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Regulatory Program



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

This form should be completed by following the instructions provided in the Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): September 18, 2015

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NAO-2002-3818

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State:VA County/parish/borough: N/A City: Portsmouth

Center coordinates of site (lat/long in degree decimal format): Lat. 36.874495, Long. -76.355367.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled "Wetland and Waters Map".

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different JD form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1):

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date:

Office (Desk) and Field Determination. Office/Desk Date(s): August 11, 2015; September 1, 2015 Field Date(s): August 18, 2015.

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this JD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: VIG Wetlands and Waters Map (Figure 4).

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.. Title/Date: Virginia International Gateway – Pre-Application and Jurisdictional Determination Request / July 17, 2015.

Office does not concur with data sheets/delineation report. Summarize rationale and include information on revised data sheets/delineation report that this JD form has relied upon: Revised Title/Date:

Data sheets prepared by the Corps. Title/Date:

Corps navigable waters study. Title/Date:

CorpsMap ORM map layers. Title/Date:

USGS Hydrologic Atlas. Title/Date:

USGS, NHD, or WBD data/maps. Title/Date:

USGS 8, 10 and/or 12 digit HUC maps. HUC number:

USGS maps. Scale & quad name and date:

USDA NRCS Soil Survey. Citation:

USFWS National Wetlands Inventory maps. Citation:

State/Local wetland inventory maps. Citation:

FEMA/FIRM maps. Citation:

Photographs: Aerial. Citation: Google Earth. or Other. Citation:

LiDAR data/maps. Citation:

Previous determinations. File no. and date of jurisdictional determination letter: NAO-2002-3818.

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete Spreadsheet Tab "Aquatic Resources" – Required for All AJDs

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **List water(s) and area/length within review area – Required:** Elizabeth River (.

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, DO NOT USE THIS FORM TO MAKE THE DETERMINATION. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. **Check all that apply.**

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters or TNW).

- **Complete Spreadsheet Tab "(a)(1)" - Required**

This JD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Spreadsheet Tab "(a)(2)" - Required**

(a)(3): The territorial seas.

- **Complete Spreadsheet Tab "(a)(3)" - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(4)" - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(5)" - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Spreadsheet Tab "(a)(6)" - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(7)" for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. – Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Spreadsheet Tab "(a)(8)" for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. – Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Spreadsheet Tab “NonWaters-No SigNex”. Attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. – Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus analysis.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Spreadsheet Tab “NonWaters-Excluded” - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Spreadsheet Tab “NonWaters-Other” - Required**

D. ADDITIONAL COMMENTS TO SUPPORT JD: Although the ditches may be argued to be perennial due to the presence of the water during the height of a dry season, it was unclear that a connection could be sufficiently documented or observed to the (a)(1) water. Previous tidal wetlands within the study area had been mitigated for and related impacts taken between 2005 and 2007. Subsequent to these impacts ditches were constructed to convey runoff and stormwater away from access roads. Wetlands established on the fringes of these constructed ditches and are jurisdictional under the definition of neighboring to the Elizabeth River (within 1,500 feet of HTL).

¹ In many cases these excluded features will not be specifically identified on the approved JD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

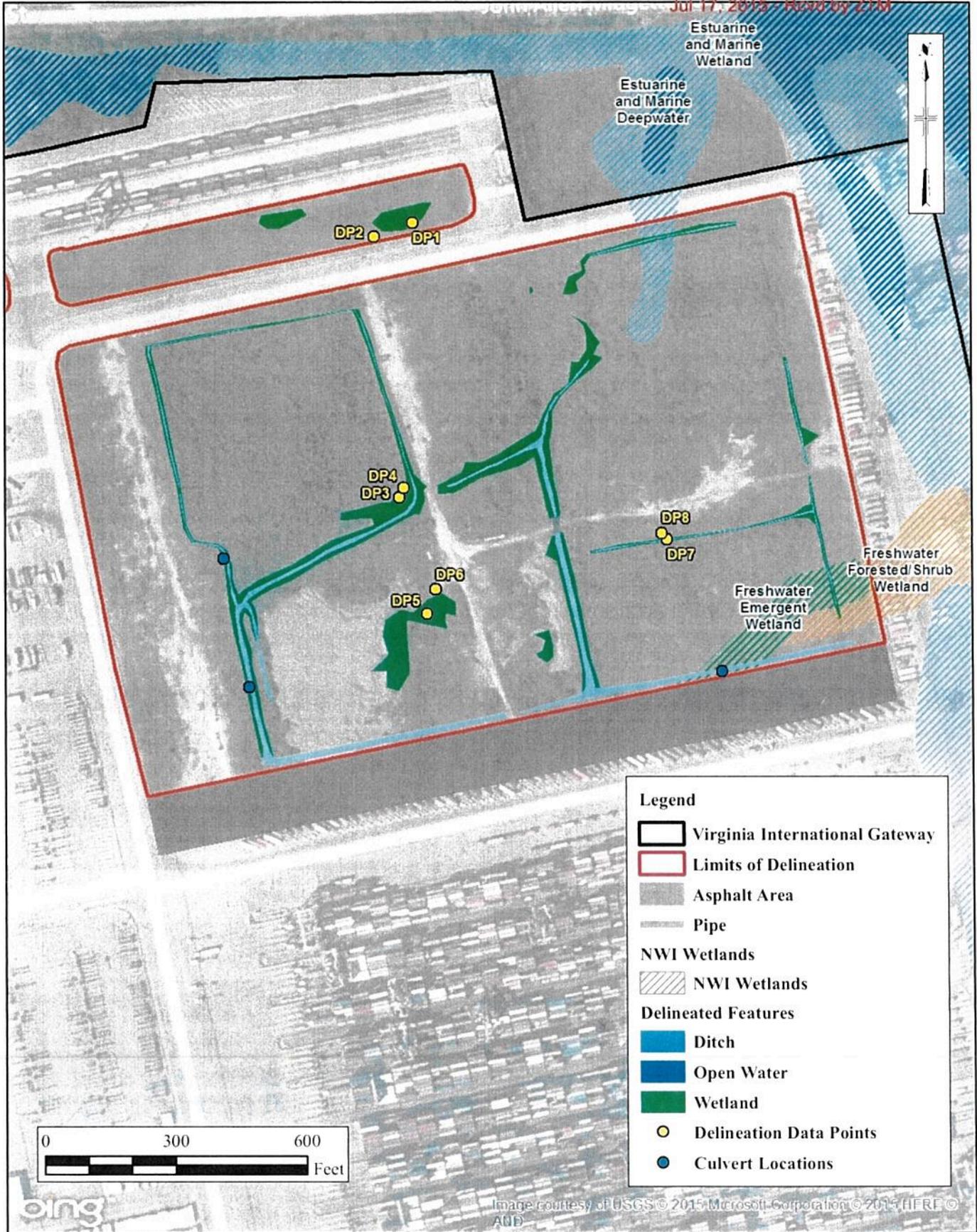
Aquatic Resources

Waters_Name	Cowardin_Code	HGM_Code	Meas_Type	Amount	Units	Waters_Type	Latitude	Longitude	Local_Waterway
Water 1	E1UB3		Area	1.800000	ACRE	A1	36.870938	-76.348444	Elizabeth River
Wetland 1	PEM		Area	0.069250	ACRE	A6N3H	36.879535	-76.355928	Elizabeth River
Wetland 2	PEM		Area	0.123590	ACRE	A6N3H	36.879564	-76.354991	Elizabeth River
Wetland 3	PEM		Area	0.002404	ACRE	A6N3H	36.879129	-76.353959	Elizabeth River
Wetland 4	PSS		Area	0.038234	ACRE	A6N3H	36.879150	-76.353645	Elizabeth River
Wetland 5	PEM		Area	0.071900	ACRE	A6N3H	36.879525	-76.352674	Elizabeth River
Wetland 6	PEM		Area	0.052678	ACRE	A6N3H	36.878230	-76.351756	Elizabeth River
Wetland 7	PEM		Area	0.115585	ACRE	A6N3H	36.877715	-76.351733	Elizabeth River
Wetland 8	PSS		Area	0.145999	ACRE	A6N3H	36.877462	-76.353768	Elizabeth River
Wetland 9	PSS		Area	0.041060	ACRE	A6N3H	36.876853	-76.353798	Elizabeth River
Wetland 10	PEM		Area	0.210155	ACRE	A6N3H	36.877083	-76.354708	Elizabeth River
Wetland 11	PEM		Area	0.118431	ACRE	A6N3H	36.876755	-76.355026	Elizabeth River
Wetland 12	PEM		Area	0.294159	ACRE	A6N3H	36.877722	-76.355063	Elizabeth River
Wetland 13	PSS		Area	0.455090	ACRE	A6N3H	36.877167	-76.356203	Elizabeth River
Wetland 14	PSS		Area	0.280477	ACRE	A6N3H	36.878071	-76.354000	Elizabeth River
Wetland 15	PEM		Area	0.133960	ACRE	A6N3H	36.878656	-76.353582	Elizabeth River
Ditch 1	PEM		Area	1.011907	ACRE	EXCLDB3III	36.876599	-76.353447	

Waters_Name	OHWM_Chg_In_Plant_Community	OHWM_Break_In_Slope	OHWM_Chg_In_Character_Of_Soil	OHWM_Chg_In_Veg_Density_Maturity	OHWM_Line_Impressed_Texture	OHWM_Dest_Of_Terrestrial_Veg	OHWM_Multiple_Flow_Events	OHWM_Scour	OHWM_Sediment_Deposition	OHWM_Sorting	OHWM_Shelving	OHWM_Litter_and_Debris_Present	OHWM_Track_Line_Present	OHWM_Veg_Matted_Bent_OC_Absent	OHWM_Water_Staining	OHWM_Other	OHWM_Other_Text
Water 1																	
Wetland 1																	
Wetland 2																	
Wetland 3																	
Wetland 4																	
Wetland 5																	
Wetland 6																	
Wetland 7																	
Wetland 8																	
Wetland 9																	
Wetland 10																	
Wetland 11																	
Wetland 12																	
Wetland 13																	
Wetland 14																	
Wetland 15																	
Ditch 1	YES			YES													Downstream connection unclear

(a)(6) Waters of the U.S.

WATERS OF THE U.S.						
(a)(6) Waters Name	Adjacency Criteria	OHWM Present for (a)(6) Water?	Limits (boundaries) of Jurisdiction (use indicator(s) to the right)	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. (Explain how 100-year floodplain was determined, if required, whether this water part of a mosaic, whether this water extends beyond the threshold, etc.)	
Wetland 1	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 2	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 3	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 4	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 5	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 6	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 7	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 8	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 9	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water					
Wetland 10	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 11	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 12	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	
Wetland 13	a6 – Adjacent waters – neighboring (iii) – within 1500 feet of HTL of (a)(1) or (3) water	YES	1987 Manual/Regional Supplement	Elizabeth River	Water lies in part or in whole within 1500 linear feet of the HTL of the Elizabeth River - (a)(1) water.	



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VIRGINIA PORT AUTHORITY
**VIRGINIA INTERNATIONAL GATEWAY
WETLANDS AND WATERS MAP**

JUNE 2015
FIGURE 4