

Construction Notice for the North Delphos – Rockhill 138 kV Temporary Transmission Line Extensions Project



An **AEP** Company

BOUNDLESS ENERGY™

PUCO Case No. 26-0040-EL-BNR

Submitted to:
The Ohio Power Siting Board
Pursuant to Ohio Administrative Code
Section 4906-6-05

Submitted by:
AEP Ohio Transmission Company, Inc.

February 4, 2026

**CONSTRUCTION NOTICE FOR THE NORTH DELPHOS – ROCKHILL 138 KV TEMPORARY TRANSMISSION
LINE EXTENSIONS PROJECT**

CONSTRUCTION NOTICE

AEP Ohio Transmission Company, Inc.

26-0040-EL-BNR

4906-6-05 Accelerated Application Requirements

AEP Ohio Transmission Company, Inc. (the Company) provides the following information to the Ohio Power Siting Board (OPSB) in accordance with the accelerated application requirements of Ohio Administrative Code Section 4906-6-05.

4906-6-05(B) General Information

B(1) Project Description

Provide the name of the project and applicant's reference number, names and reference number(s) of resulting circuits, a brief description of the project, and why the project meets the requirements for a letter of notification or construction notice application.

The Company is proposing the North Delphos – Rockhill 138 kV Temporary Transmission Line Extensions Project (“Project”) in Lima, Allen County, Ohio. The Project involves cutting into the North Delphos – Rockhill 138 kV transmission line and constructing approximately 0.2 mile of temporary 138 kV single circuit transmission lines to serve two temporary skid substations. The Project will require new 70-foot rights-of-way (ROW), and will be located entirely on customer property. The location of the Project is shown in **Figures 1 and 2** in **Appendix A**.

The Project meets the requirements for a Construction Notification (CN) as defined by Item 1(d)(i) of Appendix A to Ohio Adm. Code Section 4906-1-01, *Application Requirement Matrix for Electric Power Transmission Lines*:

(1) New construction, extension, or relocation of single or multiple circuit electric power transmission line(s), or upgrading existing transmission or distribution line(s) for operation at a higher transmission voltage, as follows:

(d) Line(s) primarily needed to attract or meet the requirements of a specific customer or customers, as follows:

(i) The line is completely on property owned by the specific customer or the applicant.

The Project has been assigned Case No. 26-0040-EL-BNR.

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B(2) Statement of Need

If the proposed project is an electric power transmission line or gas pipeline, the applicant provide a statement explaining the need for the proposed facility.

A new customer has requested service to support an estimated initial load of 60 MW, with potential to increase to 500 MW of peak demand. In order to support the customer and to provide continuous service throughout the process, both temporary and permanent work will be necessary. The temporary work involves installing two hard taps along the existing double circuit North Delphos-Rockhill 138 kV Transmission Line, which will feed two skid substations that are required to meet the customer's initial 60MW demand.

Additional permanent facilities will be required to serve the total 500 MW of anticipated load. The Company is currently evaluating the most suitable permanent solution to serve the customer and will file separate OPSB applications, as necessary.

Failure to move forward with the proposed project will result in the inability to serve the customer's initial 60 MW load expectations and jeopardize the customer's plans for the anticipated 500 MW of peak demand. The work to be constructed under this Project is temporary and will be removed once permanent service has been established.

The need for the total 500MW of anticipated load was presented and reviewed with stakeholders at the August 5, 2025, PJM TEAC Meeting. The temporary work, the subject of this application, is not required to be submitted to PJM, as it does not impact the permanent topology of the electric grid. The Company will submit a permanent solution to PJM, once identified. The Project was not identified at the time of the Company's 2025 Long-Term Forecast Report (LTFR), but is anticipated to be included in the Company's 2026 LTFR.

B(3) Project Location

Provide the location of the project in relation to existing or proposed lines and substations shown on an area system map of sufficient scale and size to show existing and proposed transmission facilities in the project area.

The location of the Project in relation to existing transmission lines is shown on **Figure 1**, in **Appendix A**.

B(4) Alternatives Considered

Describe the alternatives considered and reasons why the proposed location or route is best suited for the proposed facility, including but not be limited to, impacts associated with socioeconomic, ecological, construction, or engineering aspects of the project.

The Project is located on customer property. Based on the customer's proposed development and existing facilities in the area, the proposed location of the North Delphos – Rockhill 138 kV Temporary

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Transmission Line Extensions Project is the most suitable location for the Project. Other alternatives would require impacting neighboring properties, as opposed to remaining entirely on the customer's property.

The Project is located completely within the customer's parcel, which was previously used for agriculture but is currently under development. The Project is not anticipated to impact cultural resources areas, streams, wetlands, or forested areas. The Project also represents the most suitable location and most appropriate solution for meeting the Company's and customer's needs.

B(5) Public Information Program

Describe its public information program to inform affected property owners and residents of the nature of the project and the proposed timeframe for project construction and restoration activities.

The Company maintains a website (<http://aeptransmission.com/ohio/>) on which an electronic copy of this CN is available. An electronic copy of the CN will be served to the public library in each political subdivision affected by this Project. The Company also retains land agents who will discuss project timelines, construction and restoration activities with affected owners and tenants.

B(6) Construction Schedule

Provide an anticipated construction schedule and proposed in-service date of the project.

Construction of the Project is planned to begin in March 2026, with one temporary skid with an anticipated in-service date of June 2026 and a second skid scheduled to enter service later in the summer. The Project is anticipated to be in-service until permanent service can be established.

B(7) Area Map

Provide a map of at least 1:24,000 scale clearly depicting the facility and proposed limits of disturbance with clearly marked streets, roads, and highways, and an aerial image.

Figure 1, in Appendix A, identifies the location of the Project area on a United States Geological Survey 1:24,000 quadrangle map (Elida). **Appendix A, Figure 2** displays the Project components on a 2025 aerial photograph.

B(8) Property Agreements

Provide a list of properties for which the applicant has obtained easements, options, and/or land use agreements necessary to construct and operate the facility and a list of the additional properties for which such agreements have not been obtained.

A list of properties required for the Project are provided in Table 1, below.

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Table 1 – Property Agreements

Property Parcel Number	Agreement Type	Easement or Option Obtained (Yes/No)
36-1200-03-002.000	Temporary	No

The easement form exhibit provided in **Appendix B** represents the minimum rights the Company would require to construct, operate, and maintain these facilities.

B(9) Technical Features

Describe the following information regarding the technical features of the project:

B(9)(a) Operating characteristics, estimated number and types of structures required, and right-of-way and/or land requirements.

Transmission Lines

The temporary transmission lines are estimated to include the following:

- Voltage: 138kV
- Conductors: 336 ACSR
- Static Wire: 7#8 Alumoweld
- Insulators: Polymer
- ROW Width: 70 feet
- Structure Type: (7) Seven wood pole / single circuit
(1) One wooden three-pole dead end

B(9)(b) Electric and Magnetic Fields

For electric power transmission lines that are within one hundred feet of an occupied residence or institution, the production of electric and magnetic fields during the operation of the proposed electric power transmission line.

No occupied residences or institutions are located within 100 feet of the Project.

B(9)(c) Project Cost

The cost estimate for the Project, which is comprised of applicable tangible and capital costs, is approximately \$975,342 using a Class 4 estimate. Per the Ohio retail tariff, the customer is responsible for 100% of the cost of the Project.

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B(10) Social and Ecological Impacts

The applicant shall describe the social and ecological impacts of the project:

B(10)(a) Land Use

Provide a brief, general description of land use within the vicinity of the proposed project, including a list of municipalities, townships, and counties affected.

The Project is mapped within American Township in Allen County. The Project vicinity is currently rural in nature and is comprised primarily of agricultural land used for row crops, and lesser amounts of fallow fields, scattered woodlots, landscaped areas, and scattered residences with denser areas of development southeast of the Project area along West Blue Lick Road and in the City of Lima, to the south and west of the Project area. The Project location and vicinity have historically been agricultural land with scattered woodlots and transmission ROWs, which is undergoing a change to industrial land due to the customer development. An aerial photograph of the Project vicinity is provided as **Figure 2**. No tree clearing is anticipated for the Project.

B(10)(b) Agricultural Land

Provide the acreage and a general description of all agricultural land, and separately all agricultural district land existing at least sixty days prior to submission of the application within the potential disturbance area of the project.

The Project area was previously characterized by agricultural land use with low density residential land uses dispersed throughout. The dominant agricultural use in the general vicinity appears to be row crops (i.e. soybeans and corn). Large, open agricultural fields are present in the Project vicinity along all major road corridors including North Cole Street and West Blue Lick Road. The Project area is undergoing development from the customer and no agricultural fields are present.

Based on data received from the Allen County Auditor's office on January 8, 2026, the parcel impacted by the Project is currently listed as an Agricultural District Parcel, however, as this parcel was recently purchased and is being developed by the customer, the land will no longer be registered with the Agricultural District program. Therefore, the Project area is not anticipated to impact agricultural lands.

B(10)(c) Archaeological and Cultural Resources

Provide a description of the applicant's investigation concerning the presence or absence of significant archaeological or cultural resources that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

The Company's consultant completed a Cultural Resource Management Review Letter in January 2026. The Company's consultant did not identify any archaeological sites or historic structures. The

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Company’s consultant notes that grading and development preparation activities have been initiated and are ongoing within this area by a developer. The Company’s consultant recommends that no further cultural resource work is necessary for the area, it is disturbed and there are no significant known resources within or near the Project area. The results of the coordination with the State Historic Preservation Office will be provided to OPSB once it has been received.

B(10)(d) Local, State, and Federal Agency Correspondence

Provide a list of the local, state, and federal governmental agencies known to have requirements that must be met in connection with the construction of the project, and a list of documents that have been or are being filed with those agencies in connection with siting and constructing the project.

A summary of anticipated permits and authorizations for the Project is provided in Table 2, below. There are no other known local, state, or federal requirements that must be met prior to commencement of the Project.

Table 2 – Anticipated Permits

Permit/Authorization/Coordination	Agency	Date
Storm Water Pollution Prevention Plan	Ohio Environmental Protection Agency	Anticipated prior to construction
	Allen County	
Archaeology/Architectural	Ohio Historic Preservation Office	Submitted January 2026
Threatened and Endangered Species	United States Fish and Wildlife Service	Consultation complete 12/2/25 (Appendix C)
Threatened and Endangered Species	Ohio Department of Natural Resources	Consultation complete 12/3/25 (Appendix C)
Floodplain	Allen County	Anticipated prior to construction

B(10)(e) Threatened, Endangered, and Rare Species

Provide a description of the applicant's investigation concerning the presence or absence of federal and state designated species (including endangered species, threatened species, rare species, species proposed for listing, species under review for listing, and species of special interest) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

The customer has coordinated their proposed development, which encompasses the extent of the Project area, with the United States Fish and Wildlife Service (USFWS) and the Ohio Department of Natural

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Resources (ODNR) Ohio Natural Heritage Program (ONHP) and Division of Wildlife (DOW), to obtain environmental review of the Project area for potential impacts to state and/or federally protected species. Responses from USFWS and ODNR were received on December 2, 2025 and December 3, 2025, respectively. Copies of the agencies' responses are presented in **Appendix C**. The review area submitted by the customer to regulatory agencies encompasses the Project area and the review occurred within the last two years, therefore, agency responses remain applicable. A summary of listed species identified through the customer's coordination with USFWS and ODNR as it applies to this Project area, is provided below.

According to the response letter received from the USFWS and ODNR, four listed bat species, the northern long-eared bat (*Myotis septentrionalis*), Indiana bat (*Myotis sodalists*), little brown bat (*Myotis lucifugus*), and tricolored bat (*Perimyotis subflavus*) were identified as being within range of the Project area. Both the USFWS and ODNR recommended seasonal tree clearing recommendations (between October 1 and March 31) to avoid adverse effects to these species. Additionally, the ODNR recommended that, if potential or known hibernacula are identified, a 0.25 mile buffer for tree clearing and a 5 mile buffer for subsurface disturbance of bedrock materials be maintained around hibernacula entrances. As the Project does not include tree clearing activities and will not require blasting or subsurface disturbance to bedrock materials, impacts to these bat species are not anticipated.

The USFWS recommends measures to maintain habitat and avoid impacts to the monarch butterfly (*Danaus plexippus*), including revegetating disturbed areas with native plant species and limiting mowing monarch habitat from March 15 to August 31. As the Project area is associated with property being developed by the customer, habitat for this species does not exist and no impacts to the monarch butterfly are anticipated.

Additionally, the ODNR identified several aquatic species including fish and mussels with ranges overlapping the Project area. These species include clubshell (*Pleurobema clava*), the northern riffleshell (*Epioblasma torulosa rangiana*), pondhorn (*Uniomerus tetralasmus*), pirate perch (*Aphredoderus sayanus*), and greater redhorse (*Moxostoma valenciennesi*). No impacts are anticipated to any fish and/or mussel species as no streams were identified within the Project area.

Lastly, the ODNR commented that the Project is within range of one bird species, northern harrier (*Circus hudsonis*). Based on existing site conditions, potential nesting habitat for the northern harrier was not identified due to the existing land use, actively disturbed areas, and developed urban and landscaped areas related to the customer's development. Therefore, the northern harrier is not anticipated to be impacted by the Project. No seasonal restrictions for construction are applicable.

Based on the nature of the proposed Project activities and habitat characteristics of the surrounding vicinity, construction impacts to protected species are not anticipated.

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B(10)(f) Areas of Ecological Concern

Provide a description of the applicant's investigation concerning the presence or absence of areas of ecological concern (including national and state forests and parks, floodplains, wetlands, designated or proposed wilderness areas, national and state wild and scenic rivers, wildlife areas, wildlife refuges, wildlife management areas, and wildlife sanctuaries) that may be located within the potential disturbance area of the project, a statement of the findings of the investigation, and a copy of any document produced as a result of the investigation.

The customer's consultant conducted a wetland delineation in March 2024 in support of their proposed development, which encompasses the Project area. While the delineation identified wetlands in the northern portion of their overall development site, no wetlands or streams were identified in the Project area. Therefore, construction activities associated with this Project are not expected to result in impacts to wetlands or streams, as none occur in the Project area. A Jurisdictional Determination from the United States Army Corps of Engineers covering the Project area is provided in **Appendix D**.

Based on a review of the Protected areas Database of the United States as well as the Conservation Easement Database, there are no state or national parks, forests, wildlife areas or mapped conservation easements in the vicinity of the Project.

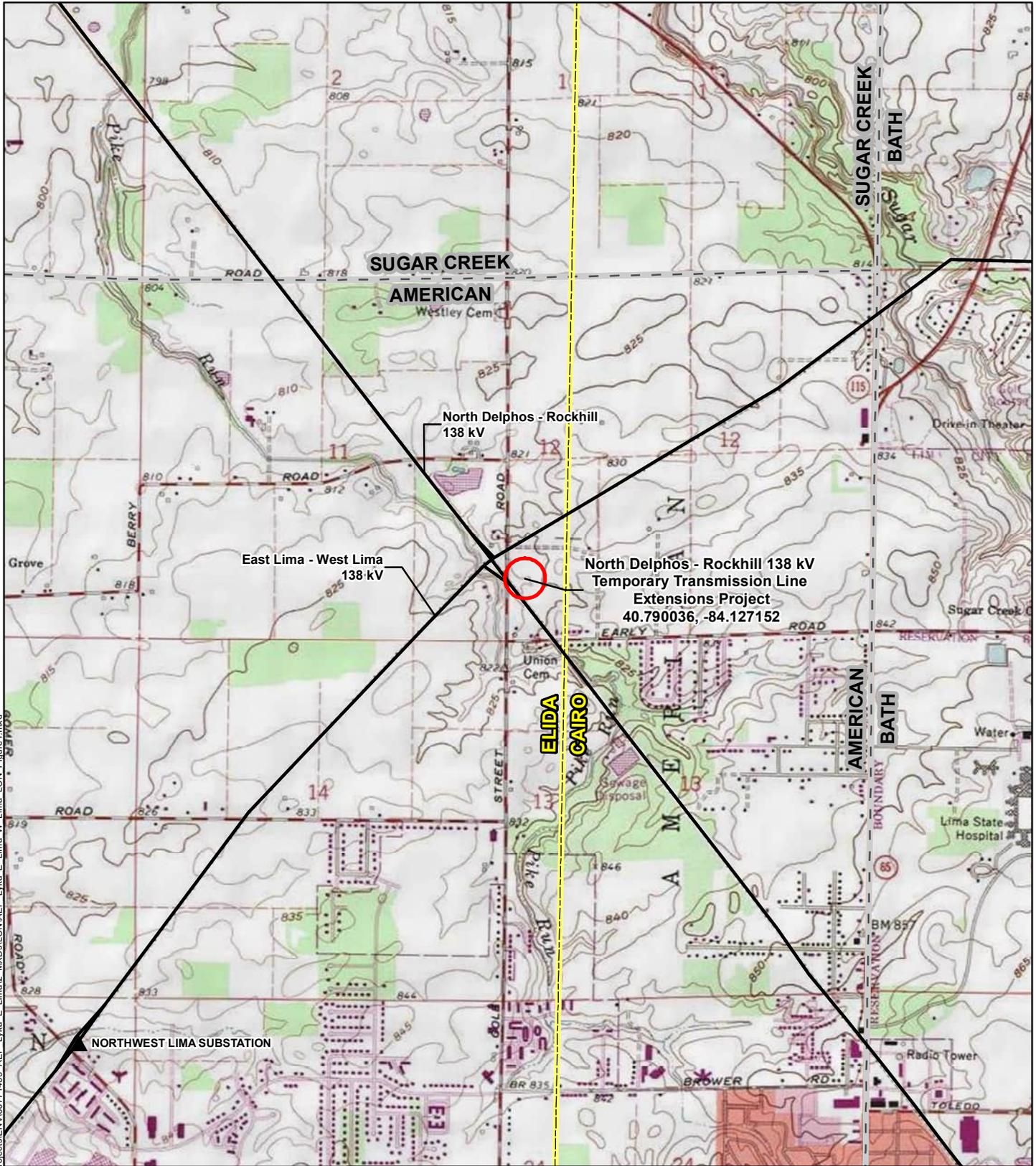
The FEMA Flood Insurance Rate Map (FIRM) was reviewed to identify any floodplains/flood hazard areas that have been mapped within the Project area (specifically, map number 39003C0192E). Based on this mapping, FEMA-designated 100-year floodplain associated with Pike Run overlaps the Project area and some of the proposed structures will be located within the floodplain areas. Local floodplain permitting will be coordinated with the relevant agencies as applicable prior to construction.

B(10)(g) Unusual Conditions

Provide any known additional information that will describe any unusual conditions resulting in significant environmental, social, health, or safety impacts.

To the best of the Company's knowledge, no unusual conditions exist that would result in significant environmental, social, health, or safety impacts.

Appendix A Project Maps



Document Path: X:\DCS\GIS\ArcMap_GeoDB_Projects\EN\60771453_AEP_Lyke_E_Lima2_MXD\EN\AEP_Lyke_E_Lima_W_Lima_LON_Figure1.mxd

- ▲ Existing Substation
- Existing Transmission Line
- Project Area
- ▭ Township Boundary
- ▭ USGS 7.5' Topographical Quadrangle

Data Sources: AEP (2025),
 ESRI Topographic Map (2013),
 USGS 7.5 Topographic
 Quadrangle (Elida)

Coordinate System:
 State Plane Ohio North
 NAD 83

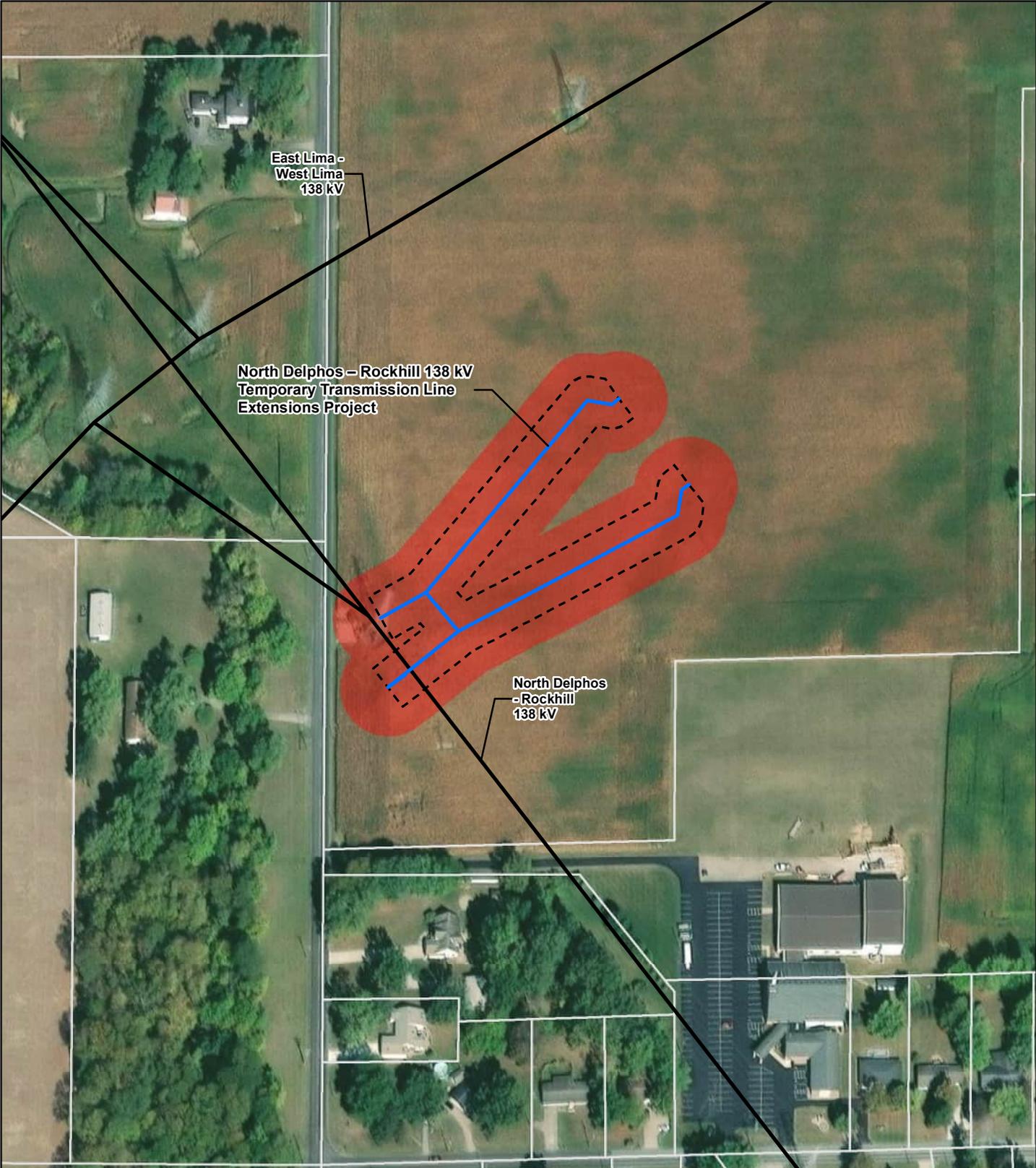
January 28, 2026



FIGURE 1
TOPOGRAPHIC OVERVIEW

North Delphos – Rockhill 138 kV
 Temporary Transmission Line
 Extensions Project

0 2,000
 Feet



East Lima -
West Lima
138 kV

North Delphos - Rockhill 138 kV
Temporary Transmission Line
Extensions Project

North Delphos
- Rockhill
138 kV

-  Proposed Centerline
-  Existing Transmission Line
-  Proposed 70' Right of Way
-  Proposed Route
-  Parcels

Data Sources: AEP (2025),
ESRI World Imagery (2025)

Coordinate System:
State Plane Ohio North
NAD 83

January 28, 2026



PROJECT LOCATION

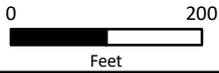


ALLEN COUNTY, OHIO

FIGURE 2
AERIAL MAP



North Delphos - Rockhill 138 kV
Temporary Transmission Line
Extensions Project



Appendix B Easement Form

Line Name:

Line No.:

TEMPORARY EASEMENT AND RIGHT OF WAY

On this _____ day of _____, 2025, in consideration of Ten and NO/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the covenants hereinafter set forth, _____, whose address is _____ ("Grantor"), whether one or more persons, hereby grants, sells, conveys, and warrants to **Ohio Power Company**, a(n) Ohio corporation, a unit of American Electric Power, whose principal business address is 1 Riverside Plaza, Columbus, Ohio 43215, ("AEP") and its successors, assigns, lessees and tenants a temporary easement and right of way ("Easement"), for electric transmission, distribution, and communication lines and appurtenant equipment and fixtures, being, in, on, over, under, through and across the following described lands of the Grantor, situated in the Township of Plain, County of _____, and State of Ohio, and known as being in _____ Township, and Section _____, containing _____ acres of land, more or less, per assessor.

Grantor(s) claims title by recorded on _____ County Recorder's Office.

Auditor/Key/Tax Number:

The Easement Area is more fully described and depicted on Exhibit "A", a copy of which is attached hereto and made a part hereof ("Easement Area").

THIS GRANT IS SUBJECT TO THE FOLLOWING CONDITIONS:

This temporary easement is being granted for the sole purpose of installing an electric transmission line. Upon completion of the project AEP shall remove its facilities from the temporary Easement Area and this easement and right of way shall automatically cease and terminate and the rights herein granted shall revert automatically to Grantor, its heirs and assigns.

AEP agrees to repair or pay the Grantor for actual damages sustained by Grantor to crops, fences, gates, irrigation and drainage systems, drives or lawns when such damage arises out of AEP's exercise of the rights herein granted, and upon removal of its' facilities to restore the property to a condition similar to when this Easement was granted.

AEP shall have the use of these rights for a period of 24 months, commencing on _____, and unless terminated prior to the expiration of said term, AEP, if necessary, shall have the right to continue to occupy said premises under the same terms herein contained on a month to month basis until terminated by AEP by giving Grantor thirty (30) days written notice.

GRANTOR FURTHER GRANTS AEP THE FOLLOWING RIGHTS:

The right, now or in the future, to construct, reconstruct, operate, maintain, alter, improve, extend, inspect, patrol, protect, repair, remove, replace, upgrade and relocate within the Easement Area, poles, towers, and structures, made of wood, metal, concrete or other materials, and crossarms, guys, anchors, grounding systems, and all other appurtenant equipment and fixtures, and to string

conductors, wires and cables; together with the right to add to said facilities from time to time, and the right to do anything necessary, useful or convenient for the enjoyment of the Easement herein granted.

The right, in AEP's discretion, now or in the future, to cut down, trim, remove, and otherwise control, using herbicides or tree growth regulators or other means, any and all trees, overhanging branches, vegetation or brush situated within the Easement Area. AEP shall also have the right to cut down, trim or remove trees situated on lands of Grantor which adjoin the Easement Area when in the opinion of AEP those trees may endanger the safety of, or interfere with the construction, operation or maintenance of AEP's facilities or ingress or egress to, from or along the Easement Area.

The right of unobstructed ingress and egress, at any and all times, over, across and along and upon the Easement Area, and across the adjoining lands of Grantor as may be necessary for access to and from the Easement Area for the above referenced purposes.

This instrument contains the complete agreement, expressed or implied between the parties herein and shall inure to the benefit of and be binding on their respective successors, assigns, heirs, executors, administrators, lessees, tenants, and licensees.

This Easement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

Any remaining space on this page left intentionally blank. See next page for signatures.

IN WITNESS WHEREOF, the Grantor has executed this Easement effective the day, month and year first above written.

GRANTOR

State of §

County of §

This instrument was acknowledged before me on the _____ day of _____, 2026, by .

Notary Public

Print Name: _____

My Commission Expires: _____

IN WITNESS WHEREOF, the Grantor has executed this Easement effective the day, month and year first above written.

GRANTOR

State of §

County of §

This instrument was acknowledged before me on the _____ day of _____, 2026, by .

Notary Public

Print Name: _____

My Commission Expires: _____

This instrument prepared by Marland L. Turner, Senior Counsel - Real Estate, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215 for and on behalf of Ohio Power Company, a unit of American Electric Power.

Appendix C Agency Correspondence



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / FAX (614) 416-8994



December 2, 2025

Project Code: 2026-0009172

Dear Ms. Queen Darby:

The U.S. Fish and Wildlife Service (Service) has received your recent correspondence requesting information about the subject proposal. We offer the following comments and recommendations to assist you in minimizing and avoiding adverse impacts to threatened, endangered, and proposed species pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq), as amended (ESA).

Federally Threatened and Endangered Species: The endangered Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*) occur throughout the State of Ohio. The Indiana bat and northern long-eared bat may be found wherever suitable habitat occurs unless a presence/absence survey has been performed to document absence. Suitable summer habitat for Indiana bats and northern long-eared bats consists of a wide variety of forested/wooded habitats where they roost, forage, and breed that may also include adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, woodlots, fallow fields, and pastures. Roost trees for both species include live and standing dead trees ≥ 3 inches diameter at breast height (dbh) that have any exfoliating bark, cracks, crevices, hollows and/or cavities. These roost trees may be located in forested habitats as well as linear features such as fencerows, riparian forests, and other wooded corridors. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet of other forested/wooded habitat. Bridges and culverts have also been used as roosts. Additionally, northern long-eared bats have been observed roosting in other human-made structures, such as buildings, barns, and bat houses; therefore, these structures should also be considered potential summer habitat. In the winter, Indiana bats and northern long-eared bats hibernate in caves, rock crevices and abandoned mines.

Seasonal Restrictions for Federally Listed Bat Species: Should the proposed project site contain trees ≥ 3 inches dbh, we recommend avoiding tree removal wherever possible. If any caves or abandoned mines may be disturbed, further coordination with this office is requested to determine if fall or spring portal surveys are warranted. If no caves or abandoned mines are present and trees ≥ 3 inches dbh cannot be avoided, we recommend removal of any trees ≥ 3 inches dbh only occur between October 1 and March 31. If bridges or culverts will be impacted, we recommend reviewing Appendix K in the most recent "Range-Wide Indiana Bat & Northern Long-Eared Bat Survey Guidelines" to determine if the bridge/culvert may be suitable roost habitat. We recommend impacts to suitable bridges and culverts only occur from October 1 and March 31. These seasonal restrictions are recommended to avoid adverse effects to Indiana bats and northern long-eared bats.

If implementation of this seasonal restriction on tree cutting and impacting suitable bridge/culvert roosts is not possible, a summer presence/absence survey may be conducted for Indiana bats and northern long-eared bats. If Indiana bats and northern long-eared bats are not detected during the survey, then tree clearing and impacts to bridge/culvert roosts may occur at any time of the year. Surveys must be conducted by an approved surveyor and be designed and conducted in coordination with the Ohio Field Office. Surveyors must have a valid federal permit. Please note that in Ohio summer mist net surveys may only be conducted between June 1 and August 15.

Federally Proposed Species: On September 14, 2022, the Service proposed to list the tricolored bat (*Perimyotis subflavus*) as endangered under the ESA. The bat faces extinction due to the impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bats across the continent. During spring, summer, and fall, this species roosts primarily among leaf clusters of live or recently dead trees, emerging at dusk to hunt for insects over waterways and forest edges. While white-nose syndrome is by far the most serious threat to the tricolored bat, other threats now have an increased significance due to the dramatic decline in the species' population. These threats include disturbance to bats in roosting, foraging, commuting, and over-wintering habitats. Mortality due to collision with wind turbines, especially during migration, has also been documented across their range. Conservation measures for the Indiana bat and northern long-eared bat will also help to conserve the tricolored bat.

On December 12, 2024 the Service proposed to list the monarch butterfly (*Danaus plexippus plexippus*) as threatened under the ESA. Monarch butterflies are found throughout Ohio and some populations migrate vast distances across multiple generations each year. Many monarchs fly between the U.S., Mexico and Canada – a journey of over 3,000 miles. Monarch populations have declined significantly in recent years. Threats include habitat loss – particularly the loss of milkweed, the monarch caterpillar's sole food source – and mortality resulting from pesticide use. The Service recommends the following actions to maintain habitat and avoid impacts to monarchs in Ohio: revegetate disturbed areas with native plant species including nectar-producing plants and milkweed endemic to the area; limit mowing monarch habitat from March 15 to August 31 when monarchs are breeding and from September 1 to October 31 when large numbers of monarchs are migrating; and avoid the use of pesticides and herbicides in and near monarch habitat.

Section 7 Coordination: If there is a federal nexus for the project (e.g., federal funding provided, federal permits required to construct), then no tree clearing should occur on any portion of the project area until consultation under section 7 of the ESA, between the Service and the federal action agency, is completed. We recommend the federal action agency submit a determination of effects to this office, relative to the Indiana bat and northern long-eared bat, for our review and concurrence. This letter provides technical assistance only and does not serve as a completed section 7 consultation document.

Stream and Wetland Avoidance: Over 90% of the wetlands in Ohio have been drained, filled, or modified by human activities, thus is it important to conserve the functions and values of the remaining wetlands in Ohio (https://epa.ohio.gov/portals/47/facts/ohio_wetlands.pdf). We recommend avoiding and minimizing project impacts to all wetland habitats (e.g., forests, streams, vernal pools) to the maximum extent possible in order to benefit water quality and fish and wildlife habitat. Additionally, natural buffers around streams and wetlands should be preserved to enhance beneficial functions. If streams or wetlands will be impacted, the U.S. Army Corps of Engineers should be contacted to determine whether a Clean Water Act section 404 permit is required. Best

management practices should be used to minimize erosion, especially on slopes. Disturbed areas should be mulched and revegetated with native plant species. In addition, prevention of non-native, invasive plant establishment is critical in maintaining high quality habitats.

Due to the project type, size, and location, we do not anticipate adverse effects to any other federally endangered, threatened, or proposed species, or proposed or designated critical habitat. Should the project design change, or additional information on listed or proposed species or their critical habitat become available, or if new information reveals effects of the action that were not previously considered, coordination with the Service should be initiated to assess any potential impacts.

Thank you for your efforts to conserve listed species and sensitive habitats in Ohio. We recommend coordinating with the Ohio Department of Natural Resources due to the potential for the proposed project to affect state listed species and/or state lands. Contact Mike Pettegrew, Environmental Services Administrator, at (614) 265-6387 or at mike.pettegrew@dnr.ohio.gov.

If you have questions, or if we can be of further assistance in this matter, please contact our office at (614) 416-8993 or ohio@fws.gov.

Sincerely,



Erin Knoll
Field Office Supervisor

cc: Matthew.Stooksbury@dnr.ohio.gov
Eileen.Wyza@dnr.ohio.gov



Office of Real Estate & Land Management

Tara Paciorek - Chief
2045 Morse Road – E-2
Columbus, Ohio 43229-6693

December 3, 2025

Melissa Queen Darby
EMH&T
5500 New Albany Road
Columbus, Ohio 43054

Re: 25-1692_Bosc

Project: The proposed project involves the development of a data center facility to be constructed within the approximately 358-acre project site.

Location: The proposed project is located in American Township, Allen County, Ohio.

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state, or federal agency nor relieve the applicant of the obligation to comply with any local, state, or federal laws or regulations.

Natural Heritage Database: A review of the Ohio Natural Heritage Database indicates there are no records of state or federally listed plants or animals within one mile of the specified project area. Records searched date from 1980.

Please note that Ohio has not been completely surveyed and we rely on receiving information from many sources. Therefore, a lack of records for any particular area is not a statement that rare species or unique features are absent from that area.

Fish and Wildlife: The Division of Wildlife (DOW) has the following comments.

The DOW recommends that impacts to streams, wetlands and other water resources be avoided and minimized to the fullest extent possible, and that Best Management Practices be utilized to minimize erosion and sedimentation.

The project is within the vicinity of records for the little brown bat (*Myotis lucifugus*), a state endangered species. Because presence of state endangered bat species has been established in the area, summer tree clearing is not recommended, and additional summer surveys would not constitute

presence/absence in the area. However, limited summer tree clearing inside this buffer may be acceptable after further consultation with DOW (contact Eileen Wyza at Eileen.Wyza@dnr.ohio.gov).

In addition, the entire state of Ohio is within the range of the Indiana bat (*Myotis sodalis*), a state endangered and federally endangered species, the northern long-eared bat (*Myotis septentrionalis*), a state endangered and federally endangered species, the little brown bat (*Myotis lucifugus*), a state endangered species, and the tricolored bat (*Perimyotis subflavus*), a state endangered species. During the spring and summer (April 1 through September 30), these bat species predominately roost in trees behind loose, exfoliating bark, in crevices and cavities, or in clusters of dead leaves on tree limbs. However, these species are also dependent on the forest structure surrounding roost trees. The DOW recommends tree and/or tree limb clearing only occur from October 1 through March 31, conserving trees with loose, shaggy bark and/or crevices, holes, or cavities, as well as trees with a Diameter Breast Height (DBH) $\geq 20''$ if possible.

For every project, the DOW also recommends that a winter bat habitat assessment is conducted to determine if potential hibernacula are present within the project area. This is to limit possible disturbances that seasonal tree clearing and/or subsurface work (e.g., trenching, blasting, etc.) may cause to hibernating bats. Potential hibernacula include rocky outcroppings, caves, and underground mines. Direction on how to conduct winter habitat assessments can be found in the joint guidance [OHIO DIVISION OF WILDLIFE AND U.S. FISH AND WILDLIFE SERVICE \(OH-FIELD OFFICE\) JOINT GUIDANCE FOR BAT SURVEYS](#). If a potential or known hibernaculum is found, the DOW recommends a 0.25-mile permanent tree clearing buffer around the hibernaculum entrance. Limited summer or winter tree clearing may be acceptable after consultation with the DOW. If a habitat assessment for projects involving subsurface disturbance finds that a potential hibernaculum is present within 5 miles of the project area, please consult with Eileen Wyza for project recommendations. If no tree clearing or subsurface impacts to a hibernaculum are proposed, this project is not likely to impact these species.

The project is within the range of the clubshell (*Pleurobema clava*), a state endangered and federally endangered mussel, the northern riffleshell (*Epioblasma torulosa rangiana*), a state endangered and federally endangered mussel, and the pondhorn (*Uniomerus tetralasmus*), a state threatened mussel. Due to the location, and that there is no in-water work proposed in a perennial stream, this project is not likely to impact these species.

The project is within the range of the pirate perch (*Aphredoderus sayanus*), a state endangered fish, and the greater redhorse (*Moxostoma valenciennesi*), a state threatened fish. Due to the location, and that there is no in-water work proposed in a perennial stream, this project is not likely to impact this species.

The project is within the range of the northern harrier (*Circus hudsonius*), a state endangered bird. This is a common migrant and winter species. Nesters are much rarer, although they occasionally breed in large marshes and grasslands. Harriers often nest in loose colonies. The female builds a nest out of sticks on the ground, often on top of a mound. Harriers hunt over grasslands. If this type of habitat will be impacted, construction should be avoided in this habitat during the species' nesting period of April 15 through July 31. If this habitat will not be impacted, this project is not likely to impact this species.

Due to the potential for impacts to federally listed species, as well as to state-listed species, we recommend that this project be coordinated with the US Fish & Wildlife Service.

Water Resources: The Division of Water Resources has not conducted a project specific review and/or comments, however, the guidance provided below should be reviewed by the Environmental Review applicant for applicability on this project and subsequent compliance.

If the subject project is in a floodplain regulated by the Federal Emergency Management Agency (FEMA), the [local floodplain administrator](#) should be contacted concerning the possible need for any floodplain permits or approvals. The FEMA National Flood Hazard Layer (NHFL) Viewer [website](#) can be utilized to see if the project is in a FEMA regulated floodplain. If the project is not in a FEMA regulated floodplain, then no further action is required.

Ohio Revised Code (ORC) Section 1521.16 mandates that any owner of a property or a facility that has the capacity of withdrawing 100,000 gallons per day (gpd) of water from groundwater, surface water, or both must register with the Division of Water Resources' [Water Withdrawal Facilities Registration \(WWFR\) Program](#) and report their withdrawals annually.

Additional coordination may be required depending on the location of the withdrawal and consumptive use. Restrictions or permitting may be required for:

- New or increased consumptive use of water averaging 2 million gallons per day (mgd) within 30 days within the Ohio River basin.
- New or increased withdrawal and consumptive water use in the Lake Erie watershed averaging 1 million gallons per day (mgd) or more in 90 days.
- New or increased water withdrawal directly from Lake Erie averaging 2.5 million gallons per day (mgd) or more in 90 days.
- Diversion or movement of water across the Ohio River and Lake Erie basin divide.

If the project does not involve activities that are subject to water withdrawal regulatory requirements as described above, then no further action is required. For more information, visit the [Water Inventory & Planning website](#).

ODNR appreciates the opportunity to provide these comments. Please contact Mike Pettegrew (Environmental Services Administrator) at mike.pettegrew@dnr.ohio.gov if you have questions about these comments or need additional information.

Expiration: *ODNR Environmental Reviews are typically valid for 2 years from the issuance date. If the scope of work, project area, construction limits, and/or anticipated impacts to natural resources have changed significantly from the original project submittal, then a new Environmental Review request should be submitted.*

Appendix D Jurisdictional Determination



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

30 October 2024

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination and Delineation Verification for
Department of the Army Processing No. LRB-2024-00409

EMH&T - c/o Bistrozzi, LLC
Attn: Rob Milligan
5500 New Albany Road
Columbus, Ohio 43054
Email: rmilligan@emht.com

Dear Mr. Milligan:

I have reviewed the submitted approved Jurisdictional Determination (JD) request by EMH&T on your behalf, for a 358-acre review area, north of West Bluelick Road, east of North Cole Street, and west of State Route 65, in American Township and Sugar Creek Townships, Allen County, Ohio (Latitude:40.792718 N, Longitude: - 84.123142 W) (Sheets 1-2 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-2024-00409 Wetlands A, B, C, D, and E. 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

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination and Delineation Verification for Department of the Army Processing No. *LRB-2024-00409*

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

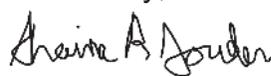
In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **December 28, 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 EMH&T and Ohio Environmental Protection Agency.

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

30 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-2024-00409 (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.

CELRB-ORR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), *LRB-2024-00409*

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-2024-00409 Wetland A, 1.86-acres, Palustrine Forested, non-WOTUS, non-jurisdictional.*
 - ii. *LRB-2024-00409 Wetland B, 0.29-acre, Palustrine Forested, non-WOTUS, non-jurisdictional.*
 - iii. *LRB-2024-00409 Wetland C, 0.21-acre, Palustrine Forested, non-WOTUS, non-jurisdictional.*
 - iv. *LRB-2024-00409 Wetland D, 0.03-acre, Palustrine Forested, non-WOTUS, non-jurisdictional.*
 - v. *LRB-2024-00409 Wetland E, 0.01-acre, Palustrine Forested, non-WOTUS, 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)

CELRB-ORR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), LRB-2024-00409

3. REVIEW AREA. *An approximate 358-acre area located north of W. Bluelick Road, east of North Cole Street, and west of State Route 65, in American Township and Sugar Creek Townships, Allen County, Ohio (Latitude:40.792718 N, Longitude: - 84.123142 W). The review area consists of primarily active agricultural land with a forested area in the northern portion. See attached map sheets 1-3 of 3.*

The review area was delineated by EMH&T on 20&21-March-2024.

U.S. Army Corps of Engineers (USACE) staff visited the review area on 15-August-2024.

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 within the review area were determined to be connected to a TNW, interstate water, or territorial seas.*⁶
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. *N/A – none of the aquatic resources within the review area were determined to have a flowpath to a TNW, interstate water, or 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

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.

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 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.*

⁹ 51 FR 41217, November 13, 1986.

- 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 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*. *N/A.*
- 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).
- i. *LRB-2024-00409 Wetlands A, B, C, D, and E are wetlands in the northern portion of the review area. Wetlands A, B, and C are Palustrine forested (PFO) in type. Wetlands D and E are Palustrine emergent (PEM) and occur in agricultural fields. Wetlands A, B, C, D, and E were determined to not have a continuous surface connection with a TNW, the territorial seas, interstate water, jurisdictional relatively permanent impoundment, or jurisdictional tributary and do not meet the definition of a paragraph (a)(4) adjacent wetland, or any other of the waters identified in Item 7 above. Therefore, Wetlands A, B, C, D, and E are not waters of the United States as supported by the following:*

- *Wetlands A (1.86-acres), B (0.29-acre), C (0.21-acre), D (0.03-acre), and E (0.01-acre) meet the definition of a wetland as described in 33CFR328.3. Wetlands A, B, C, D, and E 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 Relatively Permanent Water (RPW) to the review area is Sugar Creek located approximately 2300 linear feet at its closest location (from the northeast corner of the review area), as measured on a U.S. Geological Survey (USGS) topographic map.*
 - *Wetland A is approximately 2600 linear feet to the southwest of Sugar Creek.*
 - *Wetland B is approximately 3300 linear feet to the southwest of Sugar Creek.*
 - *Wetland C is approximately 3100 linear feet to the southwest of Sugar Creek.*
 - *Wetland D is approximately 3600 linear feet to the southwest of Sugar Creek.*
 - *Wetland E is approximately 3400 linear feet to the southwest of Sugar Creek.*
- *The submitted delineation report describes Wetlands A, B, and C as being forested wetlands located in a depression with no observable, continuous surface connection any other surface water. Further, the land around the wetlands was described to be upland forest and agricultural field with no wetland characteristics noted, and no evidence of continuous surface connections between Wetlands A, B, and C to an relatively permanent water (RPW). Wetlands D and E were not documented in the submitted delineation report.*
- *During a 15-August-2024 USACE site visit, USACE staff walked the boundaries of Wetlands A, B, and C determining that they were accurate as mapped and described. Additional wetlands were observed, and additional data was collected by USACE staff in the central-north portion of the review area. These areas were added to the maps as Wetlands D and E. No continuous surface connections were observed to any other waters. A new aquatic resource delineation map including Wetlands D and E was provided by the consultant on 18-September-2024.*
- *A review of USGS topographic maps shows no wetlands within the review area.*
- *On aerial imagery, saturation can be observed at the location of Wetlands D and E and one other area south of them. The additional*

area of saturation was determined to be upland based on the submitted delineation report and USACE site visit; no hydrology indicators were present during the site visit.

- *The USGS National Hydrologic Data (NHD) does not show any waters within the review area. Sugar Creek is located to the northwest and is the nearest water to the review area as shown on the NHD map.*
- *USGS StreamStats shows drainage from the forested area that contains Wetlands A, B, and C to the northwest toward Sugar Creek. However, the area has been highly manipulated by agriculture and none of the other resources, submitted delineation report, or USACE site visit resulted in any observations of streams or other continuous surface connections at this location.*

No drainage was shown near the location of Wetlands D and E. Other drainages were shown on the southern portion of the review area. No waters were documented or observed at these locations from the evaluation of in-office resources, the submitted delineation report, or the USACE site visit.

- *A review of the U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) Web Soil Survey shows Wetlands A, B, and C mapped with soils labeled AkA – Alvada loam, 0-1% slopes with a hydric rating of 90. Wetlands D and E are mapped as WeA – Westland-Rensselaer complex, 0-1% slopes with a hydric rating of 91 and GaB – Gallman loam, 0-2% slopes with a hydric rating of 0. The soil type of AkA at the locations of Wetlands A, B, and C indicate that the soils are hydric and wetlands can form in these areas. The soil types at the locations of Wetland D and E indicate that the soil types are hydric and non-hydric, but the area has been extensively modified by agriculture and altered the soils. The soil types and soil survey do not indicate any surface connections.*
- *A review of the U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) maps show PFO1A ([P] Palustrine, [FO] forested, [1] broad-leaved deciduous, [A] temporary flooded) wetlands at the location of Wetlands A, B, and C, but no other waters within or near the review area*
- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(1) TNWs. Wetlands A, B, C, D, and E 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,*
- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(2) interstate waters. Wetlands A, B, C, D, and E do not cross or serve as a state line.*

- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(3) other waters. Wetland D and F are not a lake or pond that meets the interstate/foreign commerce nexus test post-2001 SWANCC.*
- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(4) impoundments (i.e., is not a natural, man-altered, or man-made water body that flows directly or indirectly into (a)(1) water).*
- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(5) tributaries (i.e. is not a relative permanent tributary that flows to a paragraph (a)(1) or (a)(2) water).*
- *Wetlands A, B, C, D, and E do not meet the definition of a paragraph (a)(6) the territorial seas ((i.e., is 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).*

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: 17-June-2024, 17-September-2024; Field Evaluation/Determination: 15-August-2024.*
- b. *Submitted Delineation Report: "Project Bosc, 358-acre study area, north of W. Bluelick Road, east of N. Cole Street, and West of State Route 65, in American Township and Sugar Township, Allen County, Ohio – Investigation of Waters of the U.S.," dated April 9, 2024. Prepared for Bistrozzi LLC. Prepared by EMH&T.*
 - i. *Some changes were requested to the maps during the 15-August-2024 site visit. The report is acceptable with the updated map received on 18-September-2024. See attached sheets 1-3 of 3 for final delineation of aquatic resources.*
- c. *Photography:*
 - i. *Aerial/Oblique Imagery: Connect Explorer - <https://explorer.pictometry.com/> - oblique imagery dates 15&16-April-2024; GoogleEarth aeriels dated May 2018, February 2020, March 2021, June 2022, and September 2022.*
 - ii. *Photographs provided in the submitted delineation report dated 11-April-2024, and photographs in the addendum letter dated 7-August-2024.*

CELRB-ORR

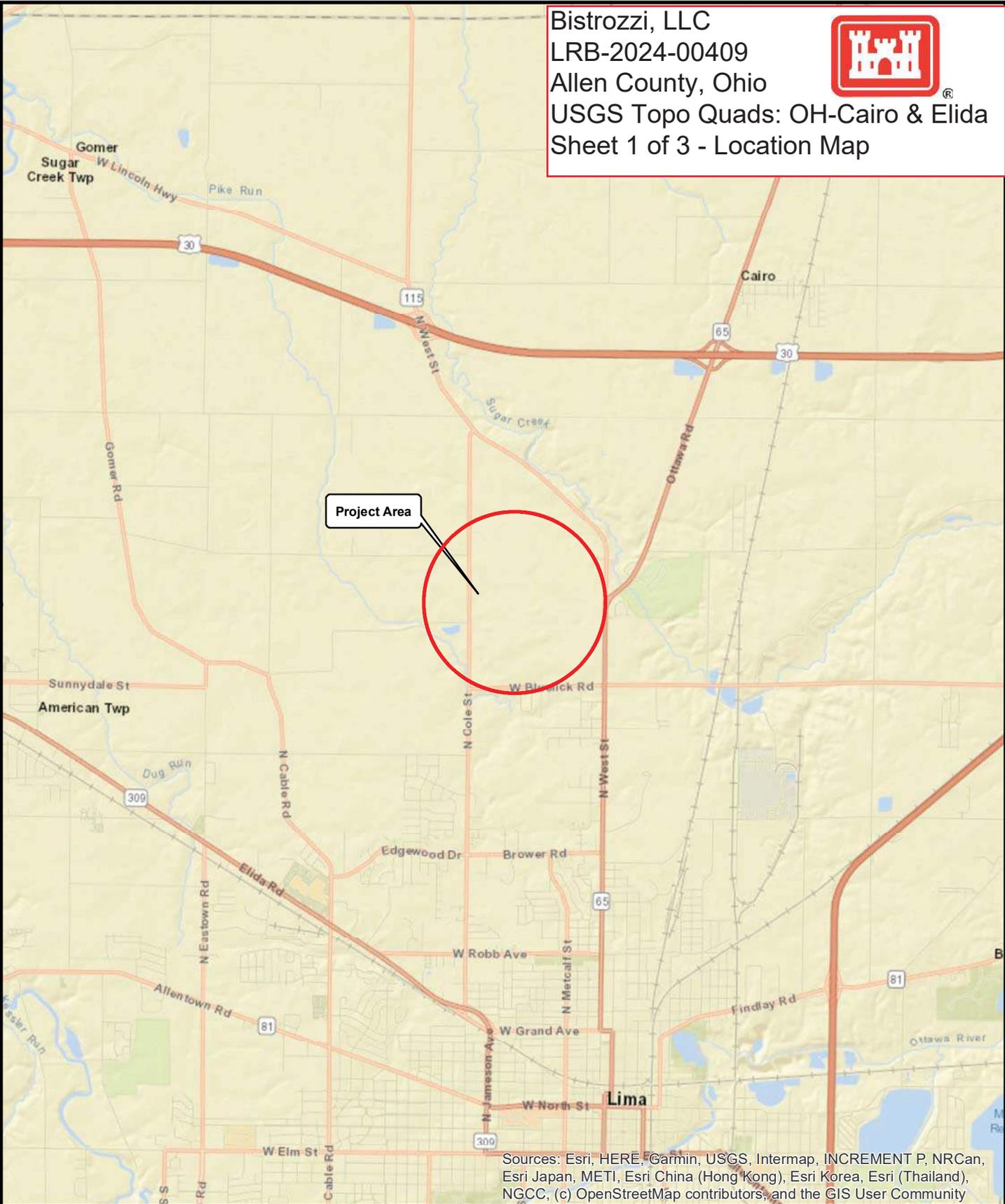
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), LRB-2024-00409

- d. *USDA NRCS Soil Survey: <https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> – accessed 17-June-2024, and as provided in the submitted delineation report.*
- e. *USGS NHD data/maps: HA-730 – NHD data and HUC 8-digit and 12-digit maps.*
- f. *USGS Topographic Quad: OH- Cairo and Elida, 2023, scale 1-24000; accessed 17-June-2024.*
- g. *USGS Streamstats: <https://streamstats.usgs.gov/ss/> - accessed 17-June-2024.*
- h. *U.S. Fish & Wildlife Service National Wetland Inventory Maps: <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/> accessed 17-June-2024, and as provided in the submitted delineation report.*

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.

Bistrozzi, LLC
 LRB-2024-00409
 Allen County, Ohio
 USGS Topo Quads: OH-Cairo & Elida
 Sheet 1 of 3 - Location Map



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

AMERICAN AND SUGAR CREEK TOWNSHIPS, ALLEN COUNTY, OHIO



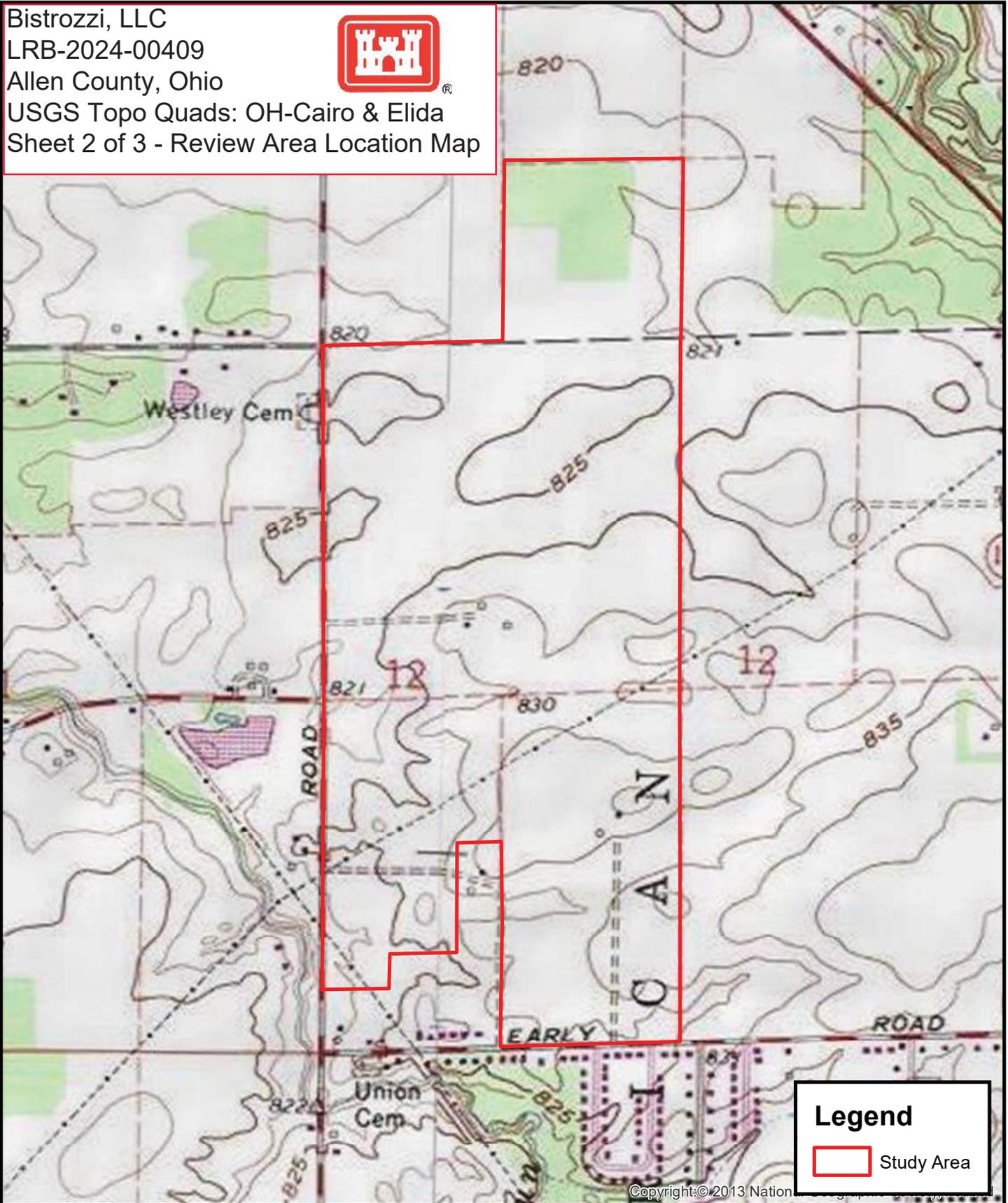
Engineers • Surveyors • Planners • Scientists
 5500 New Albany Road, Columbus, OH 43054
 Phone: 614.775.4500 Toll Free: 888.775.3648
 emht.com



**Project Bosc
 Location Map
 Exhibit 1**



Bistrozzi, LLC
LRB-2024-00409
Allen County, Ohio
USGS Topo Quads: OH-Cairo & Elida
Sheet 2 of 3 - Review Area Location Map



Legend

 Study Area

Path: J:\20240241\GIS\Exhibit 2 - USGS.mxd | Last Updated: 4/10/2024 2:52:11 PM



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AMERICAN AND SUGAR CREEK TOWNSHIPS, ALLEN COUNTY, OHIO

Project Bosc
USGS Topographic Map
Exhibit 2



Source: USGS Elida and Cairo, Ohio Quad Maps
(Pub. 1983 and 1984)

Legend

- Study Area
- Wetlands
- ◆ Upland Data Points



Path: J:\20240241\GIS\Exhibit 6 - Delineation Map.mxd | Last Updated: 9/18/2024 9:52:57 AM

Bistrozzi, LLC
 LRB-2024-00409
 Allen County, Ohio
 USGS Topo Quads: OH-Cairo & Elida
 Sheet 3 of 3 - Aquatic Resource
 Delineation Map



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AMERICAN AND SUGAR CREEK TOWNSHIPS, ALLEN COUNTY, OHIO

**Project Bosc
 Delineation Map
 Exhibit 6**



Source: Aerial - OSIP, 2021

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Bistrozzi, LLC	File Number: LRB-2024-00409	Date: October 30, 2024
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL WITHOUT PREJUDICE	C
<input type="checkbox"/>	PERMIT DENIAL WITH PREJUDICE	D
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	E
<input type="checkbox"/>	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.

<hr/> <p>Signature of appellant or agent.</p>	Date:
Email address of appellant and/or agent:	Telephone number: