



REPLY TO
ATTENTION OF

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

July 1, 2021

Regulatory Division
North Branch
LRH-2020-731-LMR-UT Jacoby Creek

NATIONWIDE PERMIT 29 VERIFICATION

Mr. Greg Smith
Oberer Land Developers, LTD.
3445 Newmark Drive
Miamisburg, Ohio 45342

Dear Mr. Smith:

I refer to the pre-construction notification (PCN), submitted on your behalf by Kilbane Environmental and received in this office on March 15, 2021, with additional information received on 24 June 2021, concerning the Struewing Residential Project. You have requested a Department of the Army (DA) authorization for the discharge of dredged and/or fill material into waters of the United States located at the southern end of Southgate Avenue, in Yellow Springs, Greene County, Ohio at approximately 39.788 latitude, -83.8986 longitude. Construction activities would occur within the unnamed tributary (UT) to Jacoby Creek, a tributary of the Little Miami River, a navigable water of the United States. We have assigned the following file number to your PCN: LRH-2020-731-LMR-UT Jacoby Creek. Please reference this file number on all future correspondence related to this subject proposal.

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, including the amendment to 33 CFR 328.3 (85 Federal Register 22250), and 33 CFR 329. Section 404 of the Clean Water Act (Section 404) requires a DA permit be obtained prior to discharging dredged and/or fill material into waters of the United States, including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

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 and/or fill material into waters of the United States subject to the requirements of Section 404.

In the submitted PCN materials and additional information received in this office on June 24, 2021, you have requested a DA authorization for the discharge of dredged and/or fill material into a total of approximately 43.5 linear feet (0.0039 acre) of one (1) intermittent stream in

conjunction with the Struewing Residential development as described in Table 1 below. The project will involve the construction of single-family lots, roadways, and attendant features and will be conducted in accordance with the information submitted in the pre-construction notification (PCN).

Based on the provided information, it has been determined the proposed discharges of dredged and/or fill material into waters of the United States in conjunction with the construction of the proposed project, meet the criteria for Nationwide Permit (NWP) No. 29 under the January 13, 2021 Federal Register, Notice of Reissuance of NWPs (86 FR 2744) provided you comply with all terms and conditions of the NWPs, and the enclosed special conditions. Copies of this NWP can be found on our website at <http://www.lrh.usace.army.mil/Missions/Regulatory.aspx>

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. The 2021 NWPs published January 13, 2021 in the Federal Register (86 FR 2744), are scheduled to be modified, reissued, or revoked on March 14, 2026. 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 14, 2026, 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.

A copy of the NWP and this verification letter must be kept at the site during construction. Upon completion of the activities authorized by this NWP verification, the enclosed certification must be signed and returned to this office. If you have any questions concerning the above, please contact Laurie Moore of the North Branch at 937-271-9942, by mail at the above address, or by email at laurie.a.moore@usace.army.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle M. Moore".

Kyle M. Moore
Regulatory Project Manager
North Branch

cc:
Tom Kilbane, Kilbane Environmental (via email)

Table 1. Proposed Discharges of Dredged/Fill Material into Waters of the United States associated with the Struewing Residential Development Project, LRH-2020-731-LMR-Unnamed Tributary to Jacoby Creek

Aquatic Resource	Latitude & Longitude (°N) (°W)		Length lf on-site	Width feet	Flow Regime or Cowardin Class	Class based on HHEI	Length (lf) and/or Acres (ac) of Fill	Activity
Stream 1	39.7874	-83.9005	2,471 lf	9 ft	Intermittent	Class II PHWH	-	No discharge of dredged/fill material
Stream 2	39.7880	-83.8986	490 lf	4 ft	Intermittent	Class III PHWH	43.5 lf (0.0039 ac)	Road Crossing
Stream 3	39.7873	-83.9008	120 lf	4 ft	Intermittent	Class II PHWH	-	No discharge of dredged/fill material
Total							43.5 lf (0.0039 ac)	

SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 29 VERIFICATION
STRUEWING RESIDENTIAL DEVELOPMENT PROJECT
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1. All work will be conducted in accordance with the submitted pre-construction notification (PCN) and the additional information received on June 24, 2021 for the Struewing Property Project and drawings titled *Figure 4: Development Plan and Subdivision Concept Village of Yellow Springs Exhibit*, prepared by Choice One Engineering, dated June 10, 2021 and submitted with the PCN materials.
2. Enclosed is a copy of Nationwide Permit 29, which will be kept at the site during construction. A copy of the nationwide permit verification, special conditions, and the submitted 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 to the greatest extent practicable. 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 unmulched for longer than 14 days. All disturbed areas will be seeded and/or revegetated 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. 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-listed 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 the Indiana bats and the 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

**SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 29 VERIFICATION
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be saved during construction activities, any trees ≥ 3 inches dbh will only be cut between October 1 – March 31.

7. 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.

8. 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 State 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.

9. 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.

