



DEPARTMENT OF THE ARMY

PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

July 02, 2015

Regulatory Branch
Application Section II

SUBJECT: CENAP-OP-R-2015-00607 (72)

Project Name: RJ Corman Railroad Company Allentown Line Abandonment LH

Project Location: Lat 40.632163° N, Lon -75.465841° W

Fletcher & Sippel, LLC
c/o Audrey L. Brodrick
29 North Wacker Drive, Suite 290
Chicago, Illinois 60606-2832

Dear Ms. Brodrick:

This letter is written with regard to your request for comments concerning the proposed abandonment of approximately 3.5 miles of existing railroad rail line by the RJ Corman Company along the western bank of the Lehigh River. The project is located from the where the rail line crosses under the Pine Street Bridge in Whitehall Township, Lehigh County, Pennsylvania, south to where the spur line joins the mainline approximately near Union Boulevard in the City of Allentown, Lehigh County, Pennsylvania.

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged and/or fill material into waters of the United States, including adjacent and isolated wetlands. Any proposal to perform the above activities within any waters of the United States, including wetlands, requires the prior approval of this office.

This preliminary determination has been conducted to identify the location(s) of waters and wetlands that may be waters of the United States for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participating in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This Preliminary Jurisdictional Determination (PJD) is non-binding. The presence or absence of waters and or jurisdictional wetlands was not investigated for the purpose of this PJD. Preliminary JDs are advisory in nature and may not be appealed (See attached Notification of

Appeal Form (Enclosure 1)); however, the applicant retains the right to request an approved Jurisdictional Determination, which may be appealed, for the site. Also enclosed (Enclosure 2) is a copy of the Preliminary Jurisdictional Determination Form signed by the applicant or his agent agreeing to accept a PJD. Please be aware that for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a PJD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

This letter is valid for a period of five (5) years. This preliminary jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the preliminary jurisdictional determination at any time should existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete, or inaccurate.

The information provided with the request for comment indicates that the proposed salvaging of the rails, ties, and other railroad equipment once the rail line is abandoned will not involve the discharge of dredged and/or fill material. As such, the proposed abandonment and salvage activities are not regulated activities by the U.S Army Corps of Engineers under Section 404 of the Clean Water Act and a Department of the Army Permit is not required. Likewise, while the rail line runs parallel to the Lehigh River, no part of the rail line is located within the Ordinary High Water Line or over the river, which is a navigable water of the United States. As such, the proposed activities are not regulated under Section 10 of the Rivers and Harbors Act.

Please note that the absence of Corps jurisdiction is based on the specific activities described in the submitted project description. Additional activities may be regulated and it is suggested that these activities be coordinated with this office. Likewise, this office did not investigate the presence or absence of waters and/or jurisdictional wetlands. It is strongly recommended that prior to the conversion of the right-of-way to a trail that the right-of-way is investigated for waters and/or wetlands and the results of that study is verified by the Corps of Engineers.

If you should have any questions regarding this matter, please contact me at (570) 842-1044 or in writing at, Pocono Area Field Office, 253 State Route 435, Suite 4, Clifton Township, Pennsylvania, 18424.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn Weitknecht', with a stylized, flowing script.

Glenn R. Weitknecht
Biologist

Enclosures

Copies Furnished:

U. S. DOT, Office of Environmental Analysis Surface Transportation Board; Attn Adam J.
Assenza

PADEP, NERO (Wilkes-Barre, PA)

City of Allentown

Whitehall Township

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): July 02, 2015

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Ms. Audrey L. Brodrick
Fletcher & Sippel, LLC
29 North Wacker Drive, Suite 290
Chicago, Illinois 60606-2832

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: CENAP-OP-R-2015-006047
RJ Corman Railroad Company Allentown Line Abandonment LH

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: Pennsylvania County: Lehigh City: Allentown & Whitehall Township
Center coordinates of site (lat/long in degree decimal format):
Lat. 40.632163° N, Long. -75.465841° W
Universal Transverse Mercator: Easting (x) Northing (y)

Name of nearest waterbody: Lehigh River

Identify (estimate) amount of waters in the review area: N/A

Non-wetland waters: linear feet: width (ft) and/or acres.

Cowardin Class:

Stream Flow:

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal: None

Non-Tidal: None

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

☒ Office (Desk) Determination. Date: 2 Jul 2015

☐ Field Determination. Date(s):

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

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 approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that 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) that 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) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (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 preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes 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 approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, 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, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

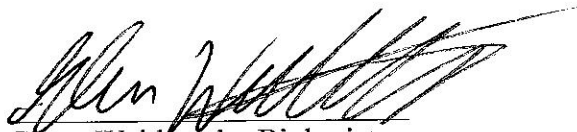
This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA: **Data reviewed for preliminary JD** (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☐ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

- ☐ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps:
- ☐ Corps navigable waters' study:
- ☐ U.S. Geological Survey Hydrologic Atlas:
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☐ U.S. Geological Survey map(s). Cite scale & quad name:
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:
- ☐ State/Local wetland inventory map(s):
- ☐ FEMA/FIRM maps:
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs:
 - ☒ Aerial (Name & Date): 19 May 2012 Google Earth Image
 - ☐ Other (Name & Date):
- ☐ Previous determination(s). File no. and date of response letter:
- ☒ Other information (please specify): The proposed activity of abandoning the existing rail line and salvaging the rails, ties, and other railroad equipment does not involve the discharge of dredged and/or fill material. The Corps of Engineers has no jurisdiction based on the proposed activities. The areas were not investigated for the presence or absence of waters and or jurisdictional wetlands.

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.


Glenn Weitknecht, Biologist

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of person requesting
preliminary JD (REQUIRED, unless
obtaining impracticable)

TABLE 1

Site number	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
1	40.XXXXX	-75.XXXXXX			
2					
3					
4					
5					
6					
7					
8					
9					
10					

Section 10 – Tidal
Section 10 – Non Tidal
Non Section 10, Wetland
Non Section 10, Non-Wetland

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: RJ Corman Railroad Company Allentown Line Abandonment LH	File Number: CENAP-2015-00607	Date: 2 Jul 2015
Attached is:		See Section below
☐	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
☐	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
☐	PERMIT DENIAL	C
☐	APPROVED JURISDICTIONAL DETERMINATION	D
☒	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://usace.army.mil/inet/functions/cw/cecwo/reg> 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 Philadelphia 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 (JD) 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 Philadelphia District Engineer. Your objections must be received by the Philadelphia 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 Philadelphia 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 Philadelphia 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 Philadelphia 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 North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

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 North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

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 North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the Philadelphia District Engineer.

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:

U.S. Army Corps of Engineers, District
ATTN: CENA

Email:

If you only have questions regarding the appeal process you may also contact:

Mr. James W. Haggerty
Administrative Appeals Review Officer
North Atlantic Division, Corps of Engineers Fort Hamilton
Military Community Bldg. 301, General Lee Avenue Brooklyn,
NY 11252-6700
Telephone: (347) 370-4650
Email: James.W.Haggerty@usace.army.mil

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: