



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, KANSAS CITY DISTRICT**  
**MISSOURI STATE REGULATORY OFFICE**  
**515 EAST HIGH STREET, #202**  
**JEFFERSON CITY, MISSOURI 65101**

October 18, 2021

Regulatory Branch  
(NWK 2009-00526)

The Honorable C.R. Bud Motsinger  
Presiding Commissioner  
Caldwell County Commission  
49 East Main Street  
Kingston, Missouri 64650

Dear Mr. Motsinger:

This is in response to your request to modify Department of the Army (DA) permit No. NWK 2009-00526 to substitute permittee-responsible compensatory mitigation with credit purchases and reduce the overall compensatory mitigation requirements by removing ephemeral streams from permit consideration by means of an Approved Jurisdiction Determination under the Navigable Waters Protection Rule (NWPR). Your request was received on April 21, 2021 and has been reviewed in accordance with Federal regulation Title 33 Code of Federal Regulations (CFR) 325.7, and with Section 404 of the Clean Water Act (Title 33 United States Code Section 1344 (33 USC 1344)).

We have determined that your proposed modification to substitute permittee-responsible compensatory mitigation with credit purchases will not increase the scope of the previously authorized activity. However, we could not complete the entirety of your request because the NWPR was vacated on August 30, 2021. Thus, the jurisdictional determination used to issue your permit, dated March 16, 2015, remains in effect. Your total stream impacts will remain unchanged, and your stream mitigation credit requirement is still 183,376 credits.

Therefore, in accordance with your request, DA permit No. NWK 2009-00526 is hereby modified to allow the replacement of the proposed permittee responsible riparian plantings with the purchase of 21,317 stream credits from the Land Learning Foundation (LLF) in-lieu fee (ILF) Program and the replacement of the proposed permittee responsible 323<sup>rd</sup> Street Aquatic Organism Passage (AOP) project with the purchase of 44,730 stream credits from the LLF ILF Program. Accordingly, the Corps has modified special condition "e." and redacted special condition "g." of the original permit to reflect our decision. A modified version of condition "e." is below:

"e. You must provide compensatory mitigation for the unavoidable impacts to a total of 36,243 linear feet of streams and 4.1 acres of wetlands in accordance with your compensatory mitigation plan dated August 21, 2020 and modification request dated April 21, 2021. As you have elected to purchase stream and wetland credits from the North Grand River Wetland and Stream Mitigation Bank and to purchase advanced stream credits from both the Missouri Conservation

Heritage Foundation Stream Stewardship Trust Fund (SSTF) and the LLF ILF programs, we must receive verification of funds payment from the mitigation providers specifying the type and amounts of credits purchased prior to the implementation of any work activities within waters of the United States for the project.

1. You must purchase 51,000 stream and 4.1 wetland credits from the North Grand River Wetland and Stream Mitigation Bank.
2. You must purchase 77,568 stream credits from the SSTF or LLF ILF providers in the same service area as your project.
3. The permittee-responsible compensatory mitigation must generate at least 54,808 stream credits and be implemented in advance or concurrently with work in waters of the United States.”

If you agree with the terms and conditions of this DA permit modification, please acknowledge acceptance within 10 days of your receipt of this letter, and attach a copy of this letter to your copy of permit No. NWK 2009-00526 in order to reflect all work authorized under the permit. This is a legal document and you are legally bound by the terms and conditions upon acknowledgement, or upon expiration of any Administrative Appeal options if exercised. This modification does not preclude the necessity of obtaining other Federal, state, or local approval for the work.

Regarding condition “e.” of your original permit: We are in receipt of verification of funds payment from Swallow Tail LLC for the purchase of 51,000 stream credits and 4.1 wetland credits from the North Grand River Wetlands and Stream Mitigation Bank, from the SSTF for the purchase of 9,188 stream credits, and from the LLF for the purchase of 2,333 stream credits. Condition “e.” is partially fulfilled. Additional credits must still be purchased, see above.

Regarding condition “f.” of your original permit: We are in receipt of the Intergovernmental Agreement for the 290<sup>th</sup> Street AOP project in Daviess County. We have also received the easements for the Turkey Road, Haun’s Mill and Toledo Road AOP projects in Caldwell County. Condition “f.” is fulfilled.

Regarding condition “h.” of your original permit: We have verified that the replacement stream crossings at 290<sup>th</sup> street, Turkey Road, Haun’s Mill and Toledo Road meet Nationwide Permit terms and conditions. We have also determined the proposed bridge construction projects will not interfere with the function or design of the AOP projects at the sites that serve as compensatory mitigation for Little Otter Creek Reservoir. Condition “h.” is fulfilled.

If you object to the terms and conditions of this DA permit modification, you may request reconsideration under the Administrative Appeals program, or you may request, within 10 days of your receipt of this letter, a meeting with the District Engineer, or a public hearing. Enclosed you will find a Notification of Administrative Appeal Options and Process and Request for Appeal (NAO-RFA) form. If you request reconsideration of this decision you must submit a completed NAO-RFA form to the Kansas City District at the following address:

District Commander  
U.S. Army Corps of Engineers, Kansas City District  
ATTN: Mark D. Frazier  
Chief, Regulatory Branch  
601 East 12<sup>th</sup> Street, Suite 402  
Kansas City, MO 64106-2824  
Telephone: 816-389-3990, FAX: 816-389-2032

In order for an NAO-RFA to be accepted by the U.S. Army Corps of Engineers (Corps), the Corps must determine that it is complete, that it meets the criteria for reconsideration under 33 CFR Part 331.5, and that it has been received by the District Office within 60 days of the date of the NAO-RFA. Should you decide to submit an NAO-RFA form, it must be received at the above address by December 17, 2021.

We are interested in your thoughts and opinions concerning your experience with the Kansas City District, Corps of Engineers Regulatory Program. Please feel free to complete our Customer Service Survey form on our website at: <https://regulatory.ops.usace.army.mil/customer-service-survey/>. You may also call and request a paper copy of the survey which you may complete and return to us by mail.

If you have any questions concerning this matter, please feel free to write me or contact Mr. Kenny Pointer at 816-389-3833 or by email at [james.k.pointer@usace.army.mil](mailto:james.k.pointer@usace.army.mil). Please reference Permit No. NWK 2009-00526 in all comments and/or inquiries relating to this project. This letter is only being provided to you electronically at: [budandbettymot@gmail.com](mailto:budandbettymot@gmail.com).

Sincerely,

*Matthew C. Sailor*

Matthew C. Sailor  
Program Manager  
Regulatory Branch

Enclosure