

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

JD Status: **DRAFT**

## SECTION I: BACKGROUND INFORMATION

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**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 22-Oct-2008

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** Norfolk District, NAO-2008-00873-alc-JD1

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

State :	VA - Virginia
County/parish/borough:	Chesapeake
City:	
Lat:	36.718558927
Long:	-76.167042159
Universal Transverse Mercator	<u>Folder UTM List</u> <i>UTM list determined by folder location</i> . NAD83 / UTM zone 37S
	<u>Waters UTM List</u> <i>UTM list determined by waters location</i> . NAD83 / UTM zone 37S
Name of nearest waterbody:	Albemarle and Chesapeake Canal
Name of nearest Traditional Navigable Water (TNW):	Albemarle and Chesapeake Canal
Name of watershed or Hydrologic Unit Code (HUC):	03010205



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:



05-May-2008

Field Determination Date(s):

## SECTION II: SUMMARY OF FINDINGS

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**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
Powell Ditch	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
Powell Stream	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

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

Area: 45 (m<sup>2</sup>)

Linear: (m)

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

based on: 1987 Delineation Manual.

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:

## 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: 3750 square miles

Drainage area: 3750 square miles

Average annual rainfall: 45 inches

Average annual snowfall: 1 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 1 (or less) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project Waters are 1 (or less) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

The project waters do not cross or serve as state boundaries.

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

Both the "ditch" and "stream" on the property flow north and connect with the Albemarle and Chesapeake Canal, running through forested non-tidal wetlands abutting the A & C Canal.

**Tributary Stream Order, if known:**

Order	Tributary Name
2	Powell Stream
2	Powell Ditch

**(b) General Tributary Characteristics:****Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Powell Ditch	-	-	-	X	1950 soil survey does not depict waterway. USGS Topo shows natural depression in area of ditch.
Powell Stream	X	-	-	-	-

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

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Powell Ditch	5	1	3:1
Powell Stream	35	1	4:1 (or greater)

**Primary tributary substrate composition:**

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Powell Ditch	X	X	-	-	-	-	-	-	-
Powell Stream	X	X	-	-	-	X	-	X	-

**Vegetation Explained:**

Tributary Name	Percent Cover	Vegetation Explained
Powell Ditch	-	-
Powell Stream	50	emergent & scrub/shrub

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

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
Powell Ditch	Ditch is stable with limited erosion.	No riffle/pool complexes. Limited elevation changes.	Relatively straight	1
Powell Stream	stable	No riffle & pool complexes.	Relatively straight	10

**(c) Flow:**

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Powell Ditch	Seasonal flow	20 (or greater)	Intermittent or seasonal.	-
Powell Stream	Seasonal flow	20 (or greater)	intermittent or seasonal	-

**Surface Flow is:**

Tributary Name	Surface Flow	Characteristics
Powell Ditch	Discrete and confined	-
Powell Stream	Discrete and confined	-

**Subsurface Flow:**

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Powell Ditch	Unknown	-	-
Powell Stream	No	-	-

**Tributary has:**

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM <sup>7</sup>	Explain
Powell Ditch	-	X	-	-
Powell Stream	-	X	-	-

**Tributaries with OHWM<sup>6</sup> - (as indicated above)**

Tributary Name	OHWM	Clear	Litter	Changes in Soil	Destruction Vegetation	Shelving	Wrack Line	Matted\Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flo
Powell Ditch	X	X	-	X	-	-	-	X	-	-	-	-	
Powell Stream	X	X	-	X	-	-	-	X	-	-	-	X	

**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
Powell Ditch	Water is brown.	None known. Adjacent to agricultural field.
Powell Stream	Water is brown.	None known. Adjacent to agricultural field.

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

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Powell Ditch	-	-	X	scrub-shrub and forested	-
Powell Stream	-	-	X	Forested and scrub-shrub wetlands.	-

**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**

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:** Powell Ditch, Powell Stream

These waterways are non-navigable tributaries of a TNW. These tributaries are relatively permanent (typically have continuous flow at least seasonally in normal rainfall years). Ditch had water present at site visit on 5/5/08. Stream is shown on maps as a man-altered natural waterway. Both are shown as hydrological features on the GIS, per information from the City of Chesapeake. These waterways are jurisdictional waters of the U.S. Waterways have a significant nexus as they have more than a speculative effect on the chemical, physical and/or biological integrity of a 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
Powell Ditch	SEASONAL	Water present in ditch on 5/5/08.
Powell Stream	SEASONAL	Steep drop-off and depicted as natural waterway on maps and GIS.

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

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
Powell Ditch	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	-	4046.856
Powell Stream	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	-	4046.856
<b>Total:</b>		<b>0</b>	<b>8093.712</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.**

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>**

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.

## 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	-	-
----Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
----Aerial	-	-

### B. ADDITIONAL COMMENTS TO SUPPORT JD:

Not Applicable.

<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.