



**DEPARTMENT OF THE ARMY**  
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE  
CORPS OF ENGINEERS  
INDIANAPOLIS REGULATORY OFFICE  
9799 BILLINGS ROAD  
INDIANAPOLIS, INDIANA 46216-1055  
<http://www.lrl.usace.army.mil>

April 1, 2011

Operations Division  
Regulatory Branch (North)  
ID No. LRL-2010-466-djd

Mr. Nathan Saxe  
Indiana Department of Transportation  
100 North Senate Avenue, Room N642  
Indianapolis, IN 46204

Dear Mr. Saxe:

Enclosed is Department of the Army (DA) Permit Number LRL-2010-466 authorizing the plan to construct Section 2 of the Interstate 69 Evansville to Indianapolis extension. Also enclosed is ENG Form 4336, "Notice of Authorization," which must be displayed at the construction site throughout construction.

Should any modification of the plans become necessary for any reason, approval from the District Engineer must be received prior to the start of the work. Copies of this letter will be sent to the appropriate coordinating agencies (see enclosure for addresses).

Sincerely,

A handwritten signature in blue ink, appearing to read "Deborah Duda Snyder", is written over the typed name.

Deborah Duda Snyder  
Project Manager  
Indianapolis Regulatory Office

Enclosures

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

Applicant: Indiana Department of Transportation	File Number: LRL-2010-466	Date: 4/01/2011
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	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:

Deborah Duda Snyder, Project Manager  
US Army Engineer District, Louisville  
Attn: CELRL-OP-FN  
9799 Billings Road  
Indianapolis, IN 46216-1055  
Ph# 317-532-4197

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

Ms. Pauline D. Thorndike  
U.S. Army Engineer Division,  
Great Lakes and Ohio River  
550 Main Street - Room 10032  
Cincinnati, Ohio 45202-3222  
Ph# 513-684-6212

**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:

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Indiana Department of Transportation

**Permit Number:** LRL-2010-466

**Issuing Office:** U.S. Army Engineer District, Louisville

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** To discharge 6,432 cubic yards (cys) of fill material below the Ordinary Highway Water Mark (OHWM) of 25,075 linear feet of East Fork Keg Creek, Allen Lateral, Buck Creek, Hurricane Creek, South Fork Patoka River, Patoka River, Flat Creek, Prides Creek, Mud Creek, Veale Creek, Hurricane Branch, unnamed tributaries to East Fork Keg Creek, Buck Creek, Hurricane Creek, South Fork Patoka River, Patoka River, Flat Creek, Prides Creek, Mud Creek, Lick Creek, East Fork White River, Jackson Pond, Veale Creek, and Hurricane Branch. In addition, 638,370 cys of fill material would be discharged into 16.41 acres of open water and emergent, scrub-shrub, and forested wetlands to construct fourteen crossings of Section 2 of the Interstate 69 extension. The road would start at State Route 64 near Oakland City in Gibson County and continue for approximately 29 miles to U.S. Route 50 near Washington, Daviess County, Indiana. The fill material would consist of clean earthen fill, limestone riprap, and concrete

**Project Location:** The project is located on the Patoka River and tributaries to the Patoka River and the East Fork White River in Pike and Daviess Counties, Indiana (Latitude 38.3370 North/ Longitude -87.3980 West).

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the authorized activity ends on **May 1, 2016**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

**Special Conditions:**

1. The permittee shall create or restore 25,075 linear feet of stream and 36.55 acres of wetland to include 7.84 acres of emergent, 0.06 acres of scrub-shrub, and 28.65 acres of forested wetland in accordance with the "Cornelius Mitigation and Monitoring Plan," "Corn Mitigation and Monitoring Plan," "Purcell Mitigation and Monitoring Plan" and "Cooper/Buck Mitigation and Monitoring Plan" dated January 5, 2010.
2. The permittee shall monitor the mitigation sites annually for a period of five years. This monitoring shall include annual stream monitoring, using the Headwater Habitat Evaluation Index (HHEI) or the Qualitative Habitat Evaluation Index (QHEI), as appropriate for the size of the stream, at the mitigation sites. The annual survey data should be collected at the same time each year, selected during the June-September period, at each mitigation stream reach. The survey should be designed to be readily comparable from year to year. The permittee shall submit monitoring reports to the U.S. Army Corps of Engineers, Indianapolis Regulatory Office by December 31 every year of monitoring.
3. If 30 percent of the survey channel segments at the mitigation sites fail to maintain at least their original length in linear feet and to achieve a HHEI/QHEI score of at least 30 during any annual monitoring event, adaptive management/corrective actions shall be proposed, assessed, approved by the U.S. Army Corps of Engineers, and performed.
4. If, at the end of the required monitoring period, total acreage of successful wetland mitigation is less than required at the four above mentioned sites, the permittee shall be allowed to substitute successful acreage at the Bartley Mitigation and Monitoring Site. Construction of the Bartley site shall be in accordance with the "Contingency Wetland Mitigation and Monitoring Plan for the Bartley Mitigation Site," dated September 14, 2010.
5. The permittee's responsibility to complete the required compensatory mitigation as set forth in Special Condition 1 shall not be considered fulfilled until they have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

**Further Information:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:
  - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - Section 404 of the Clean Water Act (33 U.S.C. 1344).
  - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition I establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

