

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

BEFORE THE INDIANA DEPARTMENT OF  
NATURAL RESOURCES

IN THE MATTER OF: )  
OBJECTION TO THE CERTIFICATE OF )  
APPROVAL FOR APPLICATION #FW-30915-0 )

**FILED**  
CAUSE NO. \_\_\_\_\_ **JUN 25 2021**

Natural Resources Commission  
Division of Hearings

**PETITION FOR ADMINISTRATIVE REVIEW**

The Indiana Department of Natural Resources (“DNR”) issued a Certificate of Approval for Application # FW-30915-0 that relates to Ecosystems Connections Institute LLC’s (“Applicant”) request to remove the Providence Mill Dam, an historic structure located within Silver Creek in the city of New Albany. DNR identified the City of New Albany (“New Albany”) as an interested party and adjacent landowner as shown on the service list for the Certificate of Approval, which has a mail date of June 9, 2021. Pursuant to I.C. § 4-21.5-3-7 and 312 IAC 3-1-3, this request is timely made to the Division of Hearings to conduct a review of DNR’s approval of Application # FW-30915-0.

**I. Name, Address and Telephone Number of Person Making a Request:**

City of New Albany  
c/o Mayor Jeff Gahan  
311 Hauss Square, Suite 316  
New Albany, IN 47150  
Phone: (812) 948-5333

**II. Interest of the Person Making the Request; Aggrieved Party:**

New Albany is not only an interested party due to the project area being located within city limits, but it is also an adjacent landowner to the Providence Mill Dam.

**III. Issues Proposed for Consideration:**

New Albany files this Petition for Administrative Review in order to verify compliance with the Indiana Flood Control Act, Ind. Code 14-28-1, and its associated regulations. As currently

known, there is a lack of evidence to support DNR's approval. Most notably, no hydrologic or hydraulic modeling was performed to evaluate the effect the dam removal would have on the base flood elevation.

Applicant contends that there is no change in the effective cross section flow area, and as such, did not submit any modeling data. DNR, however, concludes that "removal of the dam will *increase* the cross sectional flow area of Silver Creek . . . ." (Regulatory & Project Impact Review Comment)(emphasis added). This finding by DNR is contrary to the nature of the route taken by Applicant that *no change* is to take place as a result of dam removal. Good engineering practice and regulatory oversight would be to model in order to reconcile the conflicting positions. How significant is the change to the cross sectional flow area that DNR found?

Applicant's own hydraulic engineer partner at the US Fish and Wildlife Service recommended conducting simple hydraulic modeling to understand the effects of dam removal, yet none was done. (See March 30, 2021 letter authored by Jesus Morales). Mr. Morales also wrote that removal "will typically cause geomorphological changes to the river channel where the reservoir is now . . . ." Accordingly, there is evidence contrary to Applicant's contention and inconsistency within the DNR record as to this central issue.

DNR's conclusion concerning base flood elevation was based entirely on the information provided by Applicant, without independent verification, and without fundamental hydrologic and hydraulic modeling to satisfy the legal requirements mandated by the Flood Control Act and related regulations.

During its Fish, Wildlife, and Botanical Review, DNR answered in the affirmative: "Will there be increased erosion, sedimentation, or landslides? Yes." It then suggested that such detrimental effects "should be minimized with implementation of E&SC conditions." Similarly

without providing any technical basis or evidentiary support, DNR concludes that no wetlands will be affected by the dam removal. Of particular concern for New Albany is the Loop Island Wetland, which is just downstream of the Providence Mill Dam. Additional assessment is needed to verify the erosion and sediment controls being proposed will be sufficient to prevent the admitted detrimental side effects of dam removal.

Also required by law before approving the permit, an environmental review must evaluate the impact that the dam removal will have on fish, wildlife, and botanical resources. The submitted documents are insufficient for DNR to make an informed decision, and the record does not demonstrate that a thorough environmental assessment has been completed. As an example, Applicant allegedly collected sediment samples to evaluate the presence or absence of various chemicals as required by the Indiana Department of Environmental Management, yet the laboratory results have not been provided to New Albany.

Applicant also promises to perform a biological survey before dam removal, yet no indication that such has been completed and the results of this important step are absent the public record. When discussing the presence of mussels, Applicant states “no data available,” yet claims that mussels will benefit from the dam removal. (Supplemental Permit Submission Page 3). Without data, how can Applicant or DNR evaluate the environmental impact on mussels? Further information is required to fulfill the environmental assessment requirement.

Built in approximately 1904 to provide boating and fishing opportunities to visitors of the once-popular Glenwood Park, the Providence Mill Dam has historical significance. While the park is no longer present, Providence Mill Dam retains its distinctive characteristics and showcases the unique type, period, and method of construction. Applicant acknowledges the historical nature of the dam, but DNR appears to have not fully considered its importance. Applicant admits, “No

review of this site has been conducted by SHPO, but the Providence Mill dam will require historical recordation by a certified archaeologist.” (Supplemental Permit Submission Page 3). The findings and conclusions of the historical reviews have not been presented.

DNR did not properly consider the current recreational uses of Silver Creek due to the Providence Mill Dam; namely, fishing and kayaking. The application overlooks these to only focus on the goal of kayaking without having to portage the kayak around the dam. While Applicant cites improved safety as a reason for the removal, DNR’s Navigation and Boater Safety Review did not find any hazards. In fact, a condition of the permit is to keep Silver Creek open for this recreational use in its current configuration of either direct passage or portage. “A passageway for kayak and canoe traffic must be maintained during construction. If the main channel is blocked at any point during construction, provide temporary portage upstream . . . .” (See also Certificate of Approval Project Specific Permit Condition #5).

DNR may have been misled by the Applicant’s statement that the “removal is fully supported by local government and community.” (Supplemental Permit Submission, Page 5). Since the beginning, New Albany, through its mayor and other officials, have raised concerns over the ecological, historical, environmental, recreational, and other effects of removing Providence Mill Dam, and the public hearing and comment period further demonstrated the different viewpoints on the issue. DNR has neither recognized nor responded to these valid concerns.

Undersigned counsel has been and will remain in communication with the Applicant and DNR’s counsel regarding these issues, among others, in an effort to explore resolution while this administrative proceeding moves forward.

#### **IV. Identification of Parties and Counsel:**

Petitioner, City of New Albany, is represented by:

Nicholas Gahl  
GAHL LEGAL GROUP  
90 E. Cedar Street  
Zionsville, IN 46077  
Phone: (317) 873-4560  
[Nick@GahlLegal.com](mailto:Nick@GahlLegal.com)

**V. Person Against Whom Administrative Review is Requested:**

New Albany seeks review of DNR's Certificate of Approval, and this request for review is directed to:

Natural Resources Commission  
Division of Hearings  
Indiana Government Center North  
100 N. Senate Avenue, Room N103  
Indianapolis, IN 46204

And via email ([nrcaopa@nrc.in.gov](mailto:nrcaopa@nrc.in.gov))

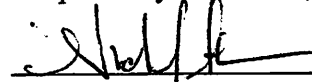
With copy via email to:

Rebecca McClain  
Staff Attorney  
Indiana Department of Natural Resources  
402 W. Washington Street, Room W295  
Indianapolis, Indiana 46204  
[rmclain@dnr.in.gov](mailto:rmclain@dnr.in.gov)

**VI. Relevant Document:**

A copy of the Certificate of Approval dated June 9, 2021 is attached hereto as Exhibit A.

Respectfully submitted,



---

Nicholas Gahl, Atty No. 27842-49  
GAHL LEGAL GROUP  
90 E. Cedar Street  
Zionsville, IN 46077  
Phone: (317) 873-4560  
[Nick@GahlLegal.com](mailto:Nick@GahlLegal.com)



**CERTIFICATE OF APPROVAL**

Application #: FW-30915-0

This Certificate of Approval is a Permit for Construction under the authority of the Indiana Flood Control Act, IC 14-28-1 with 312 IAC 10 and IC 14-29-1 with 312 IAC 6 as administered by the Department of Natural Resources.

Approval Issued To: Ecosystems Connections Institute LLC, Herb Manifold, 9130 North 600 East, Denver, IN 46926

Approval Issued By:

Mail Date: 6/9/2021

James J. Hebenstreit, PE, Division of Water

Permit Effective Date: 06/27/2021

Permit Expiration Date: 06/09/2023

Pursuant to IC 4-21.5-3-5(f), this Permit becomes Effective eighteen (18) days from the Mail Date to provide a stay period for a Petition for Administrative Review with the Indiana Natural Resources Commission, Division of Hearings. Initiating construction authorized in this Permit prior to the Permit Effective Date constitutes a violation. This Permit is only valid until the Permit Expiration Date.  
This Permit may be renewed one (1) time if a written request is received at the DNR, Division of Water, prior to the Permit Expiration Date.

---

**PROJECT INFORMATION:**

Waterbody: Silver Creek

County: Clark

Project Description Narrative: A 290' by 6' lowhead dam will be removed from Silver Creek. The dam will be removed in stages to slowly release the upstream impounded water. Temporary stream accesses approximately 25' wide will be constructed out of the riprap for machine access to the creek and dam during removal. The material from the dam and all of this material will be removed and hauled to a recycling center at the end of construction.

Project Location: Beginning approximately 760' east of the intersection of Beharrell Avenue and East Spring Street and continuing approximately 425' east near New Albany

---

**PERMIT CONDITIONS:**

This Certificate of Approval is valid only if the construction project is in compliance with all Conditions in this Permit.

**DNR PROJECT SPECIFIC PERMIT CONDITIONS**

1) Any equipment and/or cables placed on a public waterway must be clearly marked with navigation buoys as described in 312 IAC 5-4 in a manner that would be visible to any watercraft operator in the area.

- 2) In addition to the requirements in 312 IAC 5-4, any equipment and/or cables left in a public waterway in times of limited visibility must be marked with flashing amber warning lights and reflective signage warning watercraft operators of the hazards.
- 3) Any construction equipment left in the waterway overnight must be illuminated.
- 4) Warning signs shall be placed at locations upstream and downstream of the project site and be visible to any watercraft entering the construction area.
- 5) A passageway for kayak and canoe traffic must be maintained during construction. If the main channel is blocked at any point during construction, provide a temporary portage upstream and install clear signage that warn boaters of the main channel closure and directing the boaters to the temporary portage.
- 6) Ensure that the public access remains open throughout construction and completion of the project.
- 7) Revegetate all bare and disturbed areas with a mixture of native grasses, sedges, wildflowers, and also native hardwood trees and shrubs if any woody plants are disturbed during construction as soon as possible upon completion. Do not use any varieties of Tall Fescue or other non-native plants, including prohibited invasive species (see 312 IAC 18-3-25).
- 8) Do not work in the waterway from April 1 through June 30 without the prior written approval of the Division of Fish and Wildlife.
- 9) Do not cut any trees suitable for Indiana bat or Northern Long-eared bat roosting (greater than 5 inches dbh, living or dead, with loose hanging bark, or with cracks, crevices, or cavities) from April 1 through September 30.
- 10) Do not construct any temporary runarounds, access bridges, causeways, cofferdams, diversions, or pumpharounds.
- 11) Use minimum average 6 inch graded riprap stone extended below the normal water level to provide habitat for aquatic organisms in the voids.
- 12) Appropriately designed measures for controlling erosion and sediment must be implemented to prevent sediment from entering the stream or leaving the construction site; maintain these measures until construction is complete and all disturbed areas are stabilized.
- 13) Seed and protect all disturbed streambanks and slopes not protected by other methods that are 3:1 or steeper with erosion control blankets that are heavy-duty, biodegradable, and net free or that use loose-woven / Leno-woven netting to minimize the entrapment and snaring of small-bodied wildlife such as snakes and turtles (follow manufacturer's recommendations for selection and installation); seed and apply mulch on all other disturbed areas.
- 14) The Division of Water's Dam Safety Section shall be notified, in writing, within 60 days after project completion that the structure has been removed.
- 15) The low head dam is to be recorded as an archaeological site as a condition of the USACE permit. Except for this documentation of the dam, no further archaeological investigations are necessary.
- 16) Except for the material used as backfill as shown on the plans submitted for the permit application, place all excavated material landward of the floodway\*.
- 17) All work must conform with the existing bank at the upstream and downstream limits of the project site.
- 18) Do not leave felled trees, brush, or other debris in the floodway\*.
- 19) Upon completion of the project, remove all construction debris from the floodway\*.
- 20) \* Note: For regulatory purposes, the floodway is defined on the attached Floodway Map.
- 21) Other than those shown on plans received at the Division of Water, issuance of this Certificate of Approval does not constitute approval of any temporary causeways, coffer dams, runarounds, access bridges or borrow areas associated with the proposed bridge construction. A separate written approval must be obtained from the DNR, Division of Water for these types of projects prior to beginning any work within the floodway\*.

#### **DNR PROJECT GENERAL PERMIT CONDITIONS**

1) Any modifications or additional construction beyond what was shown on plans received at the Division of Water shall require an additional review and approval from the Department of Natural Resources.

2) This Permit must be posted and maintained at the project site until the project is completed.

3) This Permit shall not be assigned or transferred without the prior written approval of the Department of Natural Resources.

4) If any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (IC 14-21-1-27 and 29) requires that the discovery must be reported to the Department of Natural Resources within two (2) business days.

5) This Permit may be revoked by the Department of Natural Resources for violation of any condition or applicable statute or rule.

6) The Department of Natural Resources shall have the right to enter upon the site of the permitted activity for the purpose of inspecting the work authorized under this Permit.

Certificate of Approval Attachments: FW-30915\_FloodplainMap.pdf

---

#### **RIGHT TO ADMINISTRATIVE REVIEW:**

A party may appeal this Department of Natural Resources Action through the administrative review procedures found in the Administrative Orders and Procedures Act, IC 4-21.5, and the rules promulgated thereunder 312 IAC 3-1. If an appeal is filed, the final agency determination will be made by the Natural Resources Commission following a legal proceeding conducted before an Administrative Law Judge. The Department of Natural Resources will be represented by legal counsel at all stages of administrative review.

In order to obtain an administrative review, a written petition must be filed with the Division of Hearings within 18 days of the Mail Date of the Action. The petition must contain specific reasons for the appeal and indicate the portion or portions of the project to which the appeal pertains. The petition must be addressed to the Division of Hearings, Indiana Government Center North, Room N103, 100 North Senate Avenue, Indianapolis, Indiana 46204

---

#### **SERVICE LIST:**

##### Applicant(s):

Ecosystems Connections Institute LLC, Herb Manifold, 9130 North 600 East, Denver, IN 46926

##### Adjacent Landowners and Interested Parties:

Scott Wood, 311 Hauss Square, Room 329, New Albany, IN 47150  
City of New Albany, Larry Summers, 311 Hauss Square, Room 309 City-County Building, New Albany, IN 47150  
Amy S Williams, 501 East Court Avenue, Suite 416, Jeffersonville, IN 47130  
Jessica and Shaun Campbell, 4004 Fields Lane, New Albany, IN 47150  
Scott Wood, 1308 Aebersad Drive, New Albany, IN 47150  
Jeff Gahan, 1122 Eastridge Drive, New Albany, IN 47150  
Linda Moeller, 2824 Green Valley Road, New Albany, IN 47150  
Patricia Badger Byrd, 620 Payne Road, New Albany, IN 47150  
Heather Wenning Able, 4007 Cicalla Court, Georgetown, IN 47122  
Kathy Smith, 6299 Maple Road, Greenville, IN 47124  
Cheryl Bailey, 85 Fieldstone Court, New Albany, IN 47150  
Catherine Moeller Cunanan, 2597 Roanoke Avenue, New Albany, IN 47150  
Matthew E Juliot, 6201 Cherry Grove Court, Georgetown, IN 47122  
Willa Banet, 430 White Pine Boulevard, Georgetown, IN 47122  
Catherine Cousins, 712 Mount Tabor Road#2, New Albany, IN 47150  
Eric Condon, 480 Brookridge Circle, New Albany, IN 47150  
Chris Koehler, 7301 Wirelender Road, Georgetown, IN 47122



Sandy Boofter, 521 Bentbrook Drive, New Albany, IN 47150  
Larry Summers, 3425 Greenview Drive, New Albany, IN 47150  
Mike Mills, 9455 Wolfe Cemetery Road, Georgetown, IN 47122  
Matt Hunter, 1211 Vance Avenue, New Albany, IN 47150  
Linda Spiegelhalter, 407 South Parkline Drive, New Albany, IN 47150  
Krystina Jarboe, 1256 Vance Avenue, New Albany, IN 47150  
Jerry Burger, 2406 Trinity Run Court, New Albany, IN 47150  
Whitney Ginkins, 899 Woodbourne Drive, New Albany, IN 47150  
Cyndi Krauss, 1416 Indiana Avenue, New Albany, IN 47150  
Tonya Fischer, 4402 Sunrise Court, Sellersburg, IN 47172  
Michael Hall, 3007 Creek Ridge Drive, New Albany, IN 47150  
Jason Stanton, 501 East Spring Street Apartment 204, New Albany, IN 47150  
Jenny Leshney CBBEL, 115 West Washington Street, Indianapolis, IN 46204  
Charles Jackson, 7801 Creeks Mill Road, Georgetown, IN 47122  
Don and Kathy Corson, 1118 East Market, New Albany, IN 47150  
Louise Gohmann, 2831 Silver Creek Drive, New Albany, IN 47150  
Seth and Kristi Riddle, 2534 Glenwood court, New Albany, IN 47150  
Stan Green, 3013 Shashore Court, New Albany, IN 47172  
Michael Thompson, 759 Linden Street, New Albany, IN 47150  
Josh Turner, 1851 McDonald Lane, New Albany, IN 47150  
Kelly Carnigham, 902 Broadway Drive, New Albany, IN 47150  
Dale Brummett Sr, 1800 Gutford Road, Clarksville, IN 47129  
Philip Hendershot, 2203 Saint Andrews Road, Jeffersonville, IN 47130  
Culler Law Office, Ronald Culler, 2123 Veterans Parkway, Jeffersonville, IN 47130  
Deborah Hosier, 3113 Arbor Ridge Lane, New Albany, IN 47150  
Doug Hosier, 3113 Arbor Ridge Lane, New Albany, IN 47150  
Linda Moeller, 2824 Green Valley Drive, New Albany, IN 47150  
Al Knable, 1301 Riddle Road, New Albany, IN 47150  
Erica Stemler, 1116 Eastridge, New Albany, IN 47150  
Krstine Fee, 717 Rolling Creek Drive, New Albany, IN 47150  
Greg Miller and Karen Terwilliger, 2407 Oak Leaf Lane, Clarksville, IN 47129  
Rosalind Metzweier, 118 North Bohannon Lane, New Albany, IN 47150  
New Albany HTGLAC, Scott Dowell, 606 Woodson Avenue, New Albany, IN 47150  
Amy Price, 1030 Woodmount Drive, New Albany, IN 47150  
EKL Properties, Pam Kraft, 320 Washington Place, New Albany, IN 47150  
Janet and Floyd Quinn, 1584 Old Ford Road, New Albany, IN 47150  
Richard Rush, 2768 Mount Tabor Road, New Albany, IN 47150  
Jerry Klockmann, 2105 Gary Drive, New Albany, IN 47150  
Ron Howard, 3309 Mellwood Drive, New Albany, IN 47150  
Kevin Zurschmiede, 6003 Bent Tree Court, Floyds Knobs, IN 47119  
Kevin Pangburn, 4200 Buck Creek Road, Floyds Knobs, IN 47119  
EcoSystems Connections Institute, Mike Jarvis, 164 Monaco Drive, Franklin, IN 46131  
EcoSystems Connections Institute, Jerry and Melinda Sweeten, 9130 North 600 East, Denver, IN 46926  
Steve Bush, 6745 Pioneer Trail, Georgetown, IN 47122  
Ron Boggs, 2410 Allentown Road, Sellersburg, IN 47172  
Danelle Archer, 1650 Hedden Parkway, New Albany, IN 47150  
What's Below, Paul Detwiler, 2620 French Creek Road, New Albany, IN 47150  
Craig Hennis, 1117 Lafayette Drive, New Albany, IN 47150  
Brad Moser, 3134 Arbor Ridge Lane, New Albany, IN 47150  
Diane Williams, 916 Brookwood Drive, New Albany, IN 47150  
D M Bagshaw, 85 Gelt Street, New Albany, IN 47150  
Jerry and Jill Finn, 7810 Saint Johns Road, Floyds Knobs, IN 47119  
Jason and Amy Price, 1030 Woodmount Drive, New Albany, IN 47150  
Nelson and Chris Grube, 1812 Crestview Drive, New Albany, IN 47150  
Jamie Laswell, 2529 East Elm Street, New Albany, IN 47150  
Daniel Watkins, 2529 East Elm Street, New Albany, IN 47150  
George Melton, 2501 Glennwood Park, New Albany, IN 47150

Terri Jordan, 3002 Grey Wolf Cove, New Albany, IN 47150  
Karen Bland, 1490 Old Ford Road, New Albany, IN 47150  
Terri Dillow, 1490 Old Ford Road, New Albany, IN 47150  
Debbie and Don Conner, 2835 Silver Creek Drive, New Albany, IN 47150  
Dulcie Willis, 2845 Silver Creek, New Albany, IN 47150  
Paul Detwiler, 2620 French Creek Road, New Albany, IN 47150  
Daniel Watkins, 2529 East Elm Street, New Albany, IN 47150  
Pat McLaughlin, 608 Albany Street, New Albany, IN 47150  
Jerry Klockmann, 2105 Gary Drive, New Albany, IN 47150

Courtesy Notification:

US Army Corps of Engineers, Louisville District PO Box 59, Louisville, KY 40201  
Floyd County SWCD, Kevin Feder, 2524 Corydon Pike, Suite 103, New Albany, IN 47150  
Clark County SWCD, Lynn Miller, 9608 Highway 62, Charlestown, IN 47111  
Clark County Drainage Board, County Surveyor, City County Building Room 310 501 East Court Avenue, Jeffersonville, IN 47130  
Floyd County Drainage Board, County Surveyor City County Building, Room 122 311 West 1st Street, New Albany, IN 47150  
Indiana Department of Natural Resources, Division of Law Enforcement District 8 Headquarters PO Box 330, Henryville, IN 47126

---

**ADDITIONAL PERMITTING AGENCIES:**

This is not a waiver of any local ordinance or other state or federal law and does not relieve the permittee of any liability for the effects which the project may have upon the safety of the life or property of others.

This does not relieve the permittee of the responsibility of obtaining permits, approvals, easements, etc. under other regulatory programs administered by, but not limited to, the U.S. Army Corps of Engineers, County Drainage Board, Indiana Department of Environmental Management and local, city, or county floodplain management, planning or zoning commissions.