

## DEPARTMENT OF THE ARMY PERMIT

Permittee: **Thomas Dredging & Excavating (Lake Allure)**

Permit No.: **2010-02760-WEH**

Issuing Office: **WEHRSPANN REGULATORY OFFICE, OMAHA DISTRICT, U.S. 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.

An after-the-fact standard permit was authorized for this project on August 27, 2012. That permit expired on August 31, 2017. The project was not completed and the applicant allowed the permit to expire without requesting an extension of time to complete the permitted activity. The applicant is requesting a new authorization to complete the residential lakeside development that was originally authorized. The proposed project consists of the construction of a residential lakeside development, surrounding a completed sand and gravel mine. The waste sand from the adjacent sand and gravel mining operation will be placed into Lake Allure to allow for residential development. The project includes construction of 144 lakeside residential lots. Lots 58 through 96 and lots 137 to 144 are not completed as shown on the drawings, as well as open spaces, pathways, roadways, road improvements, water lines, sanitary sewer lines, utility lines, and water and sewer storage facilities. The original project impacted 2,250 linear feet of an unnamed tributary to the Platte River via excavation by sand and gravel mining. The unnamed tributary was relocated as compensatory mitigation. The channel relocation is complete, but not all of the required channel monitoring has been completed. The applicant will be required to complete the channel monitoring. Thirty acres of the 200-acre Lake Allure were proposed to be filled to accommodate the residential development under the original permit. There are 18 acres of Lake Allure yet to be filled.

Attachments: 1/ Project Plans  
2/ Water Quality Certification  
3/ BMP's  
4/ Final Mitigation Plan  
5/ Tern and Plover Partnership Agreement

### Project Location:

The project is located in Sections 12, 13, 17, 18, Township 13 North, Range 9 East, Saunders County, Nebraska. The center of the proposed lake, Lake Allure, is located within the vicinity of 41.104305°N, -96.345271°W.

### Permit Conditions:

### General Conditions:

1. The time limit for completing the work authorized ends on March 31, 2022. 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 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. ENG Form 1721,
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. The list of BMP's attached (attachment 3) shall be adhered to the maximum extent possible for this authorization to remain valid.

**Special Conditions:**

1. **After a detailed and careful review of all of the conditions contained in this permit, the permittee does acknowledge that, although said conditions were required by the Corps of Engineers (Corps), nonetheless, the permittee agreed to those conditions voluntarily to facilitate issuance of the permit and the permittee will comply fully with all the terms of the permit conditions.**
2. **Prior to construction, the permittee shall provide to the Corps the proposed date of commencement of any filling activity and the completion date of the project.**
3. **Clearing of vegetation shall be limited to that which is absolutely necessary for construction of the project. All areas disturbed by construction shall be revegetated to appropriate perennial, native grasses and forbs and maintained in this condition. The disturbed areas shall be reseeded concurrent with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of desirable species reaches 75%.**
4. **Concurrent with construction, silt curtains or other sediment control measures will be employed to reduce soil erosion and sedimentation into waters of the U.S. The amount of sediment entering waters of the U.S. and leaving the site shall be reduced to the maximum extent practicable. If the permittee fails to institute all appropriate measures, the Corps reserves the option to halt all earthmoving operations until the erosion/sedimentation problems are corrected.**
5. **The permittee and/or the permittee's contractor or any of the employees, subcontractors or other persons working in the performance of a contract or contracts to complete the work authorized herein, shall cease work and report the discovery of any previously unknown historic or archeological remains to the Nebraska Regulatory Office. Notification shall be by telephone or fax within 24 hours of the discovery and in writing within 48 hours. Work shall not resume until the permittee is notified by the Nebraska Regulatory Office.**
6. **The project will impact 2,250 linear feet of an unnamed tributary to the Platte River. Therefore, Thomas Dredging and Excavating shall create at a minimum 2,250 linear feet of intermittent stream channel as compensatory mitigation. Construction of the stream mitigation site shall take place concurrently with filling activities. Should the mitigation fail to produce the type and level of compensation necessary, the permittee shall comply with the Corps' directives to provide the required mitigation. The Corps must be notified with documentation verifying the mitigation site was completed by December 1, 2019. This documentation may include but is not limited to dates of construction and seeding, planting list, tags from seed bags, and receipts from seed and planting of the seed.**
7. **The mitigation plan submitted on February 1, 2012 and amended on June 11, 2012 is incorporated into this permit and is approved with inclusion of the following below.**
  - a. **The stream channel mitigation site shall have buffer strips measuring 50-feet wide on both sides of the stream channel measuring from the top of the high bank landward. The buffer strips shall be**

planted to appropriate perennial, native grasses and forbes and maintained in this condition. Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*) and Smooth Brome (*Bromus inermis*), Red Cedar (*Juniperus virginiana*), and Blue Spruce (*Picea pungens*) are NOT appropriate choices of vegetation. Revegetation will be acceptable when ground cover of desirable species reaches 75%. The Corps must be notified with documentation verifying the buffer strip was seeded by December 1, 2019. This documentation may include but is not limited to dates of seeding, planting list, tags from seed bags, and receipts from seed and planting of seed. If construction of the mitigation will not be completed prior to this date (December 1, 2019) the USACE shall be notified of this change of the mitigation plan.

8. Monitoring reports of the stream channel mitigation site shall be submitted to the Wehrspann Regulatory Office to ensure the mitigation site is developing properly. The stream channel mitigation site will be monitored for a minimum of five years. The monitoring reports shall include, but are not limited to, the following:
  - a. The report shall include three cross-sections, one at each end and one in the middle of the channel mitigation site immediately after construction of the mitigation sites to serve as a baseline for future monitoring. For a period of five years, a cross-section shall be taken at both ends and the middle of the channel mitigation sites. The report shall also include referenced photos taken of each cross-section site.
  - b. The monitoring reports shall be due December 1 of 2019, 2020, 2021, 2022 and 2023. Please contact the Wehrspann Regulatory Office if construction of the mitigation site is not completed by December 1, 2019, to ensure a proper monitoring schedule.
  - c. Should the mitigation fail to produce the type and level of compensation necessary at any time or after a period of five years, the permittee shall comply with the Corps' directives to provide the required mitigation. The permittee shall assume all liability for accomplishing corrective work should the Corps of Engineers determine that the compensatory mitigation has not been fully satisfactory. Remedial work may include, but is not limited to, regarding and/or replanting the site.
  
9. The appropriate real estate instrument for the mitigation sites and buffers must include the following use restrictions:
  - a. There shall be no construction or placement of structures or mobile homes, fences, signs, billboards or other advertising material, or other structures, whether temporary or permanent, on the land.
  - b. There shall be no filling, draining, excavating, dredging, mining, drilling or removal of topsoil, loam, peat, sand, gravel, rock, minerals or other materials.
  - c. There shall be no building of roads or paths for vehicular or pedestrian travel or any change in the topography of the land.
  - d. There shall be no removal, destruction, or cutting of trees or plants, spraying with biocides, insecticides, or pesticides, grazing of animals, farming, tilling of soil, or other agricultural activity. Maintenance activities are acceptable upon approval from the Corps.
  - e. There shall be no operation of all-terrain vehicles or any other type of motorized vehicle on the land, except for pre-existing access roads at the mitigation site.
  - f. This Covenant of Dedication may be changed, modified or revoked only upon written approval of the District Engineer of the Omaha District of the U.S. Army Corps of Engineers. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Nebraska. This Covenant needs to be reviewed by the Corps of Engineers prior to signature to assure compliance with permit conditions.

COE representative's initial \_\_\_\_\_

- g. This Covenant is made in perpetuity such that the present owner and its heirs and assigns forever shall be bound by the terms and conditions set forth herein.
10. The Section 401 Water Quality Certification from Nebraska Department of Environmental Quality issued April 6, 2018 is incorporated into this permit by reference and shall be adhered to for this authorization to remain valid.
  11. To avoid impacts to Least Tern and Piping Plovers at Lake Allure , Thomas Dredging and Excavating will enter into an agreement with the U.S. Fish and Wildlife Service, Nebraska Game and Parks Commission, and the Tern and Plover Partnership. The agreement signed October 15, 2012 shall be adhere to for this authorization to remain valid (Attachment 5).
  12. A crossing/grade control structure shall be constructed in the unnamed tributary to the Platte River at the location identified on the map provided August 16, 2012. The bottom elevation of this structure shall be set at an elevation that does not flood or damage adjacent landowners' property.
  13. The permittee shall be responsible for providing a complete copy of this permit document to each individual lot owner or lessee and any future lot or property owner that may be affected by the terms and conditions of this authorization. The permittee shall notify the Corps prior to any transfer of this authorization. The notification shall include the permit number (2010-02760-WEH), previous owner and future owner to ensure proper transfer of this authorization.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( ) Section 10 of the River 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, tribal, 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.

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 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.

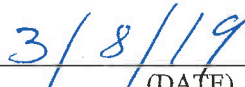
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
 \_\_\_\_\_  
 (PERMITTEE)

  
 \_\_\_\_\_  
 (DATE)

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

  
 \_\_\_\_\_  
 (DISTRICT ENGINEER)  
 John L. Hudson  
 Colonel, Corps of Engineers  
 District Commander

  
 \_\_\_\_\_  
 (DATE)  
 By:  
 John Moeschen  
 Nebraska State Program Manager

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)