



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

September 9, 2016

Regulatory Division  
North Branch  
LRH-2016-619-LMR-UT Todd Run

**APPROVED AND PRELIMINARY JURISDICTIONAL DETERMINATIONS**

Mr. Andy Kuchta  
Clermont County CIC, Inc.  
101 East Main Street, Third Floor  
Batavia, Ohio 45103

Dear Mr. Kuchta:

I refer to the report titled *South Afton Commerce Park, Water of the US Delineation* request dated July 21, 2016, submitted on your behalf by SMART Services, Inc. (SMART). You have requested an approved jurisdictional determination (JD) for the non-jurisdictional features and a preliminary JD for the potential jurisdictional aquatic resources located within the study area. Please see **Enclosure 1** for a map identifying the approved and preliminary JD boundaries and **Enclosure 2** for a table of aquatic resources within the study area. The study area is located along Half Acre Road & James A. Rhodes Appalachian Highway (Parcel No. 523508E009) in the Town of Batavia, Clermont County, Ohio. Your JD request has been assigned the following file number: LRH-2016-919-LMR-UT Todd Run. Please reference this number on all future correspondence related to this JD request.

The United States Army Corps of Engineers (Corps) authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328 and 33 CFR 329. Section 404 of the Clean Water Act (Section 404) requires a Department of the Army (DA) permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

***Preliminary Jurisdictional Determination***

Based on a review of the information provided, this office has determined approximately 38 linear feet (lf) of one (1) ephemeral stream (Stream 1) and 0.03 acre of one (1) wetland (Wetland 1) are located within the project area. This office has determined these aquatic resources may be waters of the United States in accordance with the Regulatory Guidance Letter (RGL) for Jurisdictional Determinations (JDs) issued by the Corps on June 26, 2008 (RGL No. 08-02). As indicated in the guidance, this Preliminary JD is non-binding and cannot be appealed (33 CFR 331.2) and only provides a written indication that waters of the United States, including wetlands, may be present on-site.

You have declined to exercise the option to obtain an approved JD in this instance and at this time. However, for the purposes of the determination of impacts, compensatory mitigation, and other resource protection measures for activities that require authorization from this office, the aquatic resources identified above will be evaluated as if they are waters of the United States.

Enclosed please find two copies of the Preliminary JD form. If you agree with the findings of this Preliminary JD and understand your options regarding the same, please sign and date one copy of the Preliminary JD form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy to the following address:

United States Army Corps of Engineers  
Huntington District  
Attn: North Branch  
502 Eighth Street  
Huntington, West Virginia 25701

#### ***Approved Jurisdictional Determination***

Our December 2, 2008 headquarters guidance entitled *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* was followed in the final verification of Clean Water Act jurisdiction. Based upon a review of the information provided and other information available to us, we have determined Erosional Feature 1 and Erosional Feature 2 are features that lack an ordinary high water mark (OHWM) and wetland characteristics and are therefore not jurisdictional waters of the United States. Furthermore, Depression 1 lacks the criteria of a wetland and is therefore not a jurisdictional water of the United States.

Finally, Pond 1 is a feature that was created wholly in uplands and lacks surface water connection to the tributary system of a traditional navigable waters and are therefore not jurisdictional waters of the United States. Based on this information, we have determined Erosional Feature 1, Erosional Feature 2, Depression 1, and Pond 1 are not jurisdictional waters of the United States. Therefore, no authorization would be required from this office for the discharge of dredged or fill material into Erosional Feature 1, Erosional Feature 2, Depression 1, and Pond 1. However, you should contact the Ohio Environmental Protection Agency, Division of Surface Water, at 614-644-2001 to determine state permit requirements.

This jurisdictional verification is valid for a period of five (5) years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date. This letter contains an approved JD for the subject site within the approved JD boundary. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination you must submit a

completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Appeal Review Officer  
United States Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10524  
Cincinnati, Ohio 45202-3222  
Phone: (513) 684-7261  
Fax: (513) 684-2460

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by November 8, 2016. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

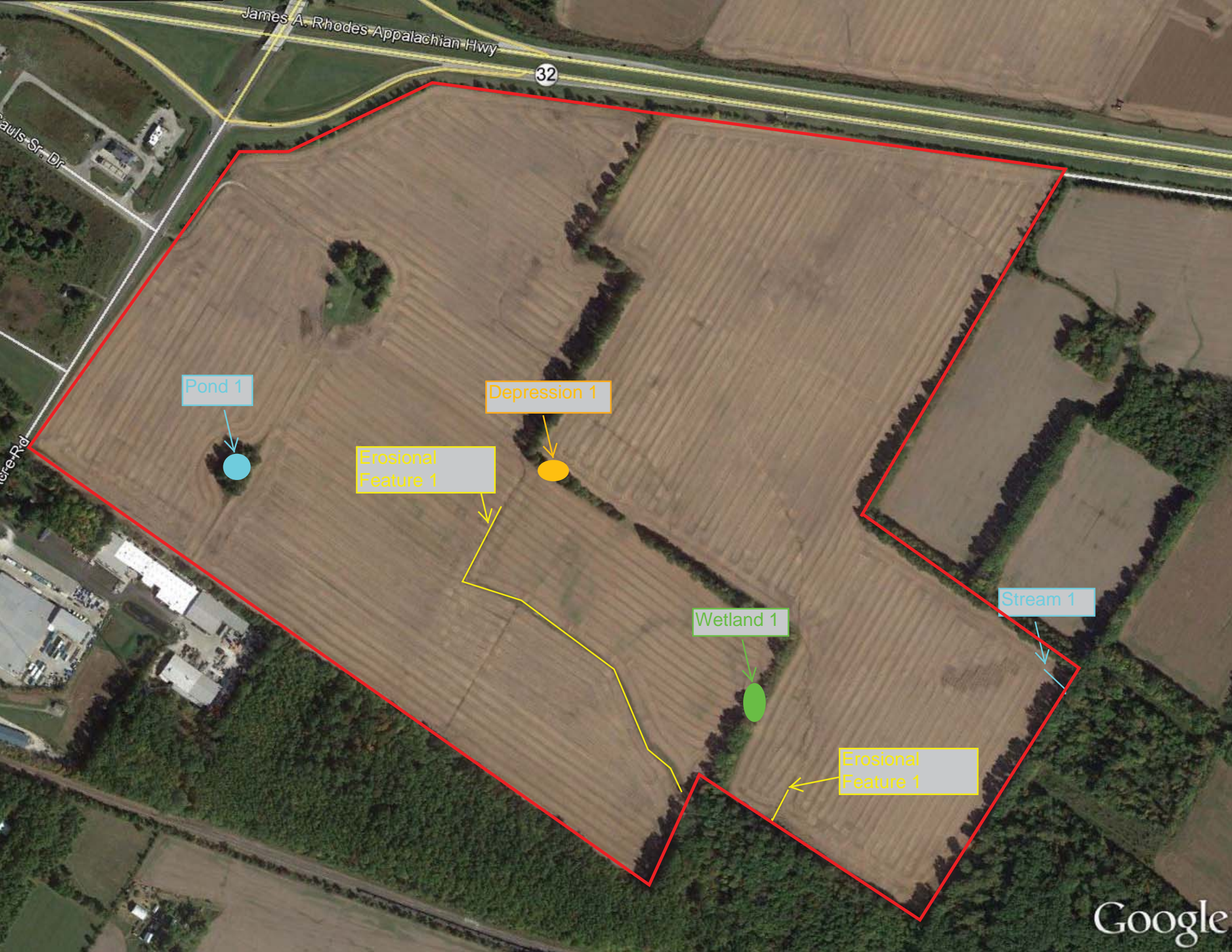
A copy of this letter will be provided to your agent, Mr. Mitchel Strain with SMART via email – [mstrain@smartservices-inc.com](mailto:mstrain@smartservices-inc.com). If you have any questions concerning the above, please contact Mr. Andrew Wendt of the North Branch at 513-825-4518, by mail at the above address, or by email at [andrew.j.wendt@usace.army.mil](mailto:andrew.j.wendt@usace.army.mil).

Sincerely,

Teresa D. Spagna  
Chief, North Branch

Enclosure(s)





Pond 1



Depression 1



Erosional  
Feature 1



Wetland 1



Erosional  
Feature 1



Stream 1



**ATTACHMENT**

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD):** September 20, 2016

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Andy Kuchta  
Clermont County CIC, Inc.  
101 East Main Street, Third Floor  
Batavia, Ohio 45103

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:**

U.S. Army Corps of Engineers  
Huntington District  
LRH-2016-619-GMR-UT Todd Run  
Afton Commerce Park

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

**State:** Ohio  
**County:** Clermont  
**City:** Batavia  
**Center coordinates of site:** 39.065012° North, 84.089312° West  
**Name of nearest waterbody:** Unnamed Tributary to Todd Run

**Identify (estimate) amount of waters in the review area:**

Non-wetland waters: Stream 1  
Linear Feet: 38  
Width and/or Acres:  
Cowardin Class:  
Stream Flow and linear feet: Ephemeral – 38 linear feet  
Wetlands: Wetland 1 – 0.03 acre  
Cowardin Class: PEM

Name of any water bodies on the site that have been identified as Section 10 waters: None

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

Office (Desk) Determination. Date: September 20, 2016  
 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: submitted by SMART Services, Inc. titled South Afton Commerce Park, Waters of the US Delineation, dated 10 May 2016

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 050902021103.

U.S. Geological Survey map(s). Cite scale & quad name: OH-WILLIAMSBURG

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 Geodectic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date):In PCN and ORM database.  
or  Other (Name & Date): Google Earth

Previous determination(s). File no. and date of response letter:.

Other information (please specify):

The Little Miami River is a TNW per JD #2008-595-LMR-Section10 Limits.pdf Final dated 01 July 2008. The Little Miami River has been determined to be a Section 10 stream from the confluence with the Ohio River near Cincinnati, Ohio to River Mile to River Mile 90.7 near the SR 72 Bridge according to Louisville District Public Notice LRL-2012-5-6 dated September 19, 2012.

**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 Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

SUMMARY TABLE: LRH-2016-619-LMR-UT Todd Run, Afton Commerce Park,  
 Clermont County, Ohio

Site Number	Latitude	Longitude	Type	Estimated amount of aquatic resource in review area	Class of aquatic resource
Wetland 1	39.061366	-84.086749	PEM	0.03 acre	Wetland
Stream 1	39.061709	-84.081877	Ephemeral	38 linear feet	Non-Wetland Non-Section 10



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

Applicant: Andy Kuchta	File Number: LRH-2016-619-LMR	Date:
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
X	APPROVED JURISDICTIONAL DETERMINATION	D
X	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 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:

Ginger Mullins, Chief, Regulatory Division, 304-399-5610  
Teresa M. Spagna, Chief, North Branch, 304-399-5210  
Michael Hatten, Chief, Energy Resource Branch, 304-399-5610  
Susan Porter, Chief, South/Transportation Branch, 304-399-5710  
Address: U.S. Army Corps of Engineers  
Regulatory Division  
502 8<sup>th</sup> Street  
Huntington, WV 25701

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

Jacob Siegrist  
Appeal Review Officer  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street, Room 10524  
Cincinnati, OH 45202-3222  
TEL (513) 684-6212; FAX (513) 684-2460

**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: