



REPLY TO
ATTENTION OF

Regulatory Division
North Branch
LRH-2014-334-SCR-Salt Creek

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

MAR 09 2015

PRELIMINARY JURISDICTIONAL DETERMINATION AND
NATIONWIDE PERMIT NO. 32 VERIFICATION

Mr. Jerry Wray
Ohio Department of Transportation (ODOT)
Office of Environmental Services
1980 West Broad Street, Mail Stop 4170
Columbus, Ohio 43223

Dear Mr. Wray:

I refer to your request for a Department of the Army (DA) permit authorization to discharge of fill material into waters of the United States in conjunction with the implementation of the Salt Creek Restoration Order (VIN-327-7.45 and PID 98489). The project site is located within Salt Creek and an abutting wetland in the NE ¼ of Section 06, Township 09 North, Range 19 West, along State Route 327 mile marker 7.45 in western Vinton County just east of the Vinton/Ross County border near the intersection of State Route 671 and State Route 327. Salt Creek is a direct tributary to the Scioto River, a traditional navigable water of the United States. This enforcement case has been assigned the following file number: LRH-2014-334-SCR-Salt Creek. Please reference this file number on all future correspondence related to this project.

Authority

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 requires a DA permit be obtained prior to discharging dredged or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 requires a DA permit be obtained for any work in, on, over or under a navigable water.

Background Information

On April 17, 2014, this office issued a Notice to Violation to the ODOT District 9 for the unauthorized discharge dredged and/or fill material into Salt Creek. In accordance with the 1989 *Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning Federal Enforcement for the Section 404 Program of the Clean Water Act*, on April 28, 2014, the lead enforcement authority for this case was transferred to the United States Environmental Protection Agency (USEPA), Region V. On December 30, 2014, the Corps received your DA permit application for the discharge of fill material into waters of

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the United States in conjunction with the implementation of the Salt Creek Restoration Order. On March 2, 2015, the Corps received the USEPA's signed Administrative Compliance Order on Consent (Docket No. V-404-AO-15-05).

Preliminary Jurisdictional Determination

You have chosen to accept a preliminary jurisdictional determination (PJD) regarding the waters on the proposed project site in accordance with the Regulatory Guidance Letter for Jurisdictional Determinations (JDs) issued by the Corps on June 26, 2008 (Regulatory Guidance Letter No. 08-02). Based upon a review of the submitted information, approximately 235 linear feet of perennial stream (Salt Creek) and 0.2 acre of wetlands are present in the proposed project area. These aquatic resources are listed in Table 1 of the enclosed PJD form and have been evaluated as if they are waters of the United States.

Enclosed please find two (2) copies of the PJD form. If you agree with the findings of this PJD and understand your options regarding the same, please sign and date one copy of the PJD form and return it to this office within 30 days of receipt of this letter. You should submit the signed copy to the following address:

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

The proposed project, as described in the submitted information, has been reviewed in accordance with Section 404 and Section 10. Based on your description of the proposed work, and other information available to us, it has been determined that this project will not involve activities subject to the requirements of Section 10. However, this project will include the discharge of dredged or fill material into waters of the United States subject to the requirements of Section 404.

Nationwide Permit 32

In the application materials received in this office on December 30, 2014, you have requested a DA authorization to permanently discharge of fill material into 100 linear feet of Salt Creek (0.04 acre) and to temporarily discharge of fill material into 100 linear feet of Salt Creek (0.01 acre) and 0.01 acre of Wetland 1. The restoration project will involve the removal of unauthorized fill material discharged into Salt Creek. The proposed restoration activities, as detailed in the *Salt Creek Restoration Plan* dated October 10, 2014, will include the:

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- temporary discharge of fill material in 100 linear feet of Salt Creek (0.01 acre) and 0.01 acre of Wetland 1 in conjunction with the placement of a temporary sandbag dam around the impacted area to facilitate the unauthorized fill material removal;
- hydraulic excavation of approximately 50 cubic yards of material previously discharged below the ordinary high water mark of Salt Creek; and
- stabilization of approximately 100 linear feet (0.04 acre) of the right descending bank of Salt Creek with topsoil, erosion control blankets, and native seeding.

Per the Ohio Administrative Code (OAC) 3745-1-09, the aquatic life use designation for Salt Creek is an Exceptional Warmwater Habitat (EWH). Salt Creek is also designated as an Outstanding State Water based on exceptional ecological values as promulgated in the OAC 3745-1-05. To reduce impacts to indigenous aquatic species and their habitat, the Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW) recommends no in-water work may occur in EWH during the restricted period of 15 April to 30 June. **Enclosure 1** of this letter lists the information that must be provided to the ODNR to request a waiver to perform in-water during the restricted period.

Please be aware the subject site must be restored in accordance with the October 14, 2014 restoration plan and the USEPA's signed Administrative Compliance Order on Consent (Docket No. V-404-AO-15-05). After completion of the restoration, you must contact this office to arrange a site inspection. The site must be restored to a condition satisfactory to the District Engineer and the USEPA. After the site inspection, you will receive written confirmation that the site has been successfully restored or any additional restoration measures that may be required to obtain successful restoration.

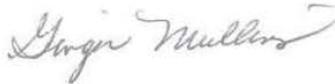
Based on the provided information, it has been determined the discharge of fill material waters of the United States associated with the implementation of the Salt Creek Restoration Order (VIN-327-7.45 and PID 98489) meets the criteria for Nationwide Permit (NWP) No. 32 (enclosed) under the February 21, 2012 Federal Register, Reissuance of NWPs (77 FR 10184) provided you comply with all terms and conditions of the enclosed material, the enclosed special conditions, and the enclosed 401 Water Quality Certification issued for this NWP by the Ohio Environmental Protection Agency on March 30, 2012.

Please be aware this NWP verification does not obviate the requirement to obtain any state or local assent required by law for the activities. Upon completion of the activity authorized by this nationwide permit verification, the enclosed certification must be signed and returned to this office along with as-built drawings showing the location and configuration, as well as all pertinent dimensions and elevations of the activity authorized under this nationwide permit verification.

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As a reminder, the restoration of the affected on-site aquatic resources must be completed in accordance with the USEPA's signed Administrative Compliance Order on Consent (Docket No. V-404-AO-15-05). If you have any questions concerning the above, please contact Ms. Teresa Spagna of the North Branch at (304) 399-6910, by mail at the above address, or by email at teresa.d.spagna@usace.army.mil.

Sincerely,



Ginger Mullins, Chief
Regulatory Division

Enclosures

Copies furnished:

Mr. Peter Swenson
USEPA, Region V, WW-16-J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Matthew Perlik
Ohio Department of Transportation
Office of Environmental Services
1980 West Broad Street, Mail Stop 4170
Columbus, Ohio 43223

Ms. Rachel Taulbee
Ohio EPA, Division of Surface Water
Post Office Box 1049
Columbus, Ohio 43216-1049

Ms. Joni Lung
Ohio EPA, Division of Surface Water
Post Office Box 1049
Columbus, Ohio 43216-1049

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**NATIONWIDE PERMIT NO. 32 VERIFICATION
SPECIAL CONDITIONS FOR OHIO DEPARTMENT OF TRANSPORTATION
LRH-2014-334-SCR-Salt Creek**

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1. This nationwide permit verification authorizes the permanent discharge of fill material into 100 linear feet of Salt Creek (0.04 acre) and the temporary discharge of fill material into 100 linear feet of Salt Creek (0.01 acre) and 0.01 acre of Wetland 1 associated with the implementation of the Salt Creek Restoration Order (VIN-327-7.45 and PID 98489). The restoration activities must be conducted in accordance with the Salt Creek Restoration Plan dated 10 October 2014.
2. A copy of the verification letter, special conditions, and the enclosed drawings must be kept at the site during construction. The permittee will supply a copy of these documents to their project engineer responsible for the implementing the restoration plan and installing the new culvert in Stream A.
3. Construction activities will be performed during low flow conditions. All appropriate site specific best management practices or sediment and erosion control must be fully implemented during construction and restoration activities at the site. No area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas will be seeded and/or re-vegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of invasive species.
4. The project lies within the range of the Indiana bat (*Myotis sodalis*) a Federally-listed endangered species and the northern long-eared bat (*Myotis septentrionalis*), a proposed endangered species.
 - a. Summer habitat requirements for the Indiana bat are not well defined but the following are considered important:
 - i. Dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas.
 - ii. Live trees (such as shagbark hickory and oaks) which have exfoliating bark.
 - iii. Stream corridors, riparian areas, and upland woodlots which provide forage sites.

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**NATIONWIDE PERMIT NO. 32 VERIFICATION
SPECIAL CONDITIONS FOR OHIO DEPARTMENT OF TRANSPORTATION
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- b. Summer habitat requirements for the northern long-eared bat are not well defined but the following are considered important:
 - i. Roosting habitat in dead or live trees and snags with cavities, peeling or exfoliating bark, split tree trunk and/or branches, which may be used as maternity roost areas;
 - ii. Foraging habitat in upland and lowland woodlots and tree lined corridors; and
 - iii. structures such as barns and sheds.

Based upon the provided information, there are six trees located along the right descending bank that exhibit suitable habitat for the Indiana bat and northern long-eared bat. The permittee has stated that none of these trees will be removed to implement the restoration plan. Therefore, the Corps has determined the proposed restoration measures will have no effect on either the Indiana bat or the northern long-eared bat. However, if it is determined the proposed restoration plan facilitates the removal of trees of any of these six trees further consultation under Section 7 of the Endangered Species Act will be necessary. The United States Fish and Wildlife Service may be contacted by mail at 4625 Morse Road, Suite 104, Columbus, Ohio, by fax at (614) 416-8994, or phone at (614) 416-8993. The permittee must also contact the Regulatory Division in the event tree removal is required.

- 5. Section 7 obligations under Endangered Species Act must be reconsidered if new information reveals impacts of the project that may affect federally listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the United States Fish and Wildlife Service, or new species are listed or critical habitat designated that might be affected by the subject project.
- 6. Should new information regarding the scope and/or impacts of the project become available that was not submitted to this office during our review of the proposal, the permittee will submit written information concerning proposed modification(s) to this office for review and evaluation, as soon as practicable.

Enclosure 1

- Name of Corps contact:
- Corps Permit number:
- Ohio EPA ID No.
- Name of permit holder:
- Reason the work cannot be done during the open environmental window:
- Approximate dates work will be started and completed:
- Type of dredging (such as suction or clamshell) if applicable:
 - Type of dredge, such as suction or clamshell
 - Total material to be removed for the project
 - Amount of material that remains to be removed
 - Location of the dredge disposal site
 - BMPs to be used during dredging
- Total material to be placed/removed for the project:
- Amount of material that remains to be removed, if applicable:
- Location of the dredge disposal site, if applicable:
- Indicate if a waiver has been requested for this permit in previous years and, if so, indicate when, why and whether it was granted.
- Submit a map showing the location of the project, and location of work within the project area.
- List of BMPs to be used.