description submitted with JD request by Waterways Surveys & Engineering, Ltd. (Rebecca Francese)
--U.S. Geological Survey map(s).	-	1907 (reprinted 1932) USGS Topo Map - borrow pit no in existence, mining began in the 1950s Current USGS Topographic Quad indicates borrow pit as

		a gravel pit.
--National wetlands inventory map(s).	-	NWI maps borrow pit as PUBHx
--Photographs	-	-
----Aerial	-	2004 1-ft Hampton Color Aerial Imagery

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

Description
<p>Lake Rice or Rice's Pit (lake) is an isolated abandoned gravel pit, with depths up to -50-ft OHW. There are no wetlands associated with the edges of the lake. Some wetland vegetation was growing along the edges, but the three parameters of the 1987 Corps Wetland delineation manual were not met because there was no evidence of the presence of hydric soils or hydrology. The only connection was a outfall pipe located at the SW corner of the lake which serves to drain the lake during time of high water due to recent storm events. This lake is approximately 6.156-acres in total size, and has been identified on site and determined to be an isolated water. Isolated waters and/or wetlands are not considered jurisdictional wetlands in the Norfolk District light of the decision by the United States Court of Appeals for the Fourth Circuit in the case of United States v. Wilson, 133 F. 3d 251 ("Wilson Decision"). Any discharge of dredged and/or fill material into this isolated waters will not require a Department of the Army permit. However, a permit may be required from the Virginia Department of Environmental Quality (DEQ).</p>

<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.