

DEPARTMENT OF THE ARMY PERMIT

Permittee Vietti's Vision, L.L.C.

Permit No. NWK=2009-00791

Issuing Office U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means 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, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Project Description: Discharge about 54,000 cubic yards of fill material into unnamed intermittent tributaries of Dry Wood Creek to construct an earthen dam with a permanent pool of 16 surface acres, and a flood pool of 19 surface acres. The dam will be constructed on a 5.14-acre footprint and shall be 24-feet high, 2,368-foot long, with a 208-foot base width, and a 12-foot top width, all within a 31.7-acre total project footprint that includes a fenced buffer area. The primary purpose of this project is to establish raptor and waterfowl nesting habitat, with the secondary purpose of sediment storage and stream flow augmentation.

Permit Drawing(s): Location map, plan view, cross section, Sheets 1 of 3 through 3 of 3 dated 30 July 2009.

Project Location: In the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 19, Township 27 South, Range 25 East, Bourbon County, Kansas.

(Latitude : 37.68497; Longitude: -94.71578)

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2013. 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.

Special Conditions:

See continuation sheets, pages 4 and 5, of this document.

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.

(PERMITTEE)

(DATE)

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

(DISTRICT ENGINEER)

(DATE)

ANTHONY J. HOFMANN, COLONEL
BY: Thomas L. Schumann
Kansas State Program Manager
Regulatory Branch

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)

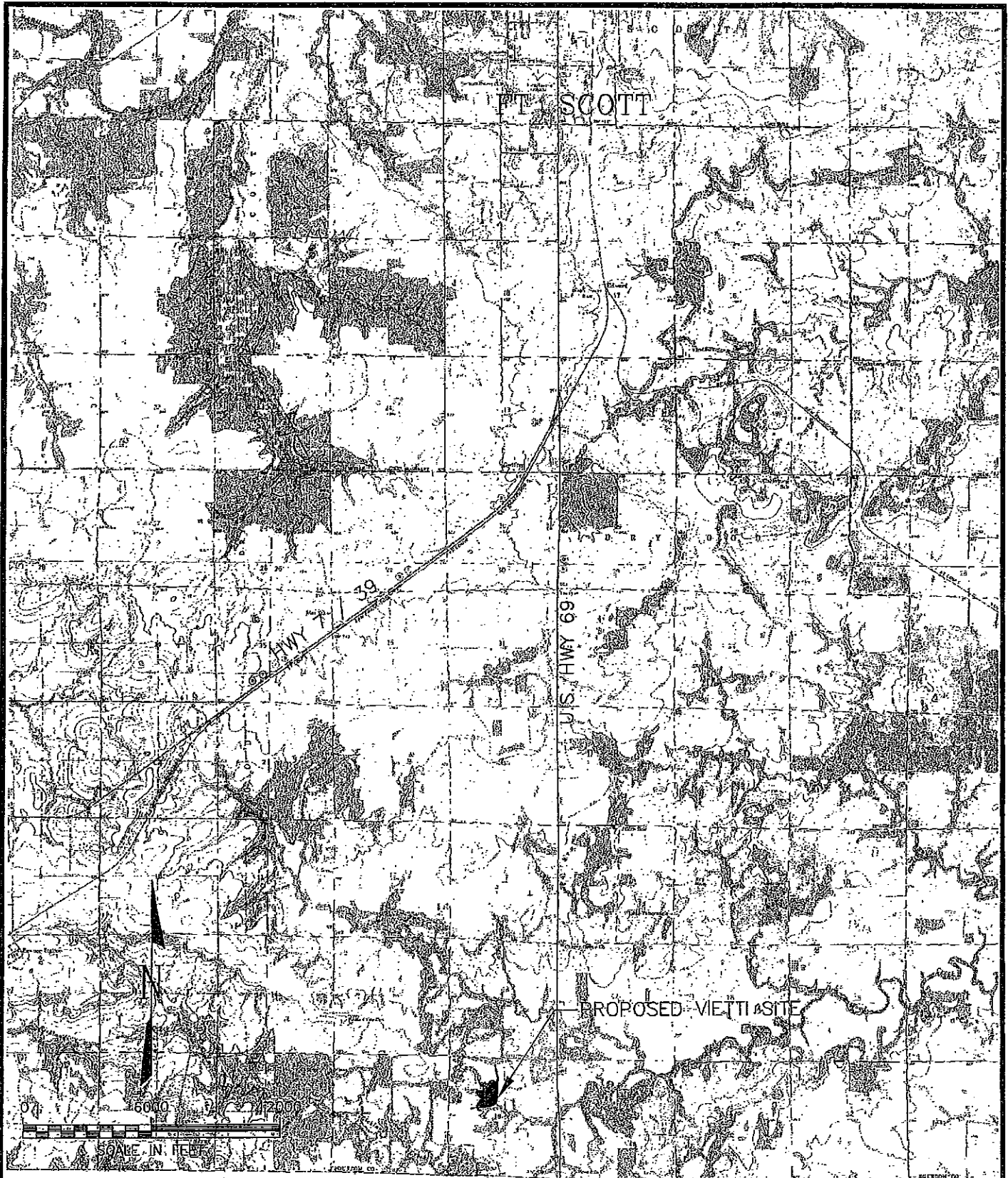
(DATE)

Special Conditions:

- a. You must sign and return a "Compliance Certification" after you complete the authorized work and any required mitigation. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that any required mitigation was completed in accordance with the permit conditions.
- b. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.
- c. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching.
- d. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- e. You must excavate, dredge and/or fill in the watercourse in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
- f. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body.
- g. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- h. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.
- i. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. Clearing, grading and replanting should be planned and timed so that only the smallest area necessary is in a disturbed, unstable or unvegetated condition.
- j. Upon completion of earthwork operations, you must plant native grass and/or forbs in all disturbed areas. The seeding and replanting of native vegetation must not include the invasive Eurasian watermilfoil (*Myriophyllum spicatum*), purple loosestrife (*Lythrum salicaria*), Johnson grass (*Sorghum halepense*), sericea lespedeza (*Lespedeza cuneata*), salt cedar (*Tamarix* spp.), and reed canary grass (*Phalaris arundinacea*). You must contact the Kansas City District, Regulatory Branch prior to beginning work on any additional erosion control measures so that a determination can be made whether further authorization is required.

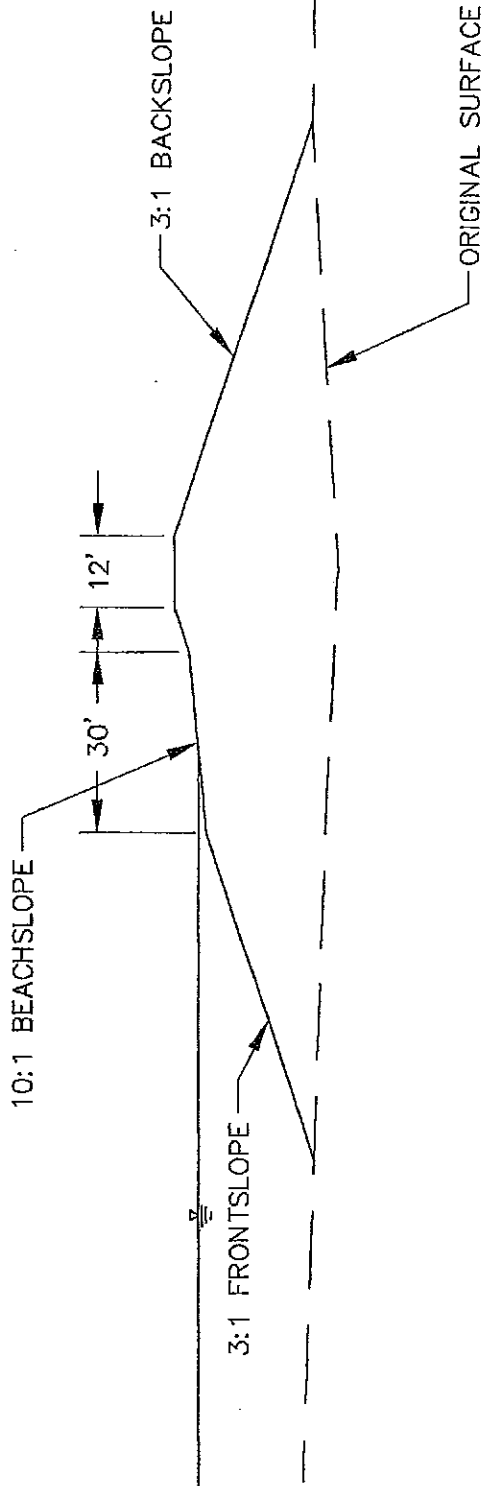
Special Conditions Continued):

- k. You must use only graded rock and/or quarry-run rock for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume.
- l. You must mitigate for project related impacts to 2,433 linear feet of stream channel in accordance with the Cindy Vietti Pond Mitigation Plan, dated February 4, 2011. To minimize project impacts downstream from the dam, you shall install an unregulated 2-inch diameter flow through pipe within the dam set at elevation 855.0. This will allow approximately 100 gallons per minute of flow into the Dry Wood Creek tributary below the dam for up to 30 days after the primary spillway flow ceases. A 150 to 200-foot (31.7-acre) fenced buffer area that includes the footprint of the dam, shall be seeded to native grass and forbs. A finalized conservation easement for the mitigation area shall be submitted to the Corps for approval before work may commence.
- m. A minimum of a five-year monitoring plan is required. An annual report with photos will be required to demonstrate the effectiveness of the flow through pipe on the downstream habitat and the effectiveness of the buffer areas. The first year monitoring will be provided to the Corps of Engineers approximately 6 months post construction, and annually for a 5 year period. Criteria required for the annual monitoring report is attached.
- n. The attached mitigation plan with associated easements to be recorded, is hereby incorporated as part of the DA permit and must be completed as described. In order to ensure that the mitigation area remains protected in perpetuity, this information/permit must be provided to future landowners.
- o. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions "l", "m", and "n" will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.



APPLICATION NO. 2009-791
CINDY VIETTI
DAM CONSTRUCTION
UNNAMED TRIBUTARIES OF DRY WOOD CREEK
BOURBON COUNTY, KANSAS
SHEET 1 OF 3 - DATED 30 JULY 2009

VIETTI POND
VICINITY MAP
VIETTI TOPOG.DWG



APPLICATION NO. 2009-791
 CINDY VIETTI
 DAM CONSTRUCTION
 UNNAMED TRIBUTARIES OF DRY WOOD CREEK
 BOURBON COUNTY, KANSAS
 SHEET 3 OF 3 - DATED 30 JULY 2009

VIETTI POND
 TYPICAL SECTION
 File Name: VIETTI TOPOG.DWG

