



REPLY TO
ATTENTION OF

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

RECEIVED AUG 31 2016

AUG 26 2016

Regulatory Division
North Branch
LRH-2016-459-SCR-Unnamed Tributary to Big Walnut Creek

**APPROVED & PRELIMINARY JURISDICTIONAL DETERMINATIONS AND
NATIONWIDE PERMIT NO. 39 VERIFICATION**

Jason Esmailzadeh
GZD Investments, LLC
245 E. 1st Avenue
Columbus, Ohio 43215

Dear Mr. Esmailzadeh:

I refer to the pre-construction notification (PCN) received in this office on May 18, 2016 concerning a commercial development project, known as the Viking Commerce Center. You have requested a Department of the Army permit authorization to discharge dredged and/or fill material into 299 linear feet of one (1) intermittent stream for the commercial development project. The project site is located along Hamilton Road, City of Gahanna, Franklin County, Ohio. Your PCN has been assigned the following file number: LRH-2016-459-SCR-Unnamed Tributary to Big Walnut Creek. Please reference this file number on all future correspondence related to this project.

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

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 there is approximately 525 linear feet of one (1) perennial stream and 451 linear feet of one (1) intermittent stream channel are located within the proposed project area. The streams within this project site will be evaluated as if they are water 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.

Approved Jurisdictional Determination

Our December 2, 2008 headquarters guidance entitled *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States* was followed in the final verification of Clean Water Act jurisdiction. Based on a review of the information provided, and other information available to us, Swale 1 does not exhibit an ordinary high water mark, defined bed and bank, or wetland characteristics. The drainage swale was likely created as a result of transportation activities and the development of the surrounding area. Drainage Swale 1 is not a jurisdictional water of the United States.

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

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

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by October 25, 2016. It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.

Nationwide Permit

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.

In the submitted PCN materials received in this office on May 18, 2016, you have requested a Department of the Army authorization to discharge dredged and/or fill material into a total of

approximately 299 linear feet of one intermittent stream. All work will take place in accordance with the PCN dated May 18, 2016.

Based on your description of the proposed work, and other information available to us, it has been determined the proposed discharge of dredged or fill material into waters of the United States in conjunction with the commercial development project meets the criteria for Nationwide Permit (NWP) 39 under the February 21, 2012 Federal Register, Notice of Reissuance of NWPs (77 FR 10184) provided you comply with all terms and conditions of the enclosed material, the enclosed special conditions. Please be aware this NWP authorization does not obviate the requirement to obtain other Federal, state or local authorizations required by law.

This verification is valid until the expiration date of the NWPs, unless the NWP authorization is modified, suspended, or revoked. The verification will remain valid if the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. All of the existing NWPs are scheduled to be modified, reissued, or revoked on March 18, 2017. Prior to this date, it is not necessary to contact this office for re-verification of your project unless the plans for the proposed activity are modified. Furthermore, if you commence or under contract to commence this activity before March 18, 2017, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

Enclosed is a copy of the NWPs to be kept at the project site during construction. Upon completion of the work, the enclosed certification must be signed and returned to this office. A copy of this letter is being furnished to your agent Mr. Andrew Kielaszek with CEC, Inc., at 250 Old Wilson Bridge Road, Suite 250, Worthington, Ohio 43085. If you have any questions concerning the above, please contact Mr. Cecil Cox of the North Branch at 304-399-5274, by mail at the above address, or by email at: cecil.m.cox@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa D. Spagna". The signature is fluid and cursive, with the first name "Teresa" being more prominent.

Teresa D. Spagna
Chief, North Branch

Enclosures

Special Conditions for Nationwide Permit
City of Gahanna Viking Commerce Center
LRH-2016-459-SCR-Unnamed Tributary to Big Walnut Creek
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1. All work will be conducted in accordance with the final plans provided by CEC, on behalf of GZD Investments, LLC, dated 16 May 2016.
2. Enclosed is a copy of Nationwide Permit 39, which will be kept at the site during construction. A copy of the nationwide permit verification, special conditions, and the enclosed construction plans must be kept at the site during construction. The permittee will supply a copy of these documents to their project engineer responsible for construction activities.
3. 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.
4. Construction activities will be performed during low flow conditions. Additionally, appropriate site specific best management practices for sediment and erosion control will be fully implemented during construction activities at the site.
5. No area for which grading has been completed will be unseeded or un-mulched 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 non-native invasive species.
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.
7. In the event any previously unknown historic or archaeological sites or human remains are uncovered while accomplishing the activity authorized by this nationwide permit authorization, the permittee must cease all work in waters of the United States immediately and contact local, state and county law enforcement offices (only contact law enforcement on findings of human remains), the Corps at 304-399-5210 and Ohio Historic Preservation Office at 614-298-2000. The Corps will initiate the Federal, state and tribal coordination required to comply with the National Historic Preservation Act and applicable state and local laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.

Special Conditions for Nationwide Permit
City of Gahanna Viking Commerce Center
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8. The project site lies within the range of the Indiana bat (*Myotis sodalis*), a federally listed endangered species and the northern long-eared bat (*Myotis septentrionalis*), a federally threatened species. Several factors have contributed to the two species decline, including habitat loss, fragmentation of habitat and the disease White Nose Syndrome. During winter, the two bat species hibernate in caves and abandoned mines. 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 travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags ≥ 3 inches diameter at breast height (dbh) that have any exfoliating bark, cracks, crevices, hollows and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of other forested/wooded habitat. The permittee will preserve wooded/forested habitats exhibiting any of the characteristics listed above wherever possible. Should suitable habitat be present that cannot be saved during construction activities, any trees ≥ 3 inches dbh will only be cut between October 1 – March 31.”
 9. 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.
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