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LRH 2018-463-TUS

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TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army (DA) Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the United States Army Corps of Engineers' (Corps) request to the Ohio Environmental Protection Agency (OEPA) to act on the Section 401 Water Quality Certification (WQC) for the following application:

APPLICANT: Mr. Barry Alexin

Rosebud Mining Company

95 North Lisbon Street

Carrollton, Ohio 44615

LOCATION: The proposed action would be located in Wetland WD-A, within the Lower Little Stillwater Creek 12-digit Hydrologic Unit Code, in Sections 25 and 31 of Union Township, in Tuscarawas County, Ohio (40.39709°N, 80.31070°W). The water on-site flows into Lower Stillwater Creek, an indirect tributary to the Tuscarawas River, a navigable water of the United States. See attached Sheet 1 of 3 for the proposed location.

DESCRIPTION OF PROPOSED WORK: The applicant has requested a DA authorization to discharge dredged and/or fill material into 1.0 acre of one (1) wetland (Wetland WD-A), as indicated on Sheet 3 of 3, in association with the expansion of an existing coal refuse disposal area, referred to as the Tusky Mine. The proposed expansion area would be part of the larger, Tusky Mine complex, a deep mine facility, that includes a deep mine portal, a coal processing facility, stockpiles areas, water treatments facilities, and a coal refuse disposal area. Expansion of the refuse disposal area would result in the permanent discharge of dredged and/or fill material 1.0 acre of one (1) wetland (Wetland WD-A) and into the Existing Diversion Ditches 1B, 5A, 8B, Existing Rock Channel 8, and a catch basin. The Existing Diversion Ditches 1B, 5A, 8B, Existing Rock Channel 8, and catch basin are part of a waste treatment system (National Pollutant Discharge Elimination System (NPDES) Permit No. OIL00141) for the existing facility and are not waters of the United States subject to regulation under Section 404 of the Clean Water Act.

The proposed refuse expansion area is regulated by the Ohio Department of Natural Resources, Division of Mineral Resources Management (ODNR-MRM), ODNR Permit No. D-2177, pursuant to the Surface Mining Control and Reclamation Act of 1977. The purpose of the proposed project is to expand the existing refuse disposal area in order to accommodate the future disposal of coarse refuse material generated by the on-site processing of coal mined from the Middle Kittanning No.6 coal seam at the Tusky Mine. A copy of the DA permit application, including all supplemental materials (alternative analysis, compensatory mitigation plan, etc.) are available for public review in the Huntington District Office, by appointment.

ALTERNATIVES ANALYSIS: A total of 1.0 acre of one (1) wetland, Wetland WD-A, would be permanently filled as a result of the proposal. The project does not require access or proximity to or siting within wetlands to fulfill its basic purpose and is considered a non-water dependent activity. The Section 404(b)(1) Guidelines state for non-water dependent activities, practicable alternatives that do not involve a discharge into special aquatic sites such as wetlands are presumed to be available, unless clearly demonstrated otherwise. The applicant is required to provide an alternatives analysis that must overcome this presumption prior to receiving authorization for the discharge of dredged and/or fill material. The applicant has submitted an alternatives analysis and it is currently under review. A complete copy of the applicant's alternatives analysis can be reviewed at the above address. The applicant evaluated six (6) potential disposal sites based on the siting criteria including



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not available to achieve the overall project purpose.

AVOIDANCE AND MINIMIZATION: In evaluating a project area containing waters of the United States, consideration must be given to avoiding impacts on these sites. If waters of the United States cannot be avoided, then the impacts must be minimized. A total of 1.64 acres of two (2) wetlands, Wetland WD-B and Wetland WD-A, are located within the ODNR Permit No. D-2177 Boundary, as depicted on Sheet 3 of 3. The applicant designed the proposed refuse disposal expansion project to avoid 0.54 acre of Wetland WD-A and all of Wetland WD- B (0.10 acre). Stormwater management planning would incorporate best management practices and water pollution controls necessary to maintain compliance with the Federal Water Pollution Control Act and Ohio Water Pollution Control Act. Stormwater management and erosion control systems would be implemented during construction to minimize indirect effects to the aquatic environment. All disturbed areas would be seeded and/or revegetated with native plant species and native seed mixes after completion of construction activities.

COMPENSATORY MITIGATION PLAN (CMP): To compensate for the loss of waters of the United States associated with the proposed project, the applicant proposes permittee-responsible off-site preservation of a recently constructed 2.72 acre wetland located within the Little Stillwater Creek sub-watershed. The applicant's CMP is currently under review. A complete copy of the applicant's CMP can be reviewed by appointment at the above address. After review of all the submitted information, the Corps will make a determination of the appropriate compensatory mitigation in the event a decision is made to issue a DA authorization.

WATER QUALITY CERTIFICATION: A Section 401 WQC is required for this project. It is the applicant's responsibility to obtain the Section 401 WQC from the OEPA.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the NRHP that would be indirectly or directly affected by the proposed work. The proposed project would be located within the footprint of the existing ODNR Permit No. D-2177 boundary which contains the existing Tusky Mine complex. The majority of the proposed project area has been previously disturbed by the existing mine, the installation of a natural gas pipeline, and logging activities. In addition, the ODNR-DMRM, previously consulted with the Ohio History Connection, the Ohio State Historic Preservation Office (Ohio SHPO) regarding a 6.4 acre borrow area and two additional (2) borrow areas that are located within the ODNR Permit No. D-2177 boundary. Through a letter dated August 9, 2018 sent to the ODNR-DMRM concerning the 6.4 acre barrow area associated with the Tusky Expansion Area, the Ohio History Connection, the Ohio SHPO stated *the proposed undertaking will have no effect on properties listed in or eligible for listing in the National Register of Historic Places*. Based on the above, the proposed undertaking would have no potential to affect historic properties. This Public Notice serves as coordination with the Ohio SHPO, pursuant to Section 106 of the National Historic Preservation Act of 1966. A copy of this Public Notice will be furnished to the Ohio SHPO for their review. Comments concerning archaeological sensitivity of the project area should be based on collected data.

THREATENED AND ENDANGERED SPECIES: The proposed project is located within the known or historic range of the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*). The applicant has agreed to conduct tree clearing operations for trees greater than 3-inches diameter at breast height prior to April 1 and after September 30, as recommended by the United States Fish and Wildlife Service (USFWS), to minimize effects on the Indiana bat and the northern long-eared bat. The Corps has determined the proposed project may affect, but is not likely adversely affect either the Indiana bat or the northern long-eared bat. This Public Notice serves as a request for concurrence from the USFWS for the aforementioned effect determination and for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND CUMULATIVE EFFECTS: This application will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the Corps, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the United States Environmental Protection Agency pursuant to Section 404(b)(1) of the Clean Water Act (40 CFR part 230). The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both the protection and the utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including the cumulative effects thereof; among those factors are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps is soliciting comments from the public, Federal, state and local agencies and officials, Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any person may request, in wr



US Army Corps of Engineers Huntington District Website

make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written statements received in this office on or before the expiration date of this Public Notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

United States Army Corps of Engineers

ATTN: CELRH-RD-E

Public Notice: LRH-2018-463-TUS

502 Eighth Street

Huntington, WV 25701-2070

Please note names, addresses, and comments submitted in response to this Public Notice become part of our administrative record and, as such, may be available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources. If you have any questions concerning this Public Notice, please contact Ms. Audrey Richter of the Energy Resource Branch, at 716-879-4469, by mail at the above address, or by email at Audrey.M.Richter@usace.army.mil.

[LRH 2018-463-TUS Attachments](#) 