



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
FORT NORFOLK
803 FRONT STREET
NORFOLK VA 23510-1011

January 31, 2020

PRELIMINARY JURISDICTIONAL DETERMINATION

Eastern Virginia Regulatory Section
NAO-2020-0178 (Lake Meade)

Robert E. Lewis
Assistant Director, Suffolk Public Works
442 West Washington Street
Suffolk, Virginia 23434

Dear Mr. Lewis:

This letter is in regard to your request for a preliminary jurisdictional determination for waters of the U.S. (including wetlands) on properties which comprise the project area known as Pitchkettle Road Realignment, located on a 27.57 acre parcel at the intersection of Pitchkettle Road and West Constance Road in Suffolk, Virginia.

The map entitled "Figure 8: Preliminary Wetlands and WOUS, Pitchkettle Road Realignment, Alternative Analysis Suffolk, VA", by N Romano dated 10/23/2019 (*copy enclosed*) provides the location(s) of waters and/or wetlands on the property listed above. The basis for this delineation includes application of the Corps' 1987 Wetland Delineation Manual (*and Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region*) and the positive indicators of wetland hydrology, hydric soils, and hydrophytic vegetation and the presence of an ordinary high water mark. This letter is not confirming the Cowardin classifications of these aquatic resources.

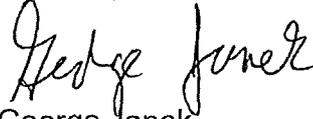
Discharges of dredged or fill material, including those associated with mechanized landclearing, into waters and/or wetlands on this site may require a Department of the Army permit and authorization by state and local authorities including a Virginia Water Protection Permit from the Virginia Department of Environmental Quality (DEQ), a permit from the Virginia Marine Resources Commission (VMRC) and/or a permit from your local wetlands board. This letter is a confirmation of the Corps preliminary jurisdiction for the waters and/or wetlands on the subject property and does not authorize any work in these areas. Please obtain all required permits before starting work in the delineated waters/wetland areas.

This is a preliminary jurisdictional determination and is therefore not a legally binding determination regarding whether Corps jurisdiction applies to the waters or wetlands in question. Accordingly, you may either consent to jurisdiction as set out in this preliminary jurisdictional determination and the attachments hereto if you agree with the determination, or you may request and obtain an approved jurisdictional determination.

Enclosed is a copy of the "Preliminary Jurisdictional Determination Form". Please review the document, sign, and return one copy to me, either by email (george.a.janek@usace.army.mil) or via standard mail to US Army Corps of Engineers, Regulatory Office, ATTN: George Janek, 803 Front Street Norfolk, Virginia 23510 within 30 days of receipt and keep one for your records. This delineation of waters and/or wetlands can be relied upon for no more than five years from the date of this letter. New information may warrant revision.

If you have any questions, please contact me by email or by telephone at 757-201-7135.

Sincerely,



George Janek
Project Manager, Eastern Virginia
Regulatory Section

Enclosure(s):
Appeals Form
Delineation Map
Preliminary Jurisdictional Determination Form

Cc: Agent
Virginia Department of Environmental Quality

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

Applicant: Robert E. Lewis, Asst. Director Suffolk Public Works	File Number: NAO-2020-0178	Date: January 31, 2020
Attached is:	See Section below	
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	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://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/appeals.aspx> 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:
George Janek
Regulatory Project Manager
Corps of Engineers, Norfolk District
WR-RE, 803 Front Street
Norfolk, VA 23510-1011
Telephone: 757-201-7135

If you only have questions regarding the appeal process you may also contact:
Mr. James W. Haggerty
Regulatory Program Manager (CENAD-PD-OR)
U S Army Corps of Engineers
Fort Hamilton Military Community
301 General Lee Avenue
Brooklyn, New York 11252-6700
Telephone number: 347-370-4650

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.

Signature of appellant or agent.	Date:	Telephone number:
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Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: January 31, 2020

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:

Robert E. Lewis, City of Suffolk, 442 W. Washington St., Suffolk, VA 23434

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

NAO-2020-0178; Pitchkettle Road JD

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)

State: Virginia County/parish/borough: City: Suffolk

Center coordinates of site (lat/long in degree decimal format): 36.7356; -76.5970

Lat.: xx.xxx° Long.: yy.yyy°

Universal Transverse Mercator.

Name of nearest waterbody: Lake Meade

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: January 31, 2020

Field Determination. Date(s): January 8, 2020

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
1	36.7384	-76.5981	0.22 acres	wetland	404
2	36.7370	-76.5972	0.77 acres	wetland	404
3	36.7365	-76.5975	0.12 acres	wetland	404
4	36.7355	-76.5965	0.44 acres	wetland	404
5	36.7348	-76.5962	344.00 sq. ft.	non-wetland	404
6	36.7344	-76.5957	356.95 sq. ft.	non-wetland	404

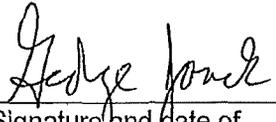
- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "may be" waters of the U.S. and/or that there "may be" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

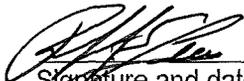
Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: Pfichetto Rd Realignment, Figure 8 Prelim W.
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report. Rationale: _____.
- Data sheets prepared by the Corps: _____.
- Corps navigable waters' study: _____.
- U.S. Geological Survey Hydrologic Atlas: 020802080101
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Suffolk quadrangle
- Natural Resources Conservation Service Soil Survey. Citation: Figure 5: NRCS Soil
- National wetlands inventory map(s). Cite name: Figure 4: NWI & NHD
- State/local wetland inventory map(s): _____.
- FEMÁ/FIRM maps: _____.
- 100-year Floodplain Elevation is: _____. (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date): Figure 3: 2017 Aerial Imagery
or Other (Name & Date): Photos 1-6; photos taken Oct. 8, 2019
- Previous determination(s). File no. and date of response letter: _____.
- Other information (please specify): _____.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.



Signature and date of
Regulatory staff member
completing PJD
January 31, 2020

 2/3/2020

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action



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January 31, 2020

Supplemental Preapplication Information

Project Number: NAO-2020-0178

Applicant: City of Suffolk Public Works, Robert E. Lewis

Project Location: adjacent to Pitchkettle and West Constance Roads, City of Suffolk

1. A search of the Virginia Department of Historic Resources data revealed the following.

- No known historic properties are located on the property.
- Tribal consultation may be required. (for Nansemond Tribe, Delaware Nation, Pamunkey Tribe)
- American Battlefield Protection Program (ABPP) consultation may be required.
- The following known architectural resources are located on the property:
Hill's Point Battlefield, Siege of Suffolk. DHR ID#133-5039
- The following known archaeological resources are located on the property:
- The following known historic resources are located in the vicinity of the property (potential for effects to these resources from future development):

NOTE:

- 1) *The information above is for planning purposes only. In most cases, the property has not been surveyed for historic resources. Undiscovered historic resources may be located on the subject property or adjacent properties and this supplemental information is not intended to satisfy the Corps' requirements under Section 106 of the National Historic Preservation Act (NHPA).*
- 2) *Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.*

2. A search of the data supplied by the U.S. Fish & Wildlife Service, the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries revealed the following:

- No known populations of threatened or endangered species are located on or within the vicinity of the subject property.

- The following federally-listed species may occur within the vicinity of the subject property: Northern long-eared bat
- The following state-listed (or other) species may occur within the vicinity of the subject property:

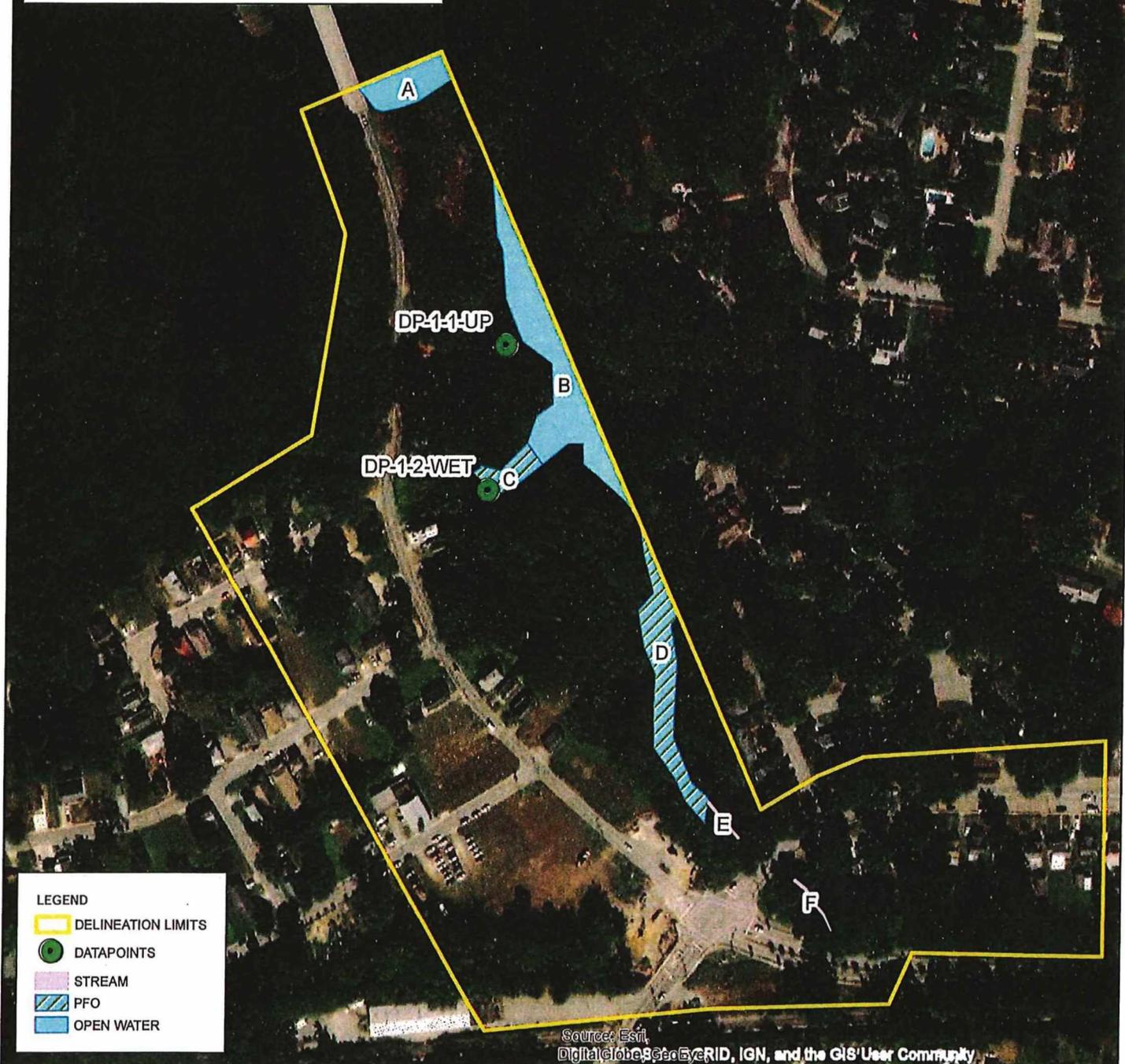
Please note this information is being provided to you based on the preliminary data you submitted to the Corps relative to project boundaries and project plans. Consequently, these findings and recommendations are subject to change if the project scope changes or new information becomes available and the accuracy of the data.

Notes:

Wetland flags and data points were field-located using a handheld Trimble GPS unit capable of submeter accuracy.

This wetland delineation is preliminary and is subject to confirmation by the USACE.

This delineation was prepared based on existing site conditions as of October 8, 2019.



LEGEND

- DELINEATION LIMITS
- DATAPOINTS
- STREAM
- PFO
- OPEN WATER

Source: Esri, DigitalGlobe, GeoEye, IGN, and the GIS User Community

Kimley»Horn	PROJECT: PITCHKETTLE ROAD REALIGNMENT ALTERNATIVE ANALYSIS SUFFOLK, VA		FIGURE 8: PRELIMINARY WETLANDS AND WOUS
	CREATED BY: N.ROMANO	SCALE: 1 IN = 250 FT	
	DATE CREATED: 10/23/2019	PROJECT NO.: 117019048	