



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NY 14202-3278

October 3, 2024

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination and Delineation Verification for
Department of the Army Processing No. LRB-2022-01061

Prestige Builder Group
Attn: Chris Brown
778 McCauley Road, Suite 140
Stow, Ohio 44224
Email: Chris.brown@prestigebuildergroup.com

Dear Mr. Brown:

I have reviewed the submitted approved Jurisdictional Determination (JD) request by HZW Environmental Consultants on your behalf, for a 97.8-acre area in size located northwest of the intersection of tow Road and Ravenna Street, and north of the Norfolk Southern railroad tracks in the City of Hudson, Summit County, Ohio (Latitude: 41.227343°N, Longitude: -81.41772°W) (Sheets 1-3 of 3).

I have determined that the location and extent of all aquatic resources shown on the attached maps (Sheet 3 of 3) accurately represent the review area conditions.

Enclosed is an approved JD which verifies the limits of waters of the U.S. within the review area as depicted on Sheets 3 of 3. This approved JD will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the approved JD before the expiration date. At the end of this period, a new aquatic resource delineation will be required to support any request for a new JD.

It has been determined that the following aquatic resources *are not waters of the U.S.* regulated under Section 404 of the Clean Water Act as noted on the attached Approved Jurisdictional Determination Memorandum for Record (MFR): LRB-2022-01061 Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, Stream 1, and Ponds 1 and 2. Department of the Army authorization *is not required* if you propose a discharge of dredged or fill material in these waters of the U.S.

Further, the delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the review area identified in this request. This delineation and/or jurisdictional determination may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you

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or your tenant are USDA program participants, or anticipate participation in USDA programs, you should discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Request for Appeal (RFA) form. If you request to appeal the above JD, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

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 C.F.R. part 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 **December 1, 2024.**

It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.

A copy of this letter has been sent to the Ohio Environmental Protection Agency and HZW Environmental Consultants.

Questions pertaining to this matter should be directed to me at (716) 879-4240, by writing to the following address: U.S. Army Corps of Engineers Regulatory Branch, 478 Main Street, Buffalo, New York 14202, or by e-mail at:
Shaina.R.Souder@usace.army.mil

Sincerely,



Shaina Souder
Biologist

Enclosures



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NEW YORK 14202-3278

CELRB-ORR

3 October 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime
Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322
(2023),¹ LRB-2022-01061 (MFR 1 of 1)²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, interstate water, or territorial seas that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable *in this state (Ohio)* due to litigation.

1. SUMMARY OF CONCLUSIONS.

- a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).
 - i. *LRB-2022-01061 Wetland A, 2.482-acres, Palustrine forested(PFO), non-jurisdictional.*
 - ii. *LRB-2022-01061 Wetland B, 0.177-acre, PFO, non-jurisdictional.*
 - iii. *LRB-2022-01061 Wetland C, 0.093-acre, Palustrine emergent (PEM), non-jurisdictional.*
 - iv. *LRB-2022-01061 Wetland D, 0.112-acre, PEM, non-jurisdictional.*
 - v. *LRB-2022-01061 Wetland E, 0.13-acre, PEM/PFO, non-jurisdictional.*
 - vi. *LRB-2022-01061 Wetland F, 0.016-acre, PEM, non-jurisdictional.*
 - vii. *LRB-2022-01061 Wetland G, 0.021-acre, PEM, non-jurisdictional.*
 - viii. *LRB-2022-01061 Wetland H, 0.190-acre, PFO, non-jurisdictional.*
 - ix. *LRB-2022-01061 Wetland I, 0.030-acre, PEM, non-jurisdictional.*
 - x. *LRB-2022-01061 Wetland J, 0.010-acre, PEM, non-jurisdictional.*
 - xi. *LRB-2022-01061 Wetland K, 0.107-acre, PEM, non-jurisdictional.*
 - xii. *LRB-2022-01061 Wetland L, 0.176-acre, PEM, non-jurisdictional.*
 - xiii. *LRB-2022-01061 Wetland M, 0.004-acre, PEM, non-jurisdictional.*
 - xiv. *LRB-2022-01061 Wetland N, 0.073-acre, PEM, non-jurisdictional.*
 - xv. *LRB-2022-01061 Wetland O, 0.068-acre, PEM, non-jurisdictional.*
 - xvi. *LRB-2022-01061 Wetland P, 0.046-acre, PEM, non-jurisdictional.*

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- xvii. *LRB-2022-01061 Wetland Q, 0.032-acre, PEM, non-jurisdictional.*
- xviii. *LRB-2022-01061 Wetland R, 0.030-acre, PEM, non-jurisdictional.*
- xix. *LRB-2022-01061 Wetland S, 0.004-acre, PEM, non-jurisdictional.*
- xx. *LRB-2022-01061 Wetland T, 0.063-acre, PEM, non-jurisdictional.*
- xxi. *LRB-2022-01061 Stream 1, 741.1 linear feet, Riverine ephemeral, non-jurisdictional.*
- xxii. *LRB-2022-01061 Pond 1, 0.784-acre, Palustrine Unconsolidated Bottom/Open Water (PUB/POW), non-jurisdictional.*
- xxiii. *LBR-2022-01061 Pond 2, 0.411-acre, PUB/POW, non-jurisdictional.*

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. A 97.8-acre area in size located northwest of the intersection of tow Road and Ravenna Street, and north of the Norfolk Southern railroad tracks in the City of Hudson, Summit County, Ohio (Latitude: 41.227343°N, Longitude: - 81.41772°W). The review area is located north and south of Ravenna Street and contains multiple wetlands, a stream, and a pond. The land use of the review area is mostly agriculture, with a residence and some forested habitat on the southern extent and eastern extent. See attached map sheets 1-4 of 4.

The review area was delineated by HZW Environmental Consultants on 15-September-2022. Updated maps and data was provided per the U.S. Army Corps of Engineers (USACE) staff requests.

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USACE site visits 8-December-2022 and 3-October-2023.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. *N/A – none of the aquatic resources were determined to be connected to a downstream TNW, interstate water, or the territorial seas.*⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. *N/A – the aquatic resources within the review area were determined to not have a flowpath to a TNW, interstate water, or the territorial seas.*
6. SECTION 10 JURISDICTIONAL WATERS⁷: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁸ *N/A.*
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant

⁶ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

⁷ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁸ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(1)(i) water.*
- b. Interstate Waters (a)(2): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(2) water.*
- c. Other Waters (a)(3): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(3) water.*
- d. Impoundments (a)(4): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(4) water.*
- e. Tributaries (a)(5): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(5) water.*
- f. The territorial seas (a)(6): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(6) water.*
- g. Adjacent wetlands (a)(7): *N/A - none of the Aquatic Resources (ARs) documented on this MFR meet the definition of a paragraph (a)(7) water.*

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁹ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. *N/A.*
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. *N/A.*
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet

⁹ 51 FR 41217, November 13, 1986.

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the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. *N/A*.

- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. *N/A*.
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “SWANCC,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with SWANCC.

i. LRB-2022-01061 Pond 1 (0.78-acre) and Pond 2 (0.411-acre; PUB/POW) are ponds located in the northern portion of the review area. Pond 1 is located to the southeast of the residence and Pond 2 is located in the northeastern portion of the review area north of Ravenna Road. Ponds 1 and 2 were considered as potential (a)(3) other waters but were determined to be non-jurisdictional because they are ponds that were determined to not have any downstream connections and are “isolated” waters without any nexus to interstate or foreign commerce. This conclusion was made based on a review of the submitted delineation report, observations made during the USACE site visits (8-December-2022), and an in-office resource review, as supported by the following:

- Both ponds were mapped and described as man-made features that do not have any connection to other waters of the United States or downstream waters.
- Ponds 1 and 2 were walked in their entirety during the 8-December-2022 USACE site visit. Both ponds had overflow culverts located much higher than the water levels, but the culverts did not connect to any other water and any overflow was contributed to the adjacent upland areas. Pond 1 was observed to have some wetland vegetation in a plateau area above Ordinary High-Water Mark (OHWM) and that area was requested to be added to the map as separate wetland (documented on this AJD MFR as Wetland D). Ponds 1 and 2 appeared to be aesthetic features associated with the nearby residences.

- *A review of USGS topographic maps shows no waters within the review area except for a pond where Pond 2 is mapped on the delineation.*
 - *A review of the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) maps indicates that no wetlands or streams are within the review area, but does identify ponds at the locations of Ponds 1 and 2, labeled PUB.*
 - *Ponds 1 and 2 are not a paragraph (a)(3) water as it is not a lake or a pond with a nexus with interstate or foreign commerce (i.e., is not a lake or pond that supports a link to interstate or foreign commerce because it is known to be used by interstate or foreign travelers for recreation or other purposes, produces fish or shellfish that could be taken and sold in interstate or foreign commerce, and is known to be used for industrial purposes by industries in interstate or foreign commerce).*
 - *Ponds 1 and 2 do not meet the definition of paragraph (a)(1) TNWs because they are not currently used, was not used in the past, and is not susceptible to use in interstate or foreign commerce; and is not subject to the ebb and flow of the tide.*
 - *Ponds 1 and 2 do not meet the definition of paragraph (a)(2) interstate waters. They do not cross or serve as a state line.*
 - *Ponds 1 and 2 do not meet the definition of a paragraph (a)(3) other waters: are not a lake or pond that meets the interstate/foreign commerce nexus test post-2001 SWANCC.*
 - *Ponds 1 and 2 do not meet the definition of paragraph (a)(4) impoundments (i.e., are not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water).*
 - *Ponds 1 and 2 do not meet the definition of paragraph (a)(5) tributaries (i.e. are not a relative permanent tributary that flows to a paragraph (a)(1) or (a)(2) water).*
 - *Ponds 1 and 2 do not meet the definition of paragraph (a)(6) the territorial seas ((i.e., are not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles)*
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court's decision in *Sackett* (e.g., tributaries that are

non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

ii. LRB-2022-01061 Wetlands A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T are wetlands that are located throughout the review area. These wetlands have been determined to not be abutting, and to not have a continuous surface connection with a TNW, interstate water, jurisdictional impoundment, jurisdictional tributary, or the territorial seas as supported by the following:

- Majority of the wetlands are Palustrine emergent wetlands located within active agriculture fields with the exceptions of Wetland A, B, and H which are Palustrine forested wetlands located in the southern portion of the review area. Wetland D is wetland fringe of Pond 1, though it was delineated above the OHWM of the pond, so was delineated separately.
- Wetlands A through T meet the definition of a wetland as described in 33CFR328.3. Wetland D and F were delineated in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region (Version 2.0).
- The nearest Relative Permanent Water (RPW) to these waters is Power Brooks located approximately 3200 linear feet to the southeast of the review area. No Continuous Surface Connections (CSCs) were found from the waters within the review area to this RPW.
- The submitted delineation report dated October 2022 only identified Wetlands A (2.48-acres) and B (0.18-acre) as palustrine forested wetlands in the southern portion of the review area. Additional data submitted in response to two U.S. Army Corps of Engineers (USACE) site visits (8-December-2022 and 3-October-2023), identified the other wetlands on the map.
- USACE Site Visits:
 - 8-December-2022: USACE staff only reviewed the northern portion of the review area during the site visit due to in-office resources already noting additional data needs for the portion of the review area south of Ravenna Road. A stream (Stream 1) was observed (resurfaced from old tile) in the northeast quadrant flowing from north-central to the southeast and then into a ditch (outside the review area) to the south where it was pooling in the agricultural field, which appeared to be functioning as wetland (Wetland G (0.021-acre)). Additional

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wetland areas and ponds were observed on the western side of the northern portion of the review area. These areas were requested to be added to the map.

– 3-October-2023: a site visit occurred to review the southern portion of the review area and walk Wetland G in the northwestern portion of the review area.

Wetland G was observed to be delineated accurately, and the area seemed to be ponding less than the last site visit. Connections to the west were sought, but none were observed. In the southern portion of the review area, many areas within the agricultural field were still exhibiting wetland characteristics (sparsely vegetated concave surface, stunted plants, algal matting, surface water, saturation) and had not been mapped. These areas were GPS-ed by the consultant and they would be added to the map. Some areas in the forested region to the south were exhibiting wetland characteristics, functioning as depressions in the forested landscape. These areas were also GPS-ed and would be added to the map. No connections were found to any tributaries or other Relative Permanent Waters (RPW). The original mapped wetlands, Wetland A and B had their boundaries walked in their entirety and accurate as mapped. No connections were found to any tributaries or other RPW for Wetland A and B.

– Updated maps were received in 2024, as attached to this AJD sheet 3 of 3.

- A review of USGS topographic maps shows no waters within the review area except for a pond where Pond 2 is mapped on the delineation.*
- Aerial/oblique imagery observed indicates saturation or inundation during the wet season, and sparsely vegetated concave surface (in the agricultural fields) during the dry season at the location of most of the waters/wetlands mapped.*
- A review of the administrative record indicated that there was a previous delineation of this review area conducted by a different consulting firm and submitted to the USACE in 2017-2018. The previous delineation was under 2017-01395 for a similar review area. This delineation had similar water locations but had some additional wetland areas too. No Jurisdictional Determination was completed with this delineation, as additional information was requested and never received, so the action had been withdrawn in 2018.*

- *A review of the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey shows multiple soils mapped within the review area that are conducive to developing wetlands at the locations of the mapped wetlands: MgA – Mahoning silt loam, 0-3% slopes (hydric rating 10), MgB – Mahoning silt loam, 3-6% slopes (hydric rating 5), and Trumbull silt loam, 0-2% slopes (hydric rating 95). Wetlands D and F mapped with soils as PsB – Platea silt loam, 2-6% slopes with a hydric rating of 5, which indicates the soils are not hydric but can form hydric inclusions.*
 - *A review of the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) maps indicates that no wetlands or streams are within the review area, but does identify ponds at the locations of Ponds 1 and 2, labeled PUB.*
 - *These wetlands do not meet the definition of a paragraph (a)(7) adjacent wetland, do not have a continuous surface connection to a TNW, interstate water, jurisdictional impoundment, jurisdictional tributary, or the territorial seas.*
 - *These wetlands do not meet the definition of paragraph (a)(1) TNWs because they are not currently used, was not used in the past, and is not susceptible to use in interstate or foreign commerce; and is not subject to the ebb and flow of the tide.*
 - *These wetlands do not meet the definition of paragraph (a)(2) interstate waters. They do not cross or serve as a state line.*
 - *These wetlands do not meet the definition of a paragraph (a)(3) other waters: are not a lake or pond that meets the interstate/foreign commerce nexus test post-2001 SWANCC.*
 - *These wetlands do not meet the definition of paragraph (a)(4) impoundments (i.e., are not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water).*
 - *These Wetlands do not meet the definition of paragraph (a)(5) tributaries (i.e. are not a relative permanent tributary that flows to a paragraph (a)(1) or (a)(2) water).*
 - *These wetlands do not meet the definition of paragraph (a)(6) the territorial seas ((i.e., are not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles)*
- iii. LRB-2022-01061 Stream 1 (Stream 1) is a 741.1 linear feet tributary located in the northwest portion of the review area that originates off-site

to the north and flows to the southeast. It was determined that Stream 1 does not continue to other waters downstream and has an ephemeral flow regime, only flowing in short duration and in direct response to precipitation, not meeting the relatively permanent standard. Therefore, Stream 1 does not meet the definition of paragraph (a)(5) tributaries.

- Stream 1 is a first order tributary in Strahler Stream Order. The relevant reach is approximately 900 linear feet from its origination to the north just outside the review area and its continuation through the review area to the west where it then is oriented north to south along the edge of the review area to where it dissipates at the location of Wetland G. The relevant reach was established through the use of remote tools including USGS Streamstats, USGS topographic maps, USFWS NWI maps, and aerial imagery. The USGS topographic maps, USFWS NWI maps, and USGS StreamStats and considering observations made during the USACE site visits for this review area on 8-December-2022 and 3-October-2023.*
- The USGS topographic maps, USFWS NWI maps, and USGS StreamStats do not show any waters present at the location of Stream 1, supporting that it is a man-made feature.*
- The channel can be observed in aerial/oblique imagery (Google Earth and Connect Explorer) with water present in the channel during imagery dated 2-May-2020 (wet season) 17-April-2016 (wet season), October-2021 (dry season). Ditch 2 did not have water presence in Google Earth aerial imagery assessed dated October-2016 (dry season) and April-2016 (wet season). Since water presence in aerial imagery was observed during multiple wet season and at least one dry season aerial/oblique imagery, this supports that water in Ditch 2 flows continuously throughout certain times of the year.*
- As observed during the 8-December-2022 site visit, Stream 1 was observed as a previously tiled stream that had resurfaced as the tile broken. The stream was observed as a defined channel with sediment sorting and erosion evident at the lower portion with no OHWM that flowed from an off-site manhole to the north to the southwest where it flowed along the agriculture field (slightly off-site) to the south where it dissipated into Wetland G. Stream 1 had saturation in the lower portion of the channel, but no evidence of pooling or current flow at the time of the 8-December-2022 site visit. During the 3-October-2022 site visit, the channel was not flowing either. Precipitation was not occurring on either site visit date. These observations support that Stream 1 has ephemeral*

flow that only has short duration of flow in direct response to precipitation and does not meet the relatively permanent standard.

- *A review of USGS StreamStats suggests drainage from the east-central portion of the southern portion of the review area to the southeast. No conveyances, CSCs, or other RPWs were observed in this location, although Wetlands J, K, L and H are at the location mapped for drainage.*
- *A review of USGS NHD data does not show any waters within the review area and the nearest water it shows is Power Brooks located approximately 3200 linear feet to the southeast of the review area.*
- *A review of the USDA NRCS web soil survey does not show any streams or drainages within or near the review area. The soils mapped at the location of Stream 1 are, MgA – Mahoning silt loam 0-2% slopes with a hydric rating of 10, MgB – mahoning silt loam 2-6% slopes with a hydric rating of 5, and BgB – Bogart loam, 2-6% slopes with a hydric rating of 0. Mahoning soil series is reported to have saturated hydraulic connectivity that is moderately low through the subsoil and moderately low or low in the underlying material. The Mahoning soil series is also reported to have a perched and/or seasonal water table 6 to 12 inches below the surface from October through June most years. This supports that some subsurface flow may occur. The Bogart soil series is reported to be very deep, moderately well-drained soils with moderate permeability in the solum and rapid permeability in the substratum. Bogart also is reported to have a potential for surface runoff to be medium and an intermittent apparent water table from 1 to 2 feet between November to April in most years. This supports that surface drainage paths, such as Stream 1 could form.*
- *A review of the USFWS NWI maps do not show any tributaries within the review area.*
- *Stream 1 does not meet the definition of paragraph (a)(6) the territorial seas ((i.e., are not part of the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters and extending seaward a distance of three miles)*
- *Stream 1 does not meet the definition of paragraph (a)(1) TNWs because they are not currently used, was not used in the past, and is not susceptible to use in interstate or foreign commerce; and is not subject to the ebb and flow of the tide.*

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- *Stream 1 does not meet the definition of paragraph (a)(2) interstate waters. They do not cross or serve as a state line.*
- *Stream 1 does not meet the definition of a paragraph (a)(3) other waters: are not a lake or pond that meets the interstate/foreign commerce nexus test post-2001 SWANCC.*
- *Stream 1 does not meet the definition of paragraph (a)(4) impoundments (i.e., are not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water).*
- *Stream 1 does not meet the definition of paragraph (a)(5) tributaries (i.e. are not a relative permanent tributary that flows to a paragraph (a)(1) or (a)(2) water).*
- *Stream 1 does not meet the definition of a paragraph (a)(7) adjacent wetland, does not have a continuous surface connection to a TNW, interstate water, jurisdictional impoundment, jurisdictional tributary, or the territorial seas.*

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. *In-Office Evaluation/Determination: 5-December-2022, 2-October-2023, and 20-22-August-2022; Field Evaluation/Determination: 8-December-2022 and 3-October-2023.*
- b. *Submitted Delineation Report: In-Office Evaluation/Determination: 23-Jul-2024, 15&19-Aug-2024; Field Evaluation/Determination: 7-August-2024.*
- c. *Submitted Delineation Report: "Wetland and Water Resource Delineation Report, undeveloped 21.74-acre (approximate) property, east of River Street, Madison Village, Lake County, Ohio (Parcel ID: 02-A-007-0-00-019-0, 02-A-007-0-00-020-0, & 02-A-007-0-00-021-0)" dated April 30, 2024; Prepared for Foundation Health Solutions; Prepared by Land Solutions, LLC.*
 - i. *Some changes were requested to the maps during the 8-December-2022 and 3-October-2023 USACE site visits. Specifically, many more wetlands and a stream were observed within the review area that were mapped; the final map based on the additional data is shown on Sheet 3 of 3.*
- d. *Photography:*

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- i. *Aerial/Oblique Imagery: Google Earth May 217, ; Connect Explorer - <https://explorer.pictometry.com/> - oblique imagery dates 29-March-2024.*
 - ii. *Photographs provided in the submitted delineation report dated 11-April-2024, and photographs in the addendum letter dated 7-August-2024.*
- e. *USDA NRCS Soil Survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – accessed 5-December-2022, 2-October-2023, and 20-22-August-2022*
- f. *USGS NHD data/maps: [HA-730 – NHD data and HUC 8-digit and 12-digit maps.](#)*
- g. *USGS Topographic Quad: [OH- Hudson, 2023, scale 1-24000; accessed 5-December-2022, 2-October-2023, and 20-22-August-2022.](#)*
- h. *USGS Streamstats: <https://streamstats.usgs.gov/ss/> - accessed 5-December-2022, 2-October-2023, and 20-22-August-2022*
- i. *U.S. Fish & Wildlife Service National Wetland Inventory Maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> - 5-December-2022, 2-October-2023, and 20-22-August-2022*
- j. *Photography:*
 - i. *Aerial/Oblique Imagery: [Google Earth May 2017, August 2020, November 2021. Connect Explorer - https://explorer.pictometry.com/](#) - oblique imagery dates 27-April-2019 and 2-April-2022.*
 - ii. *Photographs provided in the submitted delineation report dated 15-September-2022 and photographs provided of the additional review area added after USACE site visits, dated January 2024*
- k. *USDA NRCS Soil Survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – 5-December-2022, 2-October-2023, and 20-22-August-2022*
- l. *USGS NHD data/maps: [HA-730 – NHD data and HUC 8-digit and 12-digit maps.](#)*
- m. *USGS Topographic Quad: [OH- North Olmsted, 2023, scale 1-24000; accessed 5-December-2022, 2-October-2023, and 20-22-August-2022](#)*

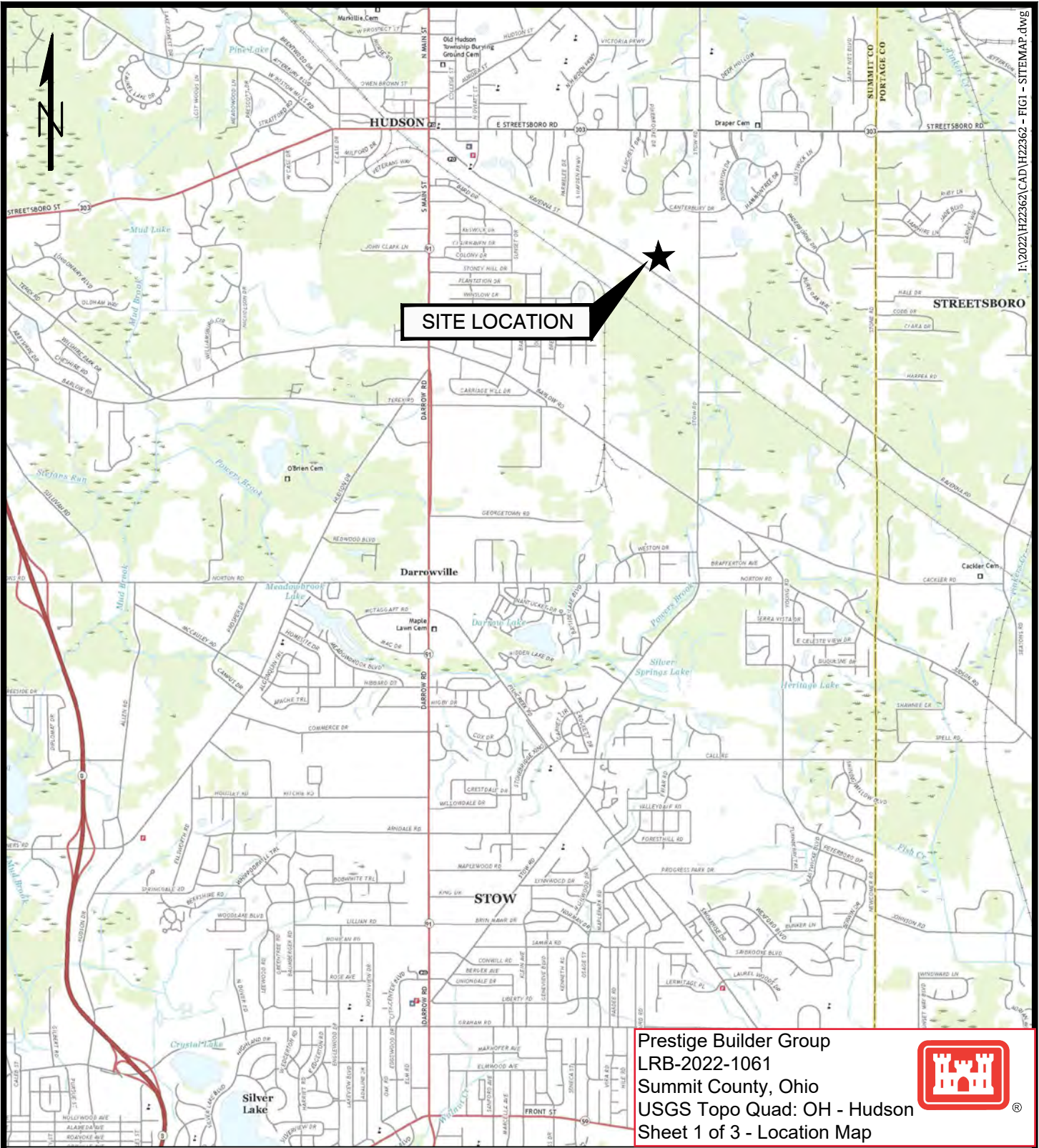
CELRB-ORR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), *LRB-2022-01061*

- n. *USGS Streamstats: <https://streamstats.usgs.gov/ss/> - accessed 5-December-2022, 2-October-2023, and 20-22-August-2022*
- o. *U.S. Fish & Wildlife Service National Wetland Inventory Maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> accessed 5-December-2022, 2-October-2023, and 20-22-August-2022*

10. OTHER SUPPORTING INFORMATION. N/A.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



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Prestige Builder Group
 LRB-2022-1061
 Summit County, Ohio
 USGS Topo Quad: OH - Hudson
 Sheet 1 of 3 - Location Map



Scale: 1" = 4,000'

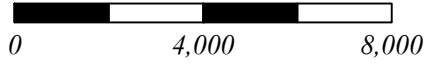
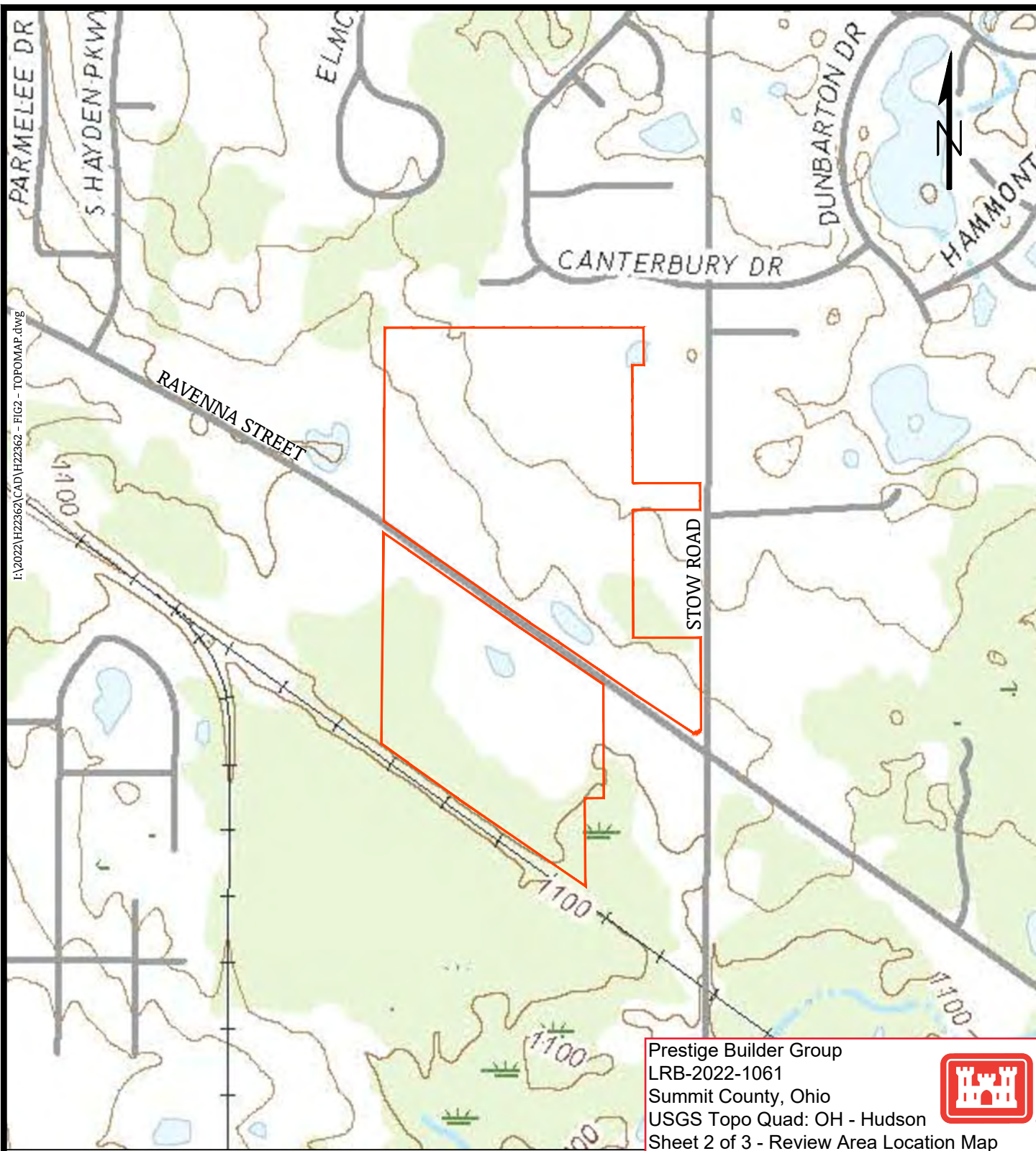
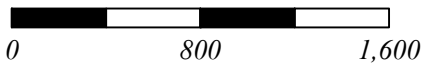


FIGURE 1
SITE LOCATION MAP
 PARCEL NUMBERS 3001397, -2169, -2375, -3108,
 -4552, -4555, -6323, -6324, 3010370, -0371
 CITY OF HUDSON, SUMMIT COUNTY, OHIO



- STUDY AREA

Scale: 1" = 800'



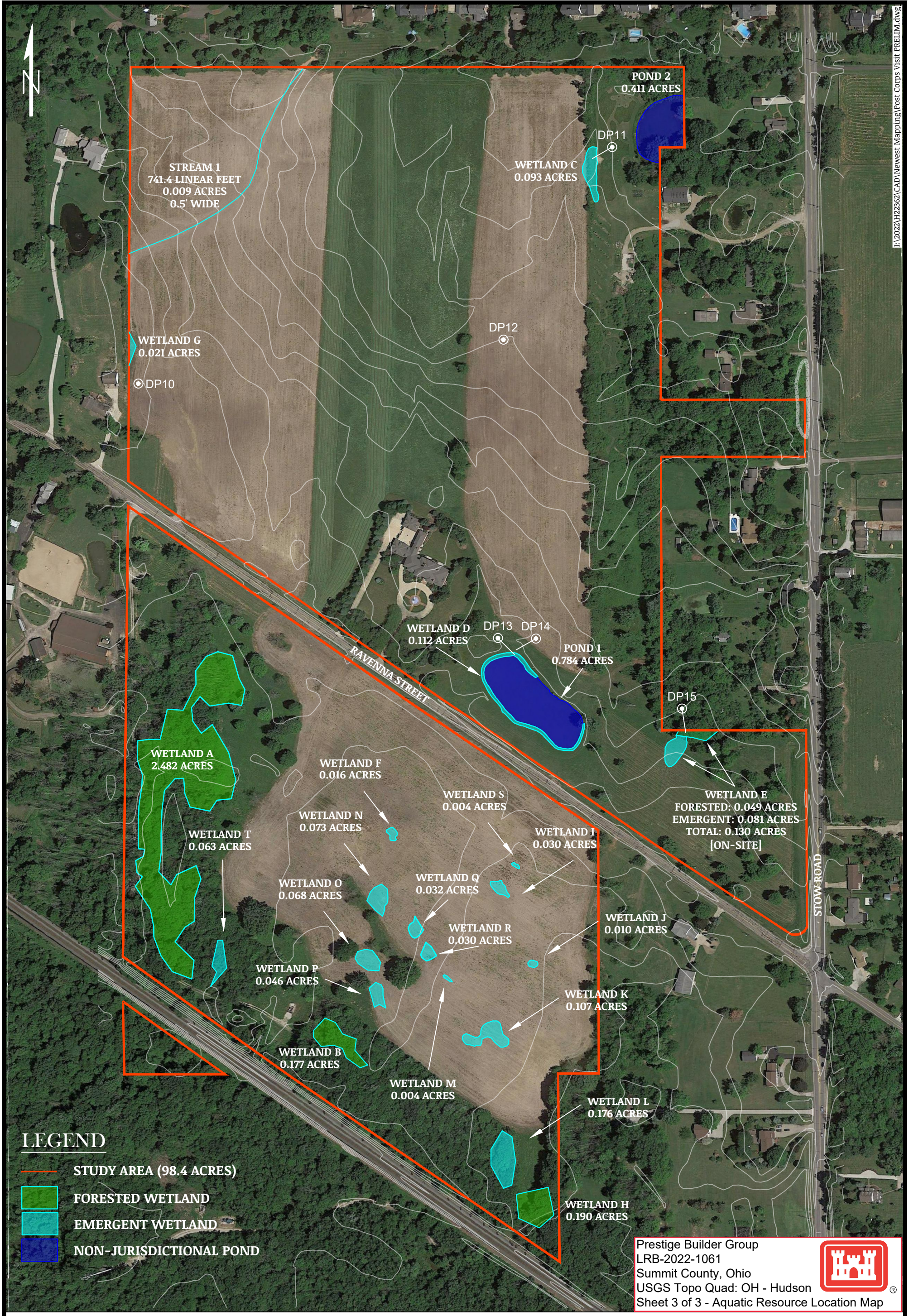
HZW Environmental
 Consultants

FIGURE 2

TOPOGRAPHIC MAP

PARCEL NUMBERS 3001397, -2169, -2375, -3108,
 -4552, -4555, -6323, -6324, 3010370, -0371
 CITY OF HUDSON, SUMMIT COUNTY, OHIO

I:\2022\H22362\CAD\Newest Mapping\Post Corps Visit PRELIM.dwg



HZW Environmental Consultants

FIGURE 3B
AQUATIC RESOURCES MAP (AERIAL)
PARCEL NUMBERS 3001397, -2169, -2375, -3108, -4552, -4555, -6323, -6324, 3010370, -0371
CITY OF HUDSON, SUMMIT COUNTY, OHIO

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Prestige Builder Group		File Number: LRB-2022-01061	Date: October 3, 2024
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 WITHOUT PREJUDICE	C	
	PERMIT DENIAL WITH PREJUDICE	D	
X	APPROVED JURISDICTIONAL DETERMINATION	E	
	PRELIMINARY JURISDICTIONAL DETERMINATION	F	

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> 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. 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 WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the 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.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **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.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

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.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Shaina Souder
U.S. Army Corps of Engineers
Buffalo District
478 Main St
Buffalo, NY 14202-3278
Phone: (716)879-4240
Email: Shaina.R.Souder@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

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. Use additional pages as necessary. 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.

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.

Date:

Signature of appellant or agent.

Email address of appellant and/or agent:

Telephone number: