



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MINNESOTA 55101-1678

OCT 07 2014

REPLY TO
ATTENTION OF

Operations
Regulatory (2012-00773-AMN)

Scott Ebel
Wisconsin Department of Transportation
944 Vanderperren Way
Green Bay, Wisconsin 54304

Dear Mr. Ebel:

Enclosed are a validated copy of the Permit Modification and Acknowledgement and a copy of the 2nd conformed permit for Department of the Army Permit 2012-00773-AMN. Please be advised that the authorized modifications are contingent on the permittee's compliance with the conformed permit and all conditions.

This Federal permit does not obviate the need to obtain any other Federal, state or local authorizations required by law.

The decision regarding this action is based on information found in the administrative record which documents the District's decision-making process, the basis for the decision, and the final decision.

If you have any questions, contact Todd Vesperman in our Green Bay Field Office at (651) 290-5857. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

for Tamara E. Cameron
Chief, Regulatory Branch

Enclosures

**Permit Modification
and Acknowledgment**

The U.S. Army Corps of Engineers, St. Paul District is proposing to modify Department of the Army permit 2012-00773-AMN issued to the State of Wisconsin Department of Transportation for the discharge of dredged and fill material into waters of the United States in conjunction with the WIS 441 Tri-County Freeway Project in Winnebago and Calumet Counties, Wisconsin.

The proposed modification would provide authorization to impact an additional 0.01 acre of wooded swamp wetland to accommodate the extension of Vermillion Road. In addition, it would increase the overall number of mitigation credits required to 37.29, with 14.51 credits being established and enhanced at the Town of Neenah Site. The modification would subsequently change and clarify the compensatory wetland mitigation requirements in Special Condition #3 of the permit. This modification does not relieve the Permittee from complying with any other terms and conditions of the permit.

I have reviewed the proposed permit modification and have no objections.



Name: SCOTT EBEL

Title: WISDOT PROJECT MANAGER

Dated: 2/10/14

The permit modification is acknowledged by the U.S. Army Corps of Engineers as of this date.



Tamara E. Cameron
Chief, Regulatory Branch
for U.S. Army Corps of Engineers, St. Paul District

Dated: 10/7/2014

DEPARTMENT OF THE ARMY PERMIT

Permittee State of Wisconsin Department of Transportation
Permit No. 2012-00773-AMN

Issuing Office St. Paul District
U.S. Army Corps of Engineers

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.

Project Description:

You are authorized to impact 37.54 acres of Little Lake Butte des Morts, unnamed tributaries to Little Lake Butte des Morts, and wetlands adjacent to unnamed tributaries to Little Lake Butte des Morts and the Arrowhead River in association with the WIS 441 Tri-County Freeway Project (WisDOT ID# 1517-07-72 & 82). The individual authorized components of the WIS 441 Tri-County Freeway Project are described below:

Permanent: The permanent discharge of dredged and fill material is authorized in 23.68 acres of wetland which include: 8.45 acres of shallow marsh, 8.24 acres of wet meadow, 4.27 acres of shrub scrub, 0.03 acre of artificial shallow marsh, 0.01 acre of deep marsh, 2.23 acres of wooded swamp, and 0.46 acre of aquatic bed. Also included in this authorization is the permanent discharge of dredged and fill material in 6.37 acres of roadside wet ditches and indirect impacts as a result of permanent shading in 0.76 acre of wetland which includes: 0.06 acre of shallow marsh, 0.42 acre of shrub scrub, and 0.28 acre of wooded swamp.

Temporary: The temporary discharge of dredged and fill material is authorized in 2.93 acres of wetland in association with temporary construction access and work space. The affected wetlands include: 1.18 acres of shrub scrub and 1.75 acre of aquatic bed. Also included in this authorization is the indirect impact as a result of temporary vegetation removal in 0.17 acre of wetland which includes: 0.12 acre of wooded swamp and 0.05 acre of shrub scrub.

Rubbert Phase 3 Mitigation Site: The permanent discharge of dredged and fill material is authorized in 0.44 acre of wet meadow wetland in association with construction of a fixed weir and berms, and the temporary discharge of dredged and fill material is authorized in 2.55 acres of wet meadow wetland in association with mechanical grading during wetland enhancement activities.

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Town of Neenah Mitigation Site: The permanent discharge of dredged and fill material is authorized in 0.01 acre of an unnamed tributary to Little Lake Butte des Morts in association with the diversion structure, and the temporary discharge of dredged and fill material is authorized in 0.62 acre of farmed wetland in association with wetland enhancement activities (Modification and Conformed Permit June 16, 2014).

The authorized wetland and water impacts are shown on the attached drawings labeled 2012-00773-AMN, Page 1 of 23 through Page 23 of 23.

Project Location:

The project site is located along the US 10/WIS 441 highway from the US 41 interchange west of Little Lake Butte des Morts to the Oneida Street interchange at the county line of Winnebago and Calumet counties in Sections 1, 2, 3, 4, 9, 10, 11 & 16, T. 20N., R. 17E., Winnebago County, and Section 6, T. 20N., R. 18E., Calumet County, Wisconsin.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2020. 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 date is reached.
2. You must maintain the activity authorized by this permit in good condition and 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 archaeological 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:

1. You understand and agree that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. You shall ensure that none of the work performed to construct, operate or maintain this project (including preparatory work, staging, site clean-up and mitigation work) causes impacts (including drainage or non-point source sedimentation) to other waters or wetlands except those impacts expressly authorized by this Corps permit.
3. To compensate for the unavoidable permanent loss of 26.20 acres of wetland, including temporal loss of wetland function and loss of wetland function associated with wetland conversion, you shall provide a total of 37.29 credits of compensatory wetland mitigation as follows:
 - a. You shall establish and enhance a minimum of 14.51 credits at the Town of Neenah Mitigation Site. A total of 20 credits (19.38 credits wetland establishment, 0.62 credits wetland enhancement) would be created at this site. The site would consist of 20 acres of riparian emergent wetlands. The hydrology and plant communities shall be established in accordance with the Success Criteria identified in the *Town of Neenah Wetland Mitigation Site Plan*, dated June 6, 2014. The mitigation shall be completed prior to or concurrently with the authorized activities in waters of the U.S., and all earthwork, construction and planting on the mitigation site shall be completed by December 31, 2016 (Modification and Conformed Permit June 16, 2014).
 - b. You shall establish and enhance a minimum of 22.78 credits (17.85 credits wetland establishment, 2.55 credits wetland enhancement, 2.38 credits upland buffer) at the Rubbert Phase 3 Mitigation Site. The site would consist of 19.02 acres of wet meadow wetlands, 4.82 acres of shallow marsh wetlands, 1.66 acres of deep marsh wetlands, and 9.52 acres of upland buffer. The hydrology and plant communities shall be established in accordance with the Success Criteria identified in the *Wetland Mitigation Site Plan – Rubbert Wetland Mitigation Site Phase 3*, dated January 21, 2014. The mitigation shall be completed prior to or

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concurrently with the authorized activities in waters of the U.S., and all earthwork, construction and planting on the mitigation site shall be completed by December 31, 2015.

- c. You shall install monitoring wells in each wetland community type at the Rubbert Phase 3 Mitigation Site prior to the second full growing season. You shall maintain these monitoring wells for the duration of the monitoring period, and shall include a summary of the monitoring well data in each monitoring report submittal to the Corps.
 - d. If the performance criteria outlined in the *Wetland Mitigation Site Plan – Rubbert Wetland Mitigation Site Phase 3*, dated January 21, 2014, and the *Town of Neenah Wetland Mitigation Site Plan*, dated June 6, 2014, are not met at any time during the monitoring period, you shall provide the Corps with a proposal detailing corrective actions and/or maintenance actions proposed (if any) and an implementation schedule for those actions. You shall implement the necessary corrective measures following review and approval/modification of those measures by the Corps. Upon completion of corrective measures, you shall provide a written summary of the work to the Corps. Additional remedial actions may be required if the corrective measures do not result in satisfaction of the performance criteria during the next growing season.
 - e. To address potential berm damage, the Corps may, at any time during the monitoring period, require removal, treatment or management of undesirable animal species (muskrats, etc.), including physical removal, live trapping, confining wires or nets.
 - f. An as-built survey shall be submitted within 30 days of the completion of the Rubbert Phase 3 Mitigation Site construction. This report will summarize the construction activities, describe any changes to the original plan, describe any corrective actions needed, and provide an as-built survey showing 1-foot elevation contours or spot elevations. This survey shall be prepared by a licensed surveyor or registered professional engineer.
 - g. The Rubbert Phase 3 Mitigation Site shall be protected in perpetuity by covenants or conservation easement or other land use restrictions acceptable to this office that prohibit incompatible uses. The covenants shall be reviewed and approved by this office, and shall be recorded within 90 days of the completion of the mitigation site construction (prior to monitoring completion). A certified copy of the recorded covenant shall be returned to this office.
4. Your responsibility to complete the required compensatory mitigation as set forth in these Special Conditions will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers.

2. Refer to Standard Conditions attachment.

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).

(X) 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 authorizations 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.

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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.

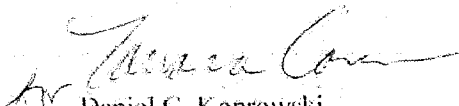
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE SIGNATURE)

4/15/14
(DATE)

SCOTT EBEL
(PERMITTEE PRINTED OR TYPED NAME)

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


Daniel C. Koprowski
Colonel, Corps of Engineers
District Engineer

4-17-14
(Date)

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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 SIGNATURE)

(DATE)

(TRANSFEREE PRINTED OR TYPED NAME)