



DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

REPLY TO
ATTENTION OF:

January 13, 2010

Regulatory Branch
File Number 2008-838 (P-2706)

Mr. Corey Mehaffy
Moberly Area Economic Development Corporation
115 North Williams, Suite A
P.O. Box 549
Moberly, Missouri 65270

Dear Mr. Mehaffy:

Transmitted herewith is Department of the Army Permit No. P-2706, authorizing the placement of fill material into waters of the United States in conjunction with the construction of a commercial development in the city of Moberly, Randolph County, Missouri. Construction of the project will result in the permanent placement of fill into 2.4 acres of jurisdictional emergent wetlands. The wetlands are adjacent to the headwaters of Elk Fork Salt River, which flows to the Mississippi River. The Mississippi River is a navigable waterway.

It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, state or local laws or regulations; nor does it obviate the necessity of obtaining state assent to the work authorized.

General conditions designated 1 through 6 and parts 2 through 6 of "Further Information" are standard conditions for all permits. Special conditions 1 through 6 specify measures to protect water quality at the worksite, ensure protection of the aquatic environment and compliance measures.


If any material changes in the scope, location and plans of the work are found necessary, due to unforeseen conditions or otherwise, revised plans detailing proposed modifications in the work must be submitted to the District Engineer for review and approval. Proposed modifications may not be placed under construction until Department of the Army "Approval of Revised Plans" has been granted.

The St. Louis District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete the enclosed postage paid card or go to our Customer Service Survey found on our web site at <http://per2.nwp.usace.army.mil/survey.html>.

If you have any questions please contact Rob Gramke, Missouri Section Chief, at (314) 331-8187. Please refer to file number MVS-2008-838.

Sincerely,

ROBERT S. GRAMKE

Danny D. McClendon
 Chief, Regulatory Branch

Enclosures

Copies Furnished: (w/ Special Conditions only)

Carrie Schulte, MDNR
Rick Hansen, USFWS
Jason Daniels, USEPA
Judith Deel, MDNR

DEPARTMENT OF THE ARMY PERMIT

Permittee Moberly Area Economic Development Corporation Attn: Mr. Corey Mehaffy

Permit No. P-2706

Issuing Office U.S. Army Engineer District, St. Louis

NOTE: The term "you" and its derivatives, as used in this permit, mean 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 of that office 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: Discharge of fill material into 2.4 acres of jurisdictional emergent wetland for the construction of a commercial/retail facility. The unnamed tributary is adjacent to the headwaters of Elk Fork Salt River. Elk Fork Salt River is a secondary tributary to the Mississippi River.

Project Location: The project is located in Section 30, Township 54 North, Range 13 West, at the eastern edge of the city of Moberly, in Randolph County, Missouri. The geographic coordinates of the site are 39° 26' 53.2" North, 92° 24' 55.2" West; (-92.415, 39.448).

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **January 13, 2015**. 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 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 of 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 in accordance with the terms and conditions of your permit.
7. Your responsibility to complete the required compensatory mitigation as set forth in Special Condition 4 will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

Special Conditions:

See continuation sheet, page 4 and 5 of this document for Special Conditions.

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 authorization 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 measures 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 1 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 favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

MNAEDC by


(PERMITTEE)

President


(TITLE)


1-21-10

(DATE)

Moberly Area Economic Development Corporation
c/o Mr. Corey Mehaffy

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER) (Thomas E. O'Hara, Jr.)
Colonel, U.S. Army
BY: Danny D. McClendon
 Chief, Regulatory Branch

1-21-10

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

Special Conditions

1. That the permit may be revoked or a stop work order issued if the State of Missouri notifies the Corps that the permitted activities are not being performed in conformance with the Missouri Department of Natural Resources December 23, 2009 Section 401 Water Quality Certification conditions issued for this permit (see attached).
2. Permittee shall construct the project in accordance with the plans submitted with the December 8, 2008 permit application. The permittee shall notify the Corps should any change in size, location or methods to accomplish the work occur. Changes could potentially require additional authorizations from the Corps as well as other Federal, state or local agencies.
3. The permittee shall submit to the District a certified copy of a Conservation Easement for the compensatory wetland mitigation site totaling 2.4 acres. The Conservation Easement shall guarantee the preservation of the mitigation site for wetland and wildlife resources. The copy of the Conservation Easement shall be submitted with a land description meeting all legal requirements and prepared by a licensed land surveyor, including the total restricted area, and with a figure illustrating the meets and bounds of the restricted mitigation area. The required Conservation Easement documentation shall be submitted to the District no later than 60 days from the date of the permit.
4. That the applicant provide compensatory mitigation as indicated in the November 30, 2009 Mitigation Plan prepared by Terra Technologies, Inc., with the following inclusions and exceptions:
 - a. Photographs of the mitigation site will be taken on an annual basis, at pre-determined viewpoints from the fixed monitoring stations. The pre-determined viewpoints could be cardinal directions, or other viewpoints that adequately illustrate developing site conditions. The pre-determined viewpoints must be photographed in replicate fashion during each successive year of monitoring. The entire photographic log must be made available to the District upon request.
 - b. The mitigation site shall have at least a 75 percent absolute vegetative cover, except in areas of near-constant inundation that cannot support such a high absolute vegetative cover percentage. However, no more than 25 percent of the constructed mitigation wetland shall exist as contiguous (non-mosaic), unvegetated open water.
 - c. Financial assurances shall be provided by in the form of an irrevocable letter(s) of credit from a designated financial authority that is a member of the Federal Deposit Insurance Corporation (FDIC), to the USACE naming a District-approved third-party oversight entity as the responsible party in the event that the permittee is unable to achieve mitigation success.
 - d. Documentation that the financial assurances have been established must be submitted to the District prior to project construction.
 - e. Disbursement of funds established by the letter(s) of credit shall be at the sole discretion of the District, and shall be required in the event of:
 - i. The mitigation project has not met one or more of its performance requirements, and has not shown a likelihood of future achievement of performance

requirements, for two consecutive years.

- ii. Annual monitoring reports have not been submitted for two consecutive years.
 - iii. Legal dissolution of the mitigation site owner/manager, or the third-party oversight entity.
- f. The letter(s) of credit shall total a minimum of \$10,000.00. Of this amount, a minimum of \$5,000.00 shall be reserved for construction costs and contingency, and a minimum of \$5,000.00 shall be reserved for mitigation monitoring and report submittal.
- i. The letter(s) of credit can be reduced by \$2,500.00 after three (3) years if the site is meeting all performance criteria at that time.
 - ii. The letter(s) of credit can be reduced by \$1,000.00 for each year of monitoring, for which the District has received and approved the submitted monitoring report.
 - iii. Written authorization must be received from the District prior to any modification of the letter(s) of credit.
- g. The permittee shall provide documentation that the third-party oversight association has established an account with an FDIC-insured financial institution, into which funds from the financial assurances can be deposited. If the third-party oversight association selected for the project cannot provide this documentation, the permittee must select another third-party oversight association. Selection of the replacement third-party oversight association will require prior approval of the District. Documentation of the established account must be submitted prior to project construction.
- h. Construction of the mitigation wetland shall be completed within one year of the initiation of project impacts. The permittee shall notify the District upon initiation of mitigation construction.
- i. The permittee shall submit final as-built drawings of the constructed mitigation wetland.
5. The permittee shall notify the District upon completion of all work relative to the project. A final compliance inspection may be carried out in order to witness that all conditions have been complied with during construction.
6. That the permit (P-2706) is valid for 5 years from the date of permit issuance. The permittee shall contact the District in writing at least 30 days prior to permit expiration in order to renew this permit, if all construction activities relative to this project are not completed in this time frame.