

Appendix R

USACE Preliminary Jurisdictional Determination



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT
1325 J STREET
SACRAMENTO CA 95814-2922

May 22, 2018

Regulatory Division (SPK-2012-00572)

Tahoe Transportation District
Attn: Mr. Carl Hasty
128 Market Street, Suite 3F
Stateline, Nevada 89449

Dear Mr. Hasty:

We are responding to your March 8, 2018, request for a preliminary jurisdictional determination (JD) for the US 50 Loop Road site. The approximately 127-acre project site is located near Lake Tahoe; with a linear project starting Latitude 38.9504° Longitude -119.9535°, midway Latitude 38.9583° Longitude -119.9426°, and ending Latitude 38.9682° Longitude -119.9359°; at South Lake Tahoe, El Dorado County, California and Stateline, Douglas County, Nevada.

Based on available information, we concur with your aquatic resources delineation for the site as depicted on the enclosed February, 2018, Exhibit 5-11 drawing(s) prepared by Ascent Environmental (enclosure 1). The approximately 0.317 acres of palustrine forested wetlands, 0.314 acres of palustrine emergent wetland, 0.13 acres of palustrine scrub-shrub wetlands, and 238 linear feet (0.08 acre) of Relatively Permanent Waters present within the survey area are potential jurisdictional aquatic resources ("waters of the United States") regulated under Section 404 of the Clean Water Act.

At your request, we have completed a preliminary JD for the site. Enclosed find a copy of the *Preliminary Jurisdictional Determination Form* (enclosure 2). Please sign and return the completed form to this office, at the address listed below, within 30 days of the date of this letter. If you do not return the signed form within 30 days, we will presume concurrence and finalize the preliminary jurisdictional determination.

You may request an approved JD for this site at any time prior to starting work within waters, including after a permit decision is made.

We recommend you provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

This preliminary jurisdictional determination has been conducted to identify the potential limits of wetlands and other aquatic resources at the project site which may be subject to U.S. Army Corps of Engineers jurisdiction under Section 404 of the Clean Water Act and/or Section 9 and 10 of the Rivers and Harbors Act. A *Notification of Appeal Process and Request for Appeal Form* is enclosed to notify you of your options with this determination (enclosure 3).

We appreciate feedback, especially about interactions with our staff and processes.

Please refer to identification number SPK-2012-00572 in any correspondence concerning this project. If you have any questions, please contact Aaron Park, Project Manager at our Reno Regulatory Field Office, 300 Booth Street, Room 3050, Reno, Nevada 89509-1328, by email at Aaron.C.Park@usace.army.mil, or telephone at (775) 784-5305. For program information or to complete our Customer Survey, visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,

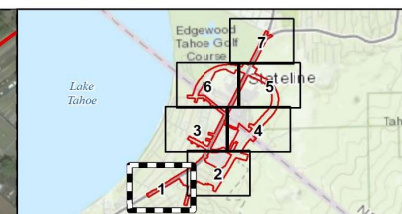
A handwritten signature in blue ink, reading "Kristine Ceragioli".

Kristine S. Ceragioli
Senior Project Manager
Nevada-Utah Section

Enclosures

cc:

Leana Rosetti, USEPA, Wetlands Office, rosetti.leana@epa.gov
Joseph Morgan, USEPA, Wetlands Office, Morgan.Joseph@epa.gov
Jean Stone, NDEP, BWQP, jstone@ndep.nv.gov
Dale Payne, California Water Quality Control Board, Lahontan Region,
DPayne@waterboards.ca.gov



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	0.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	0.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	0.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	0.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	0.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	0.07
Total Drainages					0.08

Legend

- ⊕ Map Reference Point
- Sample Point
- ▭ Study Area (130.46 acres)
- ▭ Map Extent
- ▭ Wetlands (W)
- ▭ Emergent Wetland

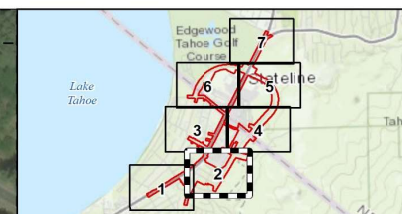


Delineator: Rachel Kozloski, Ascent Environmental
Mapping Specialist: Lisa Merry, Ascent Environmental
Delineation Date: 9/14/2017 and 9/15/2017
Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
Coordinate System: NAD 1983 StatePlane California II

G11010010 02 041a



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	0.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	0.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	0.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	0.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	0.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	0.07
Total Drainages					0.08

Legend

- Sample Point
- Study Area (130.46 acres)
- Map Extent
- Drainages (D)**
- Intermittent Stream
- Wetlands (W)**
- Emergent Wetland
- Scrub/Shrub Wetland

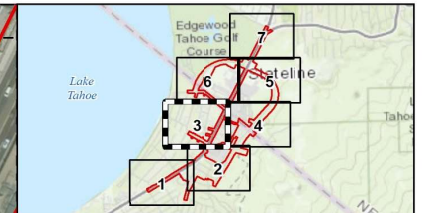


Delineator: Rachel Kozloski, Ascent Environmental
Mapping Specialist: Lisa Merry, Ascent Environmental
Delineation Date: 9/14/2017 and 9/15/2017
Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
Coordinate System: NAD 1983 StatePlane California II

G11010010 02 041b



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	C.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	C.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	C.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	C.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	C.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	C.07
Total Drainages					0.08

Legend

Study Area (130.46 acres)

Map Extent

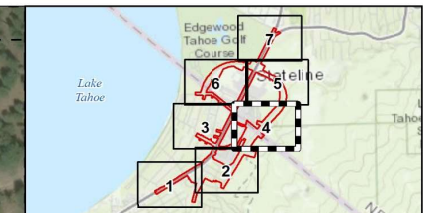
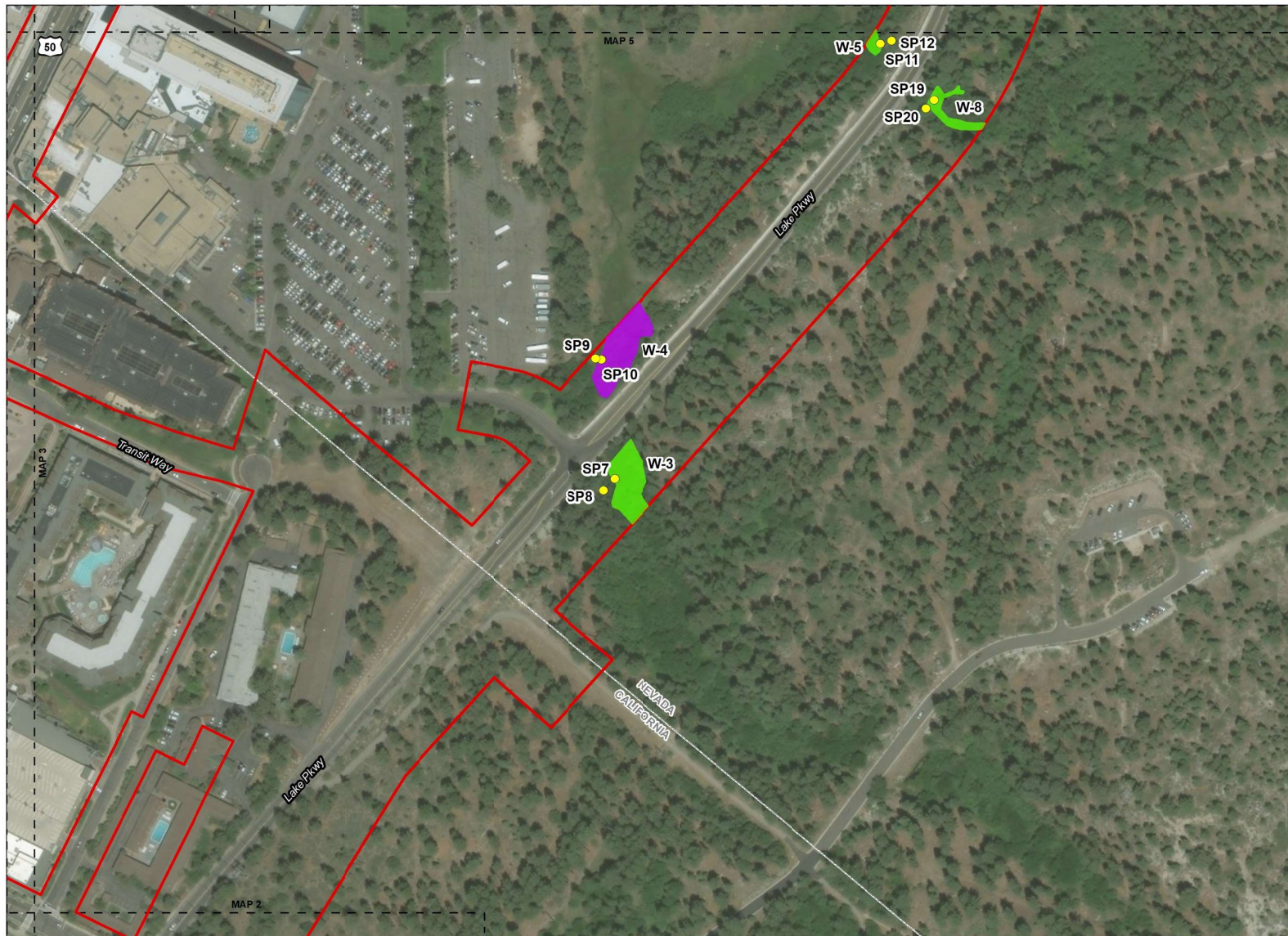


Delineator: Rachel Kozloski, Ascent Environmental
Mapping Specialist: Lisa Merry, Ascent Environmental
Delineation Date: 9/14/2017 and 9/15/2017
Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
Coordinate System: NAD 1983 StatePlane California II

G11010010 02 041c



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	0.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	0.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	0.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	0.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	0.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	0.07
Total Drainages					0.08

Legend

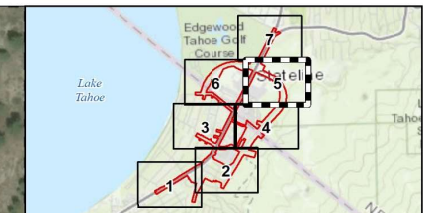
- Sample Point
- Study Area (130.46 acres)
- Map Extent
- Wetlands (W)
- Emergent Wetland
- Forested Wetland



Delineator: Rachel Kozloski, Ascent Environmental
Mapping Specialist: Lisa Merry, Ascent Environmental
Delineation Date: 9/14/2017 and 9/15/2017
Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
Coordinate System: NAD 1983 StatePlane California II
G11010010 02 0416



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	0.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	0.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	0.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	0.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	0.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	0.07
Total Drainages					0.08

Legend

- Sample Point
- Study Area (130.46 acres)
- Map Extent
- Wetlands (W)**
- Emergent Wetland
- Forested Wetland
- Scrub/Shrub Wetland

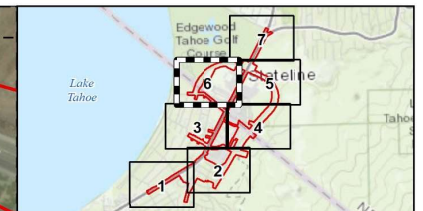


Delineator: Rachel Kozloski, Ascent Environmental
Mapping Specialist: Lisa Merry, Ascent Environmental
Delineation Date: 9/14/2017 and 9/15/2017
Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
Coordinate System: NAD 1983 StatePlane California II

G11010010 02 041e



ID	Type	Acres	ID	Type	Acres
Wetlands					
W-1	Emergent Wetland	0.01	W-7	Scrub/Shrub Wetland	C.11
W-2	Emergent Wetland	0.07	W-8	Forested Wetland	C.06
W-3	Forested Wetland	0.18	W-9a	Forested Wetland	C.01
W-4	Emergent Wetland	0.22	W-9b	Forested Wetland	C.04
W-5	Forested Wetland	0.03	W-10	Scrub/Shrub Wetland	C.02
W-6	Emergent Wetland	0.01			
Total Wetlands					0.76
Drainages					
D-1	Intermittent Stream	0.01	D-2	Perennial Stream	C.07
Total Drainages					0.08

Legend

- Study Area (130.46 acres)
- Map Extent
- 0 100 200 Feet
- 1 inch = 200 feet
-

Delineator: Rachel Kozloski, Ascent Environmental
 Mapping Specialist: Lisa Merry, Ascent Environmental
 Delineation Date: 9/14/2017 and 9/15/2017
 Revision Date: n/a

This exhibit depicts information and data produced consistent with U.S. Army Corps of Engineers wetland delineation methods described in the 1987 Corps of Engineers Wetland Delineation Manual and conforms to specifications per the Corps Sacramento District guidance.

Aerial: DigitalGlobe 2016
 Coordinate System: NAD 1983 StatePlane California II
 G11010010 02 041F



Exhibit 11 Wetlands (7 of 7)

PRELIMINARY JURISDICTIONAL DETERMINATION FORM
Sacramento District

This preliminary JD finds that there *"may be"* waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Regulatory Branch: **Nevada-Utah** File/ORM #: **SPK-2012-00572** PJD Date: **May 22, 2018**

State: **CA & NV** City/County: **El Dorado**
County & Douglas County
Nearest Waterbody: **Lake Tahoe**
Location (Lat/Long): **38.9583°, -119.9426°**
Size of Review Area: **127 acres**

Name/Address **Tahoe Transportation District**
Of Property **Attn: Mr. Carl Hasty**
Owner/ **128 Market Street, suite 3F**
Potential **Stateline, Nevada 89449**
Applicant

Identify (Estimate) Amount of Waters in the Review Area

Non-Wetland Waters:

238 linear feet **2-6** ft wide **0.08** acre(s)
Stream Flow: **Perennial**

Wetlands: **0.761** acre(s)
Cowardin Class: **N/A**

Name of any Water Bodies Tidal: **none**
on the site identified as
Section 10 Waters: Non-Tidal: **none**

☒ Office (Desk) Determination
☐ Field Determination:
Date(s) of Site Visit(s):

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply – checked items should 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: **US 50/South Shore Community Revitalization Project Aquatic Resources Delineation Report**
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☐ Data sheets prepared by the Corps.
- ☐ Corps navigable waters' study.
- ☐ U.S. Geological Survey Hydrologic Atlas:
☐ USGS NHD data.
☐ USGS HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; South Lake Tahoe**
- ☒ USDA Natural Resources Conservation Service Soil Survey.
- ☒ National wetlands inventory map(s).
- ☐ State/Local wetland inventory map(s).
- ☐ FEMA/FIRM maps.
- ☐ 100-year Floodplain Elevation (if known):
- ☒ Photographs: ☒ Aerial
☒ Other
- ☐ Previous determination(s). File no. and date of response letter:
- ☐ Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager
(REQUIRED)

Signature and Date of Person Requesting Preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "preconstruction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Tahoe Transportation District Attn: Mr. Carl Hasty		File No.: SPK-2012-00572	Date: May 22, 2018
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:

Aaron Park
Project Manager
Sacramento District, U.S. Army Corps of Engineers
Reno Regulatory Field Office
300 Booth Street, Room 3050
Reno, Nevada 89509-1328
Phone: 775-784-5305, FAX 775-784-5306
Email: Aaron.C.Park@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
1455 Market Street, 2052B
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.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
--	-------	-------------------