



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**BUFFALO DISTRICT, CORPS OF ENGINEERS**  
1776 NIAGARA STREET  
BUFFALO, NEW YORK 14207-3199

October 21, 2015

Regulatory Branch

**SUBJECT:** Department of the Army Permit No. 2015-00745, Nationwide Permit No. 42 as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012.

Mr. Richard Novak  
Lorain Port Authority  
319 Black River Lane  
Lorain, Ohio 44052

Dear Mr. Novak:

This pertains to your application for a Department of the Army permit to construct a kayak/canoe launch site along 25 linear feet of shoreline located at 301 Lakeside Avenue, in Black River Township, Lorain County, Ohio. Specifically, 25 cubic yards of pea gravel and sand will be added along the shoreline and approximately 12 cubic yards of the material will be placed below the OHW elevation of 573.4 IGLD ('85). See Page 1 and 2 of 2.

I have evaluated the impacts associated with your proposal, and have concluded that they are authorized by the enclosed Nationwide Permit (NWP) provided that the attached conditions are satisfied.

Verification of the applicability of this NWP is valid until March 18, 2017 unless the NWP is modified, suspended, revoked, or the activity complies with any subsequent permit modification. Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

It is your responsibility to remain informed of changes to the NWP program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>. Finally, note that if your activity is not undertaken within the defined period or the project specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

In addition to the general conditions attached to the NWP, your attention is directed to the following Special Conditions which are also appended at the end of the NWP General Conditions:

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1. The permittee must only dispose of fill material in the approved site as identified on **Sheet 2 of 2**.
2. The proposed project lies within the range of the Kirtland's warbler (*Setophaga kirtlandii*), a federally-listed endangered species under the Endangered Species Act. To avoid and minimize any potential adverse effects to the warbler, the clearing, removal, and/or modification of any scrub/shrub or forested habitat **shall not occur between April 22nd to June 1st and August 15th to October 15th of any year**. The permittee is responsible for ensuring all contractors executing any shrub or tree clearing activities are aware of these work restriction timeframes required to avoid and minimize effects to the warbler.
3. The permittee is **prohibited** from performing in-water work **between April 15 and June 30 of any year** to preclude adverse impacts on the spawning, nursery, and feeding activities of indigenous fish species.
4. The permittee is authorized to discharge only clean fill material that is free of fines, oil and grease, debris, wood, general refuse, plaster, broken asphalt, or other potential pollutants.
5. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, the permittee must allow access to the project site to determine compliance with the conditions of this permit.

This affirmation is limited to the attached NWP and associated Water Quality Certification (WQC), and does not obviate the need to obtain any other project specific Federal, state, or local authorization.

Finally, this letter contains an approved jurisdictional determination (JD) for the subject parcel. 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 Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, 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:

Attn: Jacob Siegrist  
Great Lakes and Ohio River Division  
CELRD-PD-REG  
550 Main Street, Room 10524  
Cincinnati, OH 45202-3222  
Phone: 513-684-2699; 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 C.F.R. part 331.5, and that it has been received by

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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 19, 2015**.

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 via email to the Ohio Environmental Protection Agency.

Questions pertaining to this matter should be directed to me at 716-879-4121, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: [ernest.a.francisco@usace.army.mil](mailto:ernest.a.francisco@usace.army.mil)

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Francisco", with a stylized flourish at the end.

Andy Francisco  
Biologist, Regulatory Branch

Enclosures

COMPLETION FORM / COMPLIANCE CERTIFICATION

Each permittee who receives a Nationwide Permit (NWP) verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any compensatory mitigation.

APPLICANT:  
Mr. Richard Novak  
Lorain Port Authority  
319 Black River Lane  
Lorain, Ohio 44052

POINT OF CONTACT:  
Same

File No.: 2015-00745  
File Closed: 10/21/2015  
NWP No.: 42

Upon completion of the activity authorized by this permit and any required compensatory mitigation sign this certification and return it to the address listed below within 30 days of project completion.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, revocation, and/or assessment of administrative penalties.

The permittee shall certify the completion of the authorized work and mitigation:

- a. The authorized work was done in accordance with the NWP authorization, including any general, regional, or activity specific conditions.
- b. The implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, this certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits.

\_\_\_\_\_  
APPLICANTS NAME

\_\_\_\_\_  
Date

Permittee Telephone Number: \_\_\_\_\_

Project location: 301 Lakeside Avenue, Black River Township, Lorain County, Ohio.

Project Description: Construct a kayak/canoe launch site along 25 linear feet of shoreline; 25 cubic yards of pea gravel and sand will be added along the shoreline.

Authorized Impacts (Waters of the U.S. Impacted by Project): Approx. 12 cubic yards of material below the OHW elevation of 573.4 IGLD ('85).

Waterway and/or Project Setting: Lake Erie

Return completed form to:  
Mr. David Leput  
Regulatory Branch  
U.S. Army Corps of Engineers  
1776 Niagara Street  
Buffalo, NY 14207

**NAVIGABLE WATERWAYS IN THE BUFFALO DISTRICT  
APPROVED JURISDICTIONAL DETERMINATION FORM  
U.S. Army Corps of Engineers**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** October 14, 2015.

**B. DISTRICT OFFICE:** Buffalo

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:** The Buffalo District has previously determined the extent of navigable waters within their regulatory jurisdiction in the states of New York and Ohio. Posting of this jurisdictional determination establishes Corps jurisdiction over these navigable waters under Section 10 of the Rivers and Harbors Act of 1899. A list of these waters is posted on the Buffalo District's regulatory website at [http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_ny.pdf](http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_ny.pdf) and [http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_oh.pdf](http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_oh.pdf). The Buffalo District has determined that a site/project specific jurisdictional determination involving these Section 10 navigable waters is not required.

**D. REVIEW PERFORMED FOR EVALUATION:** Office (Desk) Determination. Date: December 19, 2007

**SUMMARY OF FINDINGS**

**RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There  **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. *[Required]*

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: Prior to the determination and listing of Buffalo District's Section 10 navigable waters, detailed navigability studies were performed throughout the Buffalo District to determine which waters met the navigable waters definition found in 33 CFR Part 329. Upon completion, the Buffalo District issued several public notices updating the listing of Section 10 navigable waters determinations within the Buffalo District's regulatory boundaries. Since the most recent Public Notice (PN) 7-81, dated 27 July 1981, the extent of navigability of these listed waters and additional waters determined to be navigable was further refined pursuant to the "Definition of Navigable Waters of the United States" as provided in 33 CFR Part 329. The PN indicated that federal regulatory jurisdiction extends laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark (OHW) and that all adjacent embayments, or backwater areas, ponds or wetlands located below OHW are considered navigable for administrative purposes. In addition, the Pittsburg District issued PN 00-54, dated 3 October 2000, established Section 10 jurisdiction over a portion of the Allegheny River which now occurs within the Buffalo District's regulatory boundaries. The current list of navigable waters, including extent of jurisdiction, occurring within the geographic limits of the Buffalo District and meeting this definition was established in 1996 and updated in 1999 may also be found on the Buffalo District's regulatory website at

[http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_ny.pdf](http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_ny.pdf) and

[http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_oh.pdf](http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_oh.pdf). or provided upon request.

**DATA SOURCES**

**SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study: Navigable water studies are available for the majority of navigable waters within the Buffalo District regulatory jurisdiction; Buffalo District issued PN 7-81, dated 27 July 1981; Pittsburg District issued PN 00-54, dated 3 October 2000

U.S. Geological Survey map(s). Cite scale & quad name:.

USDA Natural Resources Conservation Service Soil Survey. Citation: .

FEMA/FIRM maps:

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs:  Aerial (Name & Date):

or  Other (Name & Date):

Previous determination(s). File no. and date of response letter: .

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify): Definition of Navigable Waters of the United States (33 CFR Part 329).

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: Lorain County Port Authority	File Number: 2015-00745	Date: 10/21/2015
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Attached is:	See Section below
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<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	C
<input checked="" type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Andy Francisco  
United States Army Corps of Engineers  
Buffalo District  
1776 Niagara Street  
Buffalo, NY 14207  
716-879-4121  
Ernest.a.francisco@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Attn: Appeal Review Officer  
Great Lakes and Ohio River Division  
CELRD-PD-REG  
550 Main Street, Room 10524  
Cincinnati, OH 45202-3222  
513-684-7261; FAX 513-684-2460

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number: