



REPLY TO
ATTENTION OF

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

September 20, 2021

Regulatory Division
North Branch
LRH-2021-662-TUS-Unnamed Tributary (UNT) to Wolf Creek

PRELIMINARY JURISDICTIONAL DETERMINATION

Mr. Ben Weinerman
Pride One Construction
2211 Medina Road, Suite 100
Medina, Ohio 44256

Dear Mr. Weinerman:

I refer to the *Preliminary Jurisdictional Waters Determination Report, Jacoby Road, Copley Township, Summit County, Ohio*, dated August 13, 2021, submitted on your behalf by Civil and Environmental Consultants, Inc. (CEC), and received in this office on September 16, 2021. You have requested a preliminary jurisdictional determination (JD) for the potentially jurisdictional wetlands and streams on the Jacoby Road Project Site, in Copley Township, Summit County, Ohio (41.08240 latitude, -81.61330 longitude). Your JD request has been assigned the following file number: LRH-2021-662-TUS. 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 and/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.

Based upon a review of the submitted report, this office has determined that 19.27 acres of six (6) wetlands (Wetlands A-F) and 2,905 linear feet of seven (7) streams (Streams 1-7) are located within the review area. The aquatic resources identified above and listed on the enclosed preliminary JD form **may** be waters of the United States in accordance with the Regulatory Guidance Letter for JDs issued by the Corps on October 31, 2016 (Regulatory Guidance Letter No. 16-01). 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 for the above aquatic resources. However, for the purposes of the determination of impacts,

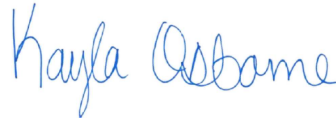
compensatory mitigation, and other resource protection measures for activities that require authorization from this office, the above aquatic resources will be evaluated as if they are waters of the United States.

Enclosed with this document please find a copy of the preliminary JD. If you agree with the findings of this preliminary JD and understand your options regarding the same, please sign and date the preliminary JD form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy via email to Rachel.A.King@usace.army.mil or by mail to the following address:

United States Army Corps of Engineers
Huntington District
Attn: North Branch-LRH-2021-662-TUS
502 Eighth Street
Huntington, West Virginia 25701

A copy of this letter will be provided to your agent, Mr. Nick D'Eramo with CEC. If you have any questions concerning the above, please contact Ms. Rachel King of the North Branch at 304-399-6902, by mail at the above address, or by email at Rachel.A.King@usace.army.mil.

Sincerely,



Kayla N. Osborne
Regulatory Project Manager
North Branch

Enclosures

cc (via email):
Nick D'Eramo, CEC

Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: 20 September 2021

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:

Ben Weinerman
Pride One Construction
2211 Medina Road, Suite 100
Medina, Ohio 44256

C. DISTRICT OFFICE, FILE NAME, AND NUMBER:

Huntington District, Jacoby Road Project PJD, LRH-2021-662-TUS-Unnamed Tributary (UNT) to Wolf Creek

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

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

State: Ohio County/parish/borough: Summit City: Copley Township
Center coordinates of site (lat/long in degree decimal format):
Lat.: 41.08240 Long.: -81.61330
Universal Transverse Mercator: Zone 17
Name of nearest waterbody: UNT to Wolf Creek

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

☒ Office (Desk) Determination. Date: 20 September 2021

☐ Field Determination. Date:

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)
Stream 1	41.080775	-81.608204	88 linear feet	Non-wetland	Section 404
Stream 2	41.084483	-81.612871	848 linear feet	Non-wetland	Section 404
Stream 3 (INT)	41.082574	-81.617746	567 linear feet	Non-wetland	Section 404
Stream 3 (PER)	41.082047	-81.615526	917 linear feet	Non-wetland	Section 404
Stream 4	41.082694	-81.617361	30 linear feet	Non-wetland	Section 404
Stream 5	41.083022	-81.617762	247 linear feet	Non-wetland	Section 404
Stream 6	41.083014	-81.617016	74 linear feet	Non-wetland	Section 404
Stream 7	41.081757	-81.616078	134 linear feet	Non-wetland	Section 404
Wetland A	41.08212	-81.61088	17.31 acres	Wetland	Section 404
Wetland B	41.08257	-81.61770	0.02 acre	Wetland	Section 404
Wetland C	41.08289	-81.61742	0.32 acre	Wetland	Section 404

Wetland D	41.08220	-81.61617	0.26 acre	Wetland	Section 404
Wetland E	41.08157	-81.61715	0.37 acre	Wetland	Section 404
Wetland F	41.08136	-81.61569	0.99 acre	Wetland	Section 404

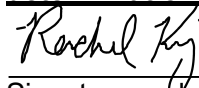
- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various 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 were indicated for all checked items: [Preliminary Jurisdictional Waters Determination Report, Jacoby Road, Copley Township, Summit County, Ohio dated 13 August 2021 \(JD, August 2021\)](#)

- ☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor: [Figure 1- Site Location Map \(JD, August 2021\)](#)
- ☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.
- ☒ Office concurs with data sheets/delineation report. [Figure 3- Preliminary Jurisdictional Waters Determination Map, Appendix D- Wetland Delineation Data Forms, and Appendix E- ORAM Forms \(JD, August 2021\)](#)
- ☐ 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: _____
- ☐ USGS NHD data.
- ☒ USGS 8 and 12 digit HUC maps. [05040001 –Tuscarawas, 050400010102– Pigeon Creek](#)
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: [1:24K, Akron West, OH Quad](#)
- ☒ Natural Resources Conservation Service Soil Survey. Citation: [Appendix A- NRCS Soils Report \(JD, August 2021\)](#)
- ☒ National wetlands inventory map(s). Cite name: [Figure 2- Background Environmental Data Map \(JD, August 2021\)](#)
- ☐ State/local wetland inventory map(s): _____
- ☐ FEMA/FIRM maps: _____
- ☐ 100-year Floodplain Elevation is: _____
- ☒ _____ (National Geodetic Vertical Datum of 1929)
- Photographs: ☒ Aerial (Name & Date): [Historical Aerials \(2017, 2015, 2013, 2011, 2010, 2009, 2006, 2004, 2003, 2002, 2000, 1994, 1982, 1969, 1967, 1966, 1957, and 1952\)](#)
- or ☒ Other (Name & Date): [Appendix C- Site Photographs \(JD, August 2021\)](#)
- ☐ 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.

 20 September 2021
Signature and date of
Regulatory staff member
completing PJD

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

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.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mr. Ben Weinerman		File Number: LRH-2021-662	Date: 9/20/2021
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	
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://www.usace.army.mil/CECW/Pages/reg_materials.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:

Michael Hatten, Chief, Regulatory Division, 304-399-5710
Teresa Spagna, Chief, North Branch, 304-399-5210
Lee Robinette, 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 8th 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 10-714
Cincinnati, OH 45202-3222
TEL (513) 684-7261; 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: