



Y  
REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, ROCK ISLAND DISTRICT**  
**PO BOX 2004 CLOCK TOWER BUILDING**  
**ROCK ISLAND, ILLINOIS 61204-2004**

May 8, 2023

Regulatory Division

SUBJECT: CEMVR-RD-2023-0165

Drainage District Trustees  
Cerro Gordo County  
220 North Washington Avenue  
Mason City, Iowa 50401

Dear Drainage District Trustees:

Our office reviewed your submitted information received February 1, 2023, concerning the proposed excavation of silt from an unnamed tributary to Bailey Creek and placement of the silt along the banks of the tributary. This project is located in Sections 34, Township 94 North, Range 21 West, Cerro Gordo County, Iowa.

We have determined that your project as proposed does not occur in a water of the United States and therefore does not require a Department of the Army (DA) Section 404 permit as long as the special conditions listed below are followed. The decision regarding this action is based on information found in the administrative record which documents the District's decision-making process, the basis for the decision, and the final decision. The silt excavation activity of your project is a non-regulated activity. The placement the excavated silt, is a regulated activity. As long as the identified areas are avoided during placement of the silt, there is no indication of discharge of dredged or fill material occurring in waters of the United States (including wetlands). Therefore, these determinations resulted.

Special Conditions:

1. Placement of excavated silt shall not be placed in the areas highlighted within the attached map(s). These areas are potentially wetlands, therefore placement in these areas would require a DA Section 404 permit.
2. All relocation and distribution of excavated material will be performed when surface conditions are dry or frozen and sufficiently stable to support equipment so as to not cause any more compaction or other disturbance than has occurred in the project vicinity in the past.
3. Excavated material shall be distributed no more than 6 inches thick within the proposed spoil areas.

This letter contains an approved jurisdictional determination for the subject site. If you object to this jurisdictional determination, you may request an administrative appeal under Corps regulations found at 33 CFR Part 331. Enclosed is a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this approved jurisdictional determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

Administrative Appeals Officer  
U.S. Army Corps of Engineers  
Mississippi Valley Division  
ATTN: CEMVD-PD-KM  
Post Office Box 80  
Vicksburg, Mississippi 39181-0080

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 Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP.

It is not necessary to submit an RFA form to the Division Office if you do not object to the approved jurisdictional determination contained in this letter.

You are advised that this determination for your project is valid for five years from the date of this letter. If the project is not completed within this five-year period or your project plans change, you should contact our office for another determination.

Although a DA permit will not be required for the project, this does not eliminate the requirement that you must still acquire other applicable Federal, state, and local permits.

Should you have any questions, please contact our Regulatory Division by letter, telephone 515-276-4656 x6524, or email [emma.m.aalbers@usace.army.mil](mailto:emma.m.aalbers@usace.army.mil).

Sincerely,

*Abigail A. Steele*

Abigail Steele  
Chief, Western Branch  
Regulatory Division

Copies Furnished:

Drainage District Trustees  
Cerro Gordo County  
[awedmore@cgcounty.org](mailto:awedmore@cgcounty.org)

Tyler Conley  
Bolton & Menk  
[tyler.conley@bolton-menk.com](mailto:tyler.conley@bolton-menk.com)

EA

**DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM<sup>1</sup>**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): April 25, 2023**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CEMVR-RD-2023-0165**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State: IOWA County/parish/borough: CERRO GORDO COUNTY City: NA  
Center coordinates of site (lat/long in degree decimal format): Lat. 42.9158 °, Long. -93.3087 °  
Universal Transverse Mercator: Zone 15

Name of nearest waterbody: Bailey Creek

Name of watershed or Hydrologic Unit Code (HUC): HUC8: 07080204 Upper Mississippi Region

- ☒ Check if map/diagram of review area is available upon request.
- ☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

- ☒ Office (Desk) Determination. Date: April 25, 2023
- ☐ Field Determination. Date(s): [Click here to enter a date.](#)

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **are no** “navigable waters of the U.S.” within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **are no** “waters of the U.S.” within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

**SECTION III: DATA SOURCES.**

**A. 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: “2023-03-14-126016 DD 57 Cerro Gordo” in AR
- ☐ 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: [Click here to enter text.](#)
- ☐ U.S. Geological Survey Hydrologic Atlas: [Click here to enter text.](#)
- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: “2023-0165 StreamStats” in AR
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: “2023-0165 SoilData” in AR
- ☒ National wetlands inventory map(s). Cite name: “2023-0165 NatWet Inventory” in AR
- ☐ State/Local wetland inventory map(s): [Click here to enter text.](#)
- ☐ FEMA/FIRM maps: [Click here to enter text.](#)
- ☐ 100-year Floodplain Elevation is: [Click here to enter text.](#) (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): “2023-0165 Project Area” from October 2021 in AR
- ☒ or ☒ Other (Name & Date): Lidar Imagery, multiple captures as found in AR
- ☐ Previous determination(s). File no. and date of response letter: [Click here to enter text.](#)
- ☐ Applicable/supporting case law: [Click here to enter text.](#)
- ☐ Applicable/supporting scientific literature: [Click here to enter text.](#)
- ☒ Other information (please specify): Images labeled “...Project Spoil Avoidance Areas” in AR show areas in which spoil cannot be placed as they are potentially wetland areas.

**B. REQUIRED ADDITIONAL COMMENTS TO SUPPORT JD. EXPLAIN RATIONALE FOR DETERMINATION THAT THE REVIEW AREA ONLY INCLUDES DRY LAND:** This project, excavating silt from the stream, is not a regulated activity, but the placement of said silt is, but the placement location is on dry land if the areas are avoided as highlighted on the attached Project Spoil Avoidance Areas maps. The highlighted areas are potential wetlands and therefore shall be avoided when placing the excavated material. Decision based on information supported from aerial and LiDAR imagery, USFWS National Wetlands Inventory, USGS WebSoil Survey, USGS Stream Stats, and other regulatory data showing the project is unlikely to impact a wetland as long as the highlighted areas are avoided.

<sup>1</sup> This form is for use only in recording approved JDs involving dry land. It extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas and adds no new fields.

PRELIMINARY PLANS FOR

# DRAINAGE DISTRICT NO. 57

## OPEN CHANNEL CLEANOUT

### CERRO GORDO COUNTY, IOWA

# 2023

GOVERNING SPECIFICATIONS

THE 2023 EDITION OF THE "SUDAS SPECIFICATIONS FOR PUBLIC IMPROVEMENTS" SHALL GOVERN.

IOWA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR HIGHWAY AND BRIDGE CONSTRUCTION", SERIES 2015 AND ALL CURRENT GENERAL SUPPLEMENTAL SPECIFICATIONS AND MATERIALS INSTRUCTIONAL MEMORANDUM SHALL GOVERN AS REFERENCED.

ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS AND ORDINANCES WILL BE COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.



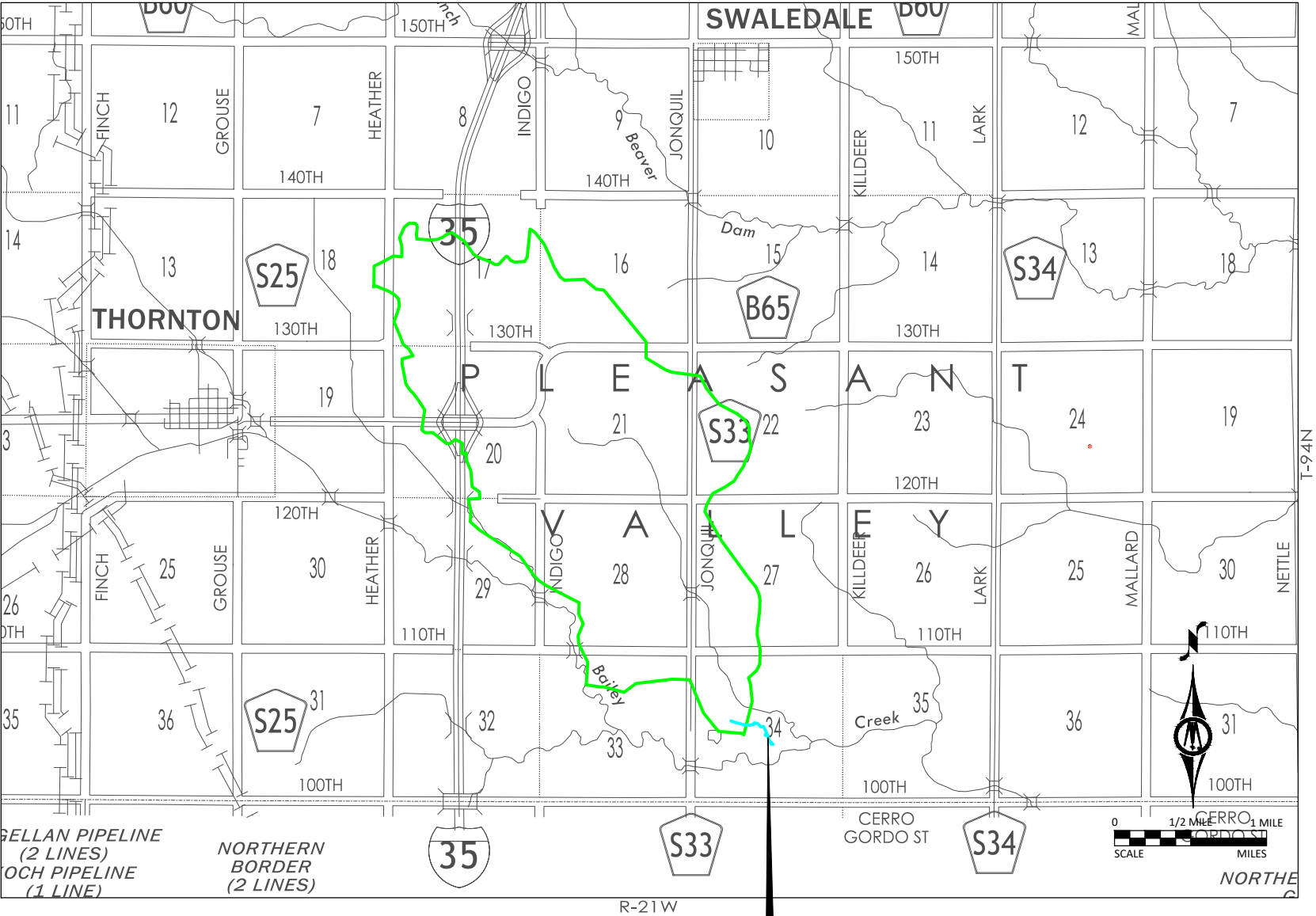
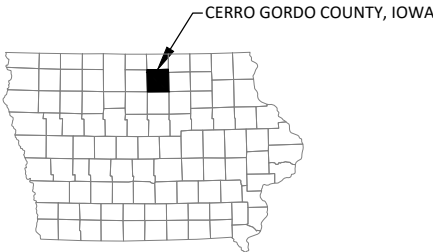
NOTE: THE CONTRACTOR SHALL FIELD VERIFY EXACT LOCATIONS PRIOR TO COMMENCING CONSTRUCTION AS REQUIRED BY STATE LAW. NOTIFY IOWA ONE CALL, 811 OR 1-800-292-8989.

THE SUBSURFACE UTILITY INFORMATION IN THIS PLAN IS UTILITY QUALITY LEVEL D. THIS UTILITY QUALITY LEVEL WAS DETERMINED ACCORDING TO THE GUIDELINES OF C/ASCE 38-02, ENTITLED "STANDARD GUIDELINES FOR THE COLLECTION AND DEPICTION OF EXISTING SUBSURFACE UTILITY DATA."

UTILITY CONTACTS

THE FOLLOWING ARE KNOWN, BUT NOT NECESSARILY THE ONLY UTILITY CONTACTS THAT SHOULD BE CONTACTED PRIOR TO BEGINNING OF EXCAVATION.

ALLIANT ENERGY Phone: 800-255-4268 Email: locate_ipl@alliantenergy.com	IOWA COMMUNICATIONS NETWORK Contact: Shannon Marlow Phone: 800-572-3900 Email: shannon.marlow@iowa.gov	VENTURA TELEPHONE COMPANY Name: Brad Emerson Phone: 641-355-2113 Email: brademerson@cctl.com
CLEAR LAKE INDEPENDENT TEL Contact: Brad Emerson Phone: 641-355-2113 Email: brademerson@cctl.com	NORTHERN IOWA PIPELINE Contact: Matthew Trenkamp Phone: 641-289-3338 Email: mtrenkamp@icenergy.com	WINDSTREAM COMMUNICATIONS Name: LOCATE DESK Phone: 800-289-1901 Email: LOCATE.DESK@WINDSTREAM.COM
HAWKEYE POWER PARTNERS LLC Contact: Tad Miller Phone: 641-629-3908 Email: tanya_olson@fpl.com	COMMUNICATIONS 1 NETWORK, INC. Contact: Jayson Keiper Phone: 641-762-3772 Email: jkeiper@com1net.net	PRAIRIE ENERGY COOPERATIVE Name: Ken Norem Phone: 800-728-0013 Email: knorem@prairieenergy.coop



PROJECT LOCATION

SHEET INDEX	
SHEET NO.	SHEET TITLE
A.01	TITLE SHEET
A.02	LANDOWNERS
D.01	OPEN DITCH PLAN AND PROFILE
X.01-X.05	CROSS SECTIONS

	I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF IOWA.	
	TYLER A. CONLEY, P.E.	
	REG. NO. 25044	DATE: _____
	MY LICENSE RENEWAL DATE IS DECEMBER 31, 2023	
PAGES OR SHEETS COVERED BY THIS SEAL:		
ALL SHEETS		

PROJECT DATUM: IRCS2  
HORIZONTAL: NAD83  
VERTICAL: NAVD88

RECORD DRAWING  
INFORMATION  
OBSERVER:  
CONTRACTOR:  
DATE:



1609 US HWY 18 EAST  
ALGONA, IOWA 50511  
Phone: (515) 395-3140  
Email: Algona@bolton-menk.com  
www.bolton-menk.com

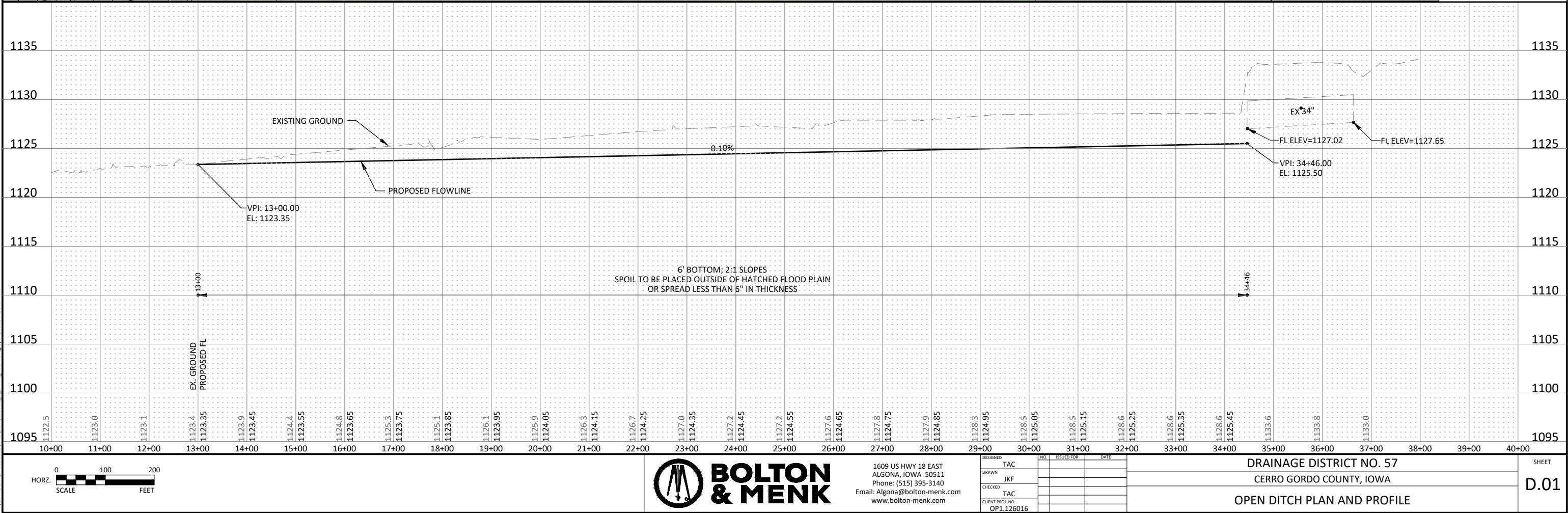
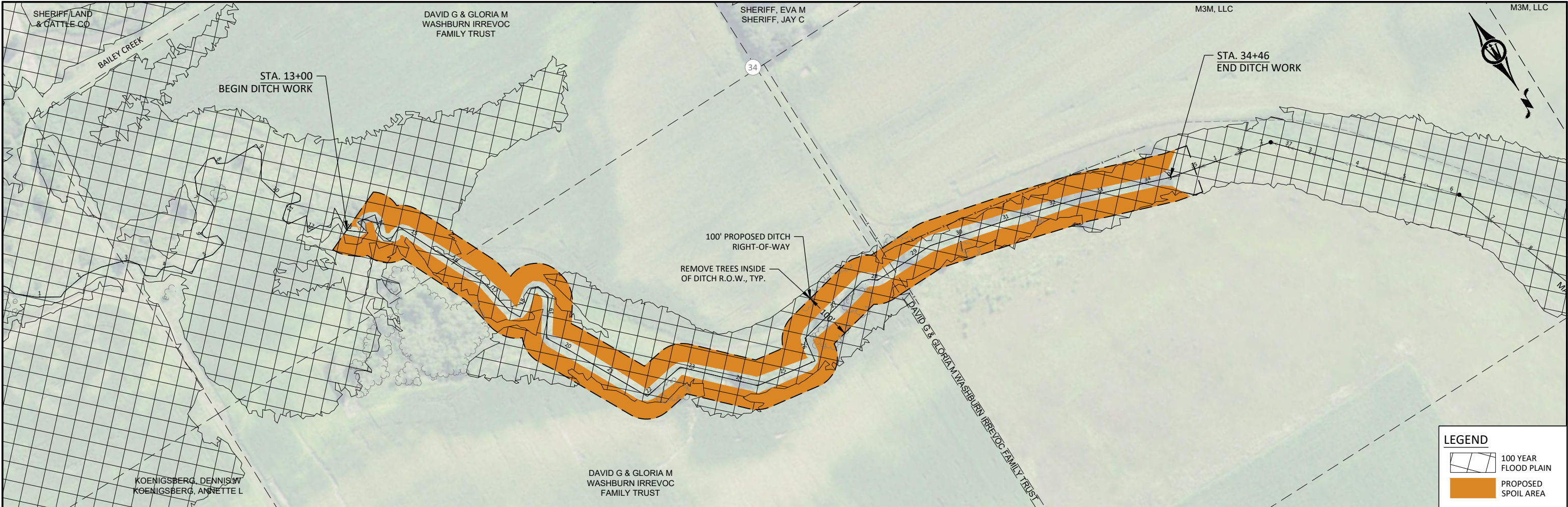
DESIGNED	NO.	ISSUED FOR	DATE
TAC			
DRAWN			
JKF			
CHECKED			
TAC			
CLIENT PROJ. NO.			
OP1.126016			

DRAINAGE DISTRICT NO. 57  
CERRO GORDO COUNTY, IOWA  
TITLE SHEET

SHEET

A.01







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ALGONA\DWG\126016\126016\_C-STRM.dwg 3/14/2023 7:56:17 AM



**2023-0165**  
Stream Silt Excavation & Spoil Placement  
Project Area = Approx. 7 acres total  
Avoid placing spoil in highlighted areas

**Legend**


-  Avoid Placing Spoil
-  Stream Silt Excavation Project Area





**2023-0165**  
Stream Silt Excavation & Spoil Placement  
Project Area = Approx. 7 acres total  
Avoid placing spoil in highlighted areas

**Legend**

-  Avoid Placing Spoil
-  Stream Silt Excavation Project Area





Iowa

Illinois / Missouri

I-Sites

Mussel Database



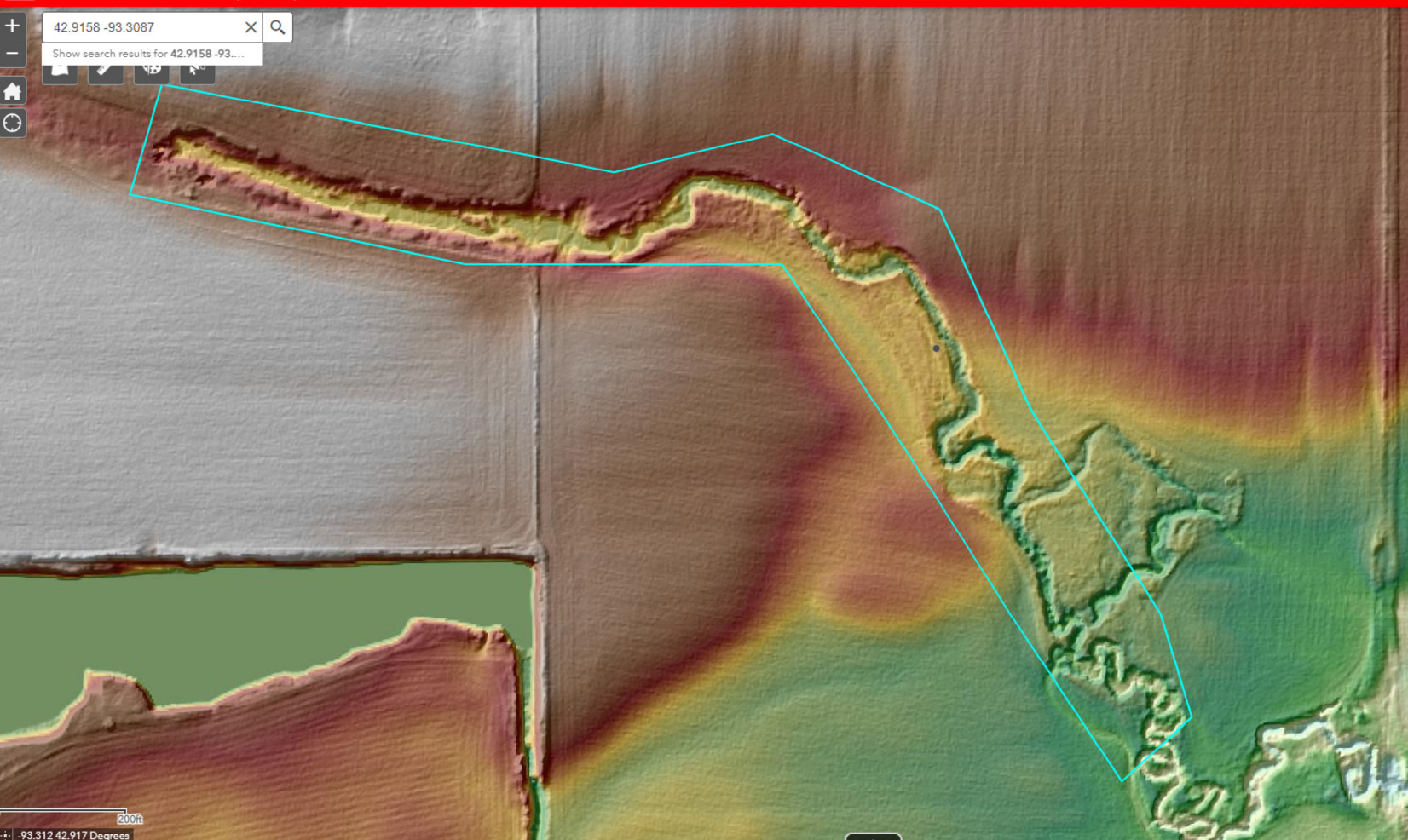
Rock Island District Regulatory Viewer - Iowa



42.9158 -93.3087



Show search results for 42.9158 -93....



## Imagery

- ☐ ortho\_1950 ...
- ☐ ortho\_1930 ...
- ☐ naip\_2021\_nc ...
- ☐ naip\_2019\_nc ...
- ☐ naip\_2017\_nc ...
- ☐ naip\_2015\_nc ...
- ☐ naip\_2014\_nc ...
- ☐ naip\_2013\_nc ...
- ☐ naip\_2011\_nc ...
- ☐ naip\_2010\_nc ...
- ☐ naip\_2009\_nc ...
- ☐ naip\_2008\_nc ...
- ☐ naip\_2007\_nc ...
- ☐ naip\_2006\_nc ...
- ☐ naip\_2005\_nc ...
- ☐ naip\_2004\_nc ...
- ☒ lidar\_color\_hillshade\_2020 ...
- ☐ lidar\_hs\_2020 ...
- ☐ lidar\_color\_hillshade\_2010 ...
- ☐ lidar\_hs\_2010 ...
- ☐ USGS Topo ...



42.9158 -93.3087

Show search results for 42.9158 -93....



### Imagery

- ☐ ortho\_1950 ...
- ☐ ortho\_1930 ...
- ☐ naip\_2021\_nc ...
- ☐ naip\_2019\_nc ...
- ☐ naip\_2017\_nc ...
- ☐ naip\_2015\_nc ...
- ☐ naip\_2014\_nc ...
- ☐ naip\_2013\_nc ...
- ☐ naip\_2011\_nc ...
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- ☐ naip\_2008\_nc ...
- ☐ naip\_2007\_nc ...
- ☐ naip\_2006\_nc ...
- ☐ naip\_2005\_nc ...
- ☐ naip\_2004\_nc ...
- ☒ lidar color hillshade 2020 ...
- ☐ lidar\_hs 2020 ...
- ☐ lidar color hillshade 2010 ...
- ☐ lidar\_hs 2010 ...
- ☐ USGS Topo ...

Avoid placing spoil in areas highlighted in RED

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

<b>Applicant: Drainage District Trustees, Cerro Gordo County, Iowa</b>		<b>File No.: 2023-0165</b>	<b>Date: 25-APR-2023</b>
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	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://usace.army.mil/inet/functions/cw/cecwo/reg> 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:

Emma Aalbers  
US Army Corps of Engineers, Rock Island District  
**Attn: Regulatory Division**  
Clock Tower Building, P.O. Box 2004  
Rock Island, IL 61204  
515-276-4656 x6524

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

Administrative Appeals Review Officer  
Mississippi Valley Division  
P.O. Box 80 (1400 Walnut Street)  
Vicksburg, MS 39181-0080  
601-634-5820 FAX: 601-634-5816

**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: