



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT
SOUTHERN COLORADO REGULATORY BRANCH
201 WEST 8TH STREET, SUITE 350
PUEBLO, COLORADO 81003

June 30, 2022

Regulatory Division

SUBJECT: Jurisdictional Determination- Action No.SPA-2022-00123

Classic Communities
Attn: Loren Moreland
6385 Corporate Dr., Suite 200
Colorado Springs, Colorado 80919
lorenm@classichomes.com

Dear Mr. Moreland:

This letter responds to your request for a jurisdictional determination (JD) for forty (40) wetlands and one man-made pond associated with the *Classic Communities-Jayne's Parcel*, residential development. The approximately 141-acre project site is located near Sand Creek, centered at latitude 38.976682°, longitude -104.668357°, Colorado Springs, El Paso County, Colorado. We have assigned Action No. SPA-2022-00123 to your request. Please reference this number in all future correspondence concerning the site.

Based on the information provided, we concur with your aquatic resource delineation for the site, as depicted on the enclosed drawing labeled, *SPA-2022-00123, Figure 1*, prepared by Core Consultants, Inc. (enclosure 1). We have determined that the site does not contain waters of the United States that are subject to regulation under Section 404 of the Clean Water Act. The approximately 9.66-acres of aquatic resources identified as *Wetlands WT-A1* through *WT-A40* and one man-made pond, on the above drawing are intrastate isolated aquatic resources with no apparent interstate or foreign commerce connection. As such, these aquatic resources are not regulated by the U.S. Army Corps of Engineers. This disclaimer of jurisdiction is only for Section 404 of the Federal Clean Water Act.

We are enclosing a copy of the *Approved Jurisdictional Determination Form* for your site (enclosure 2). A copy of this JD is also available at <http://www.spa.usace.army.mil/req/JD>. This approved JD is valid for five years unless new information warrants revision of the determination before the expiration date.

You may accept or appeal this approved JD or provide new information in accordance with the attached Notification of Administration Appeal Options and Process and Request for Appeal (NAAOP-RFA) (enclosure 3). If you elect to appeal this approved JD, you must complete Section II of the form and return it to the Army Engineer Division, South Pacific, CESPDPDS-O, Attn: Tom Cavanaugh, Administrative

Appeal Review Officer, P.O. Box 36023, 450 Golden Gate Ave, San Francisco, CA 94102 within 60 days of the date of this notice. 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.

If you have any questions, please contact Senior Project Manager Kyle Zibung by email at kyle.d.zibung@usace.army.mil, or telephone at (651) 290-5877. For program information or to complete our Customer Survey, visit our website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Zibung". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

for
Kara Hellige
Chief, Southern Colorado Branch

Enclosures

cc:
Natalie Graves, Core Consultants, Inc. (ngraves@liveyourcore.com)

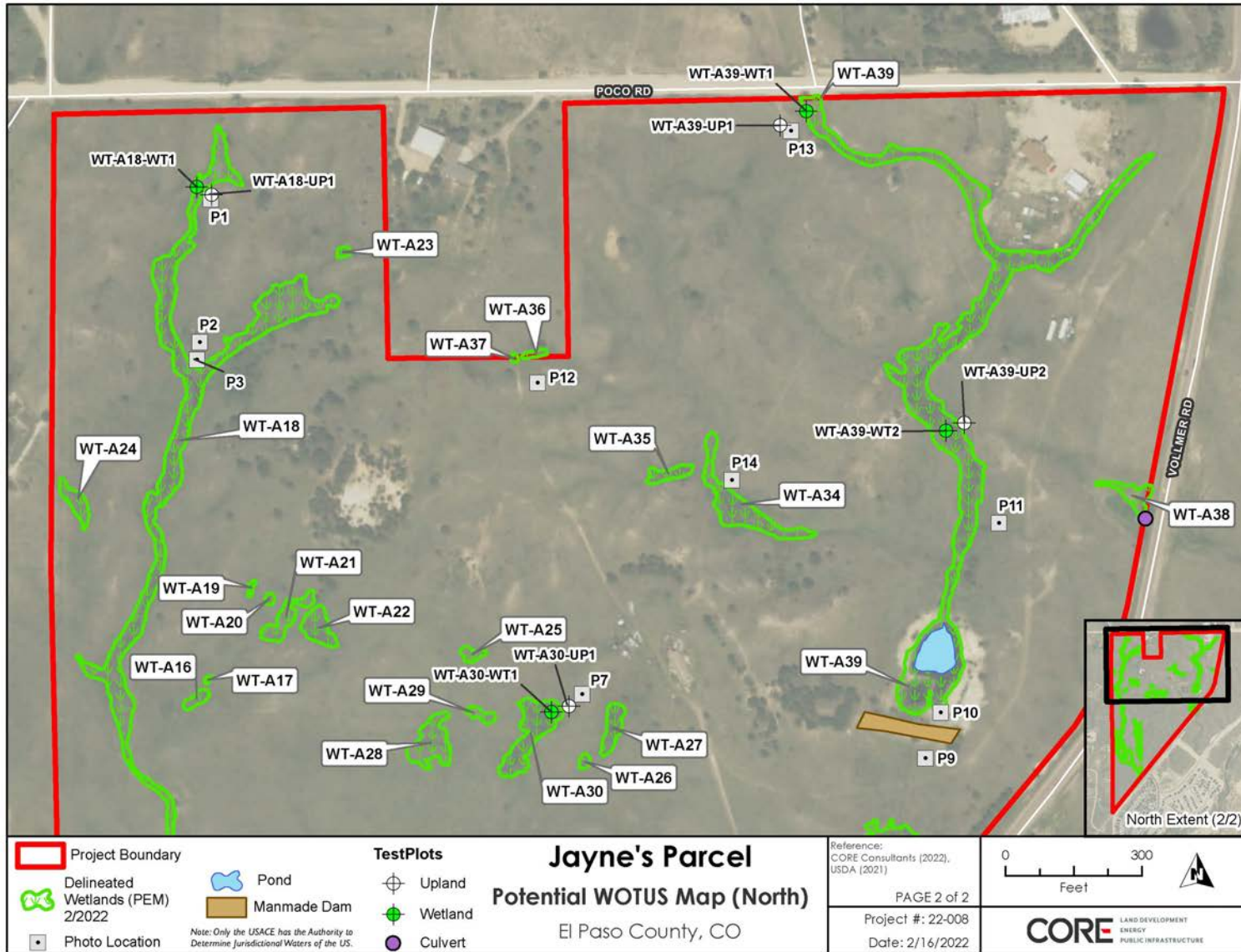


Figure 4.4 Potential WOTUS Location Map (North)

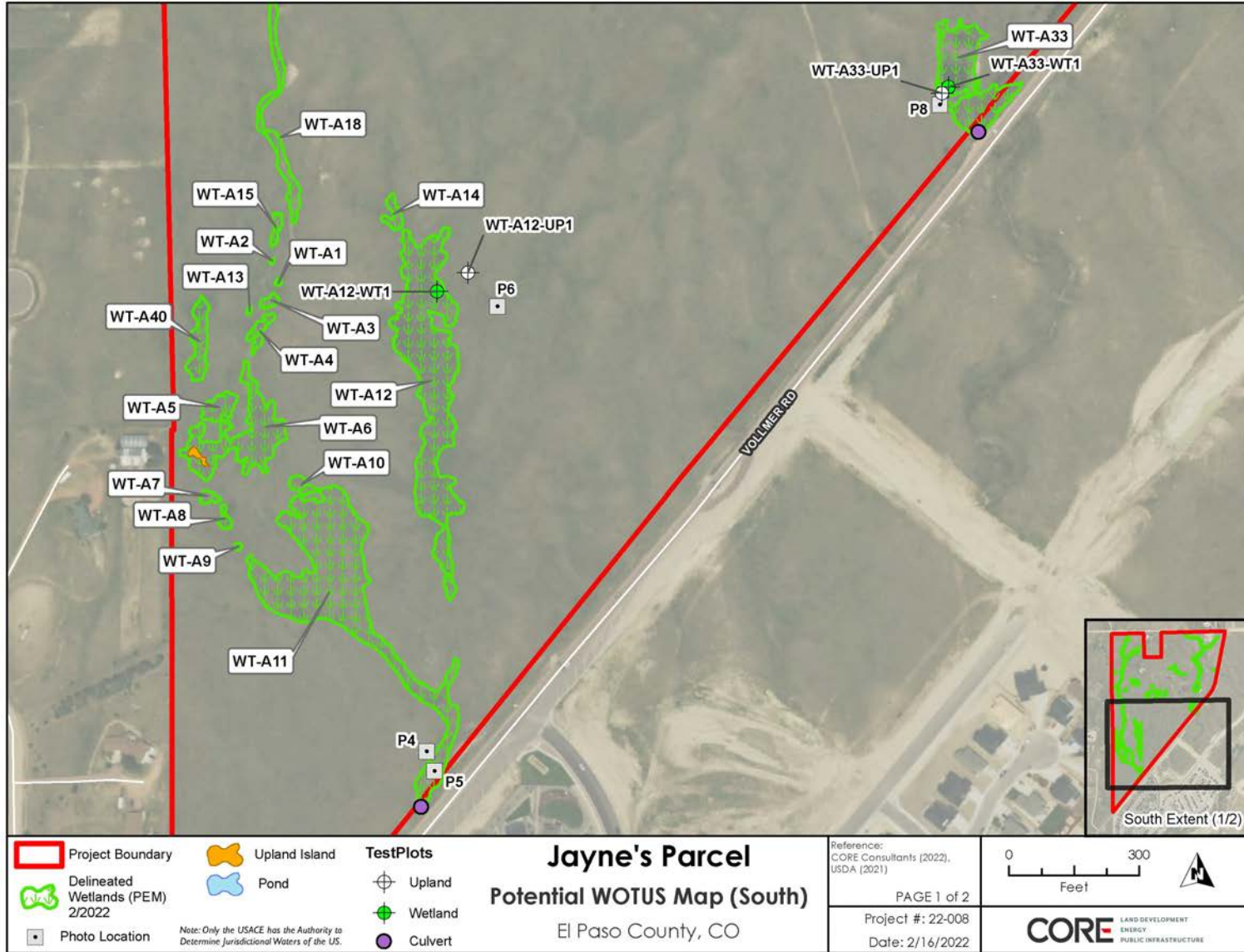


Figure 4.4 Potential WOTUS Location Map (South)

APPROVED JURISDICTIONAL DETERMINATION FORM
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): June 30, 2022

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: SPA-2022-00123, Classic Communities-Jayne's Parcel AJD

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Colorado County/parish/borough: El Paso City: Colorado Springs
Center coordinates of site (lat/long in degree decimal format): Lat. 38.976682° N, Long. -104.668357° W
Universal Transverse Mercator: 13
Name of nearest waterbody: Sand Creek

Name of watershed or Hydrologic Unit Code (HUC): 11020003-Fountain

- Check if map/diagram of review area and/or potential jurisdictional areas is/are 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: June 2, 2022
 Field Determination. Date(s):

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.

1. Waters of the U.S.: N/A

2. Non-regulated waters/wetlands (check if applicable):¹

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: **The review area for this determination is comprised of 40 individual Wetlands (identified as WT A1 through WT-A40) totaling 9.51 acres and one man-made pond totaling 0.15 acre located on the approximately 141-acre tract. Based on a review of the National Hydrography Dataset (NHD) the nearest mapped potential relatively permanent water (RPW) is Sand Creek located approximately 1,500 feet southeast of the review area. The National Wetland Inventory (NWI) and NHD shows mapped wetland drainages with two mapped ephemeral streams in the eastern and western portion of the review area, however, the February 2022 Core Consultants, Inc., wetland delineation report (Core Report) did not find any defined bed/banks nor ordinary high water mark indicators within these two mapped features. The Core Report determined the mapping layers to be inaccurate and best characterized both features as multiple depressional wetlands separated by upland swales. The upland swales sever a surface connection between the wetlands, pond, and Sand Creek. The Core Report notes that a culvert is present under Vollmer Road in the eastern portion of the review area near WT-A38, however, the outlet channel is comprised of a meandering upland swale with no observed surface connection to Sand Creek. Much of the land south of the JD review area has been previously graded for residential development resulting in altered surface hydrology patterns. Due to their small size and/or disturbed characteristics, Wetlands WT-A1 through WT-A40 and the man-made pond provide limited habitat functions to surrounding areas and exhibit tenuous ecological connections to nearby surface waters. Based on this information, the Corps has determined that Wetlands WT-A1 through WT-A40 and the man-made pond are isolated features with no surface or shallow subsurface hydrologic connection or ecological connection to a RPW or TNW. Wetlands WT-A1 through WT-A40 and the man-made pond do not border, neighbor, nor are contiguous with another water of the U.S. Wetlands WT-A1 through WT-A40 and the man-made pond are not separated from other WOTUS by man-made dikes, barriers, or berms. Wetlands WT-A1 through WT-A40 and the man-made pond do not support a link to interstate or foreign commerce; they are not known to be used by interstate or foreign travelers for recreation or**

¹ Supporting documentation is presented in Section III.F.

other purposes; They do not produce fish or shellfish that could be taken and sold in interstate or foreign commerce; and they are not known to be used for industrial purposes by industries in interstate commerce. Therefore, the Corps has determined that Wetlands WT-A1 through WT-A40 and the man-made pond are isolated and therefore not regulated by the Corps under Section 404 of the CWA.

SECTION III: CWA ANALYSIS

- A. TNWs AND WETLANDS ADJACENT TO TNWs: N/A
- B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY): N/A
- C. SIGNIFICANT NEXUS DETERMINATION: N/A
- D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY): N/A
- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY): N/A

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:
- Other (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: 0.15 acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: 9.51 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

SECTION IV: 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: February 2022 Core Consultants, Inc. Wetland Delineation Report
- 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:
- U.S. Geological Survey Hydrologic Atlas:
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: 1:24K Falcon NW
- USDA Natural Resources Conservation Service Soil Survey. Citation: El Paso County Soil Survey
- National wetlands inventory map(s). Cite name: USFWS National Wetland Inventory
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

- Photographs: Aerial (Name & Date): 2020, 2018, 2017, 2015, 2013, 2010 2008, 2006, 2005, 2000, 1994
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):

B. ADDITIONAL COMMENTS TO SUPPORT JD:

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Classic Communities c/o Loren Moreland	File No.: SPA-2022-00123	Date: June 30, 2022
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
→	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://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 (address on reverse). 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 (address on reverse). 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 (address on reverse). 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:

Kyle Zibung
U.S. Army Corps of Engineers
201 West 8th Street, Suite 350
Pueblo, Colorado 81003
Phone: 651-290-5877
Email: kyle.d.zibung@usace.army.mil

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

Thomas J. Cavanaugh
Administrative Appeal Review Officer
U.S. Army Corps of Engineers
South Pacific Division
P.O. Box 36023, 450 Golden Gate Ave
San Francisco, California 94103-1399
Phone: 415-503-6574, FAX 415-503-6646
Email: Thomas.J.Cavanaugh@usace.army.mil

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: