

Patricia Farrell



DEPARTMENT OF THE ARMY  
PORTLAND DISTRICT, CORPS OF ENGINEERS  
POST OFFICE BOX 2946  
PORTLAND, OREGON 97208-2946

REPLY TO  
ATTENTION OF:

November 8, 2006

Operations Division  
Regulatory Branch  
Corps No.: 200400803

RECEIVED

NOV 14 2006

FACILITIES DIVISION  
DEPT OF ADMINISTRATIVE SVCS

Mr. Bill Foster  
Oregon Department of Administrative Services  
Facilities Division  
1225 Ferry Street SE U100  
Salem, Oregon 97301-4281

Dear Mr. Foster:

Enclosed are two unsigned copies of your requested permit.

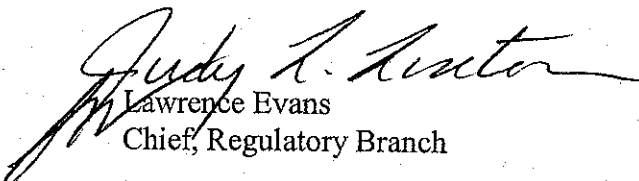
In order to make this permit valid, please read the conditions of the permit carefully, complete both copies including signature, printed name and title, and return both copies to the Regulatory Branch, Permits Section, at the letterhead address. Your copy of the fully executed permit will then be returned to you.

You are cautioned, however, not to begin work under the terms of this permit until you receive the fully executed document, as such action would be in violation of Federal law.

Recent changes in U.S Army Corps of Engineers regulations have established a process through which you may object to certain terms and conditions of the enclosed permit, and ask that the permit be modified accordingly. Please see the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal for further information about that process.

If you have any questions regarding our evaluation process, please contact Ms. Kathryn Harris at the letterhead address or telephone (503) 808-4387.

Sincerely,

  
Judy A. Austin  
Lawrence Evans  
Chief, Regulatory Branch

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

**Applicant:** Oreogn Dept. of Administrative Services | **File Number:** 200400803 | **Date:** 11/08/2006

**Attached is:** | **See Section below**

XX	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I-** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/ew/becwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice. Also, see Section II.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record. If you believe you have additional information pertinent to an approved jurisdictional determination {see Part D} with which you disagree, that new information should first be sent to the Portland District for reconsideration. Following the District's reconsideration, the approved jurisdictional determination can still be appealed as noted in Part D)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers  
Portland District Office  
CENWP-OP-GP (ATTN: Jim Goudzwaard)  
Post Office Box 2946  
Portland, Oregon 97208-2946

If you decide to appeal an action under Parts B, C or D above, send a copy of each page to:

U.S. Army Corps of Engineers  
Northwestern Division  
Attn: Karen Kochenbach, Appeal Review Officer  
Box 2870  
Portland, Oregon 97208-2870  
Telephone (503) 808-3888

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

## DEPARTMENT OF THE ARMY PERMIT

Permittee: Oregon Department of Administrative Services, contact Mr. Bill Foster

Permit No: 200400803

Issuing Office: U.S. Army Corps of Engineers, Portland District

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:** The project involves construction of the Salem Regional Employment Center (SREC), now referred to as the Mill Creek Industrial Park (MCIP). The SREC Master Plan has been developed and selected by the governor's Industrial Lands Task Force as one of 25 industrial sites with statewide significance for job creation. The result of the MCIP will be project-ready industrial and commercial lands. Parcels will be developed by individual developers or a master developer.

The Mill Creek Industrial Park involves development of approximately 507 of the 646 acres within the project area. The site will be developed through a series of construction phases with a variety of uses, including: Industrial (313 acres over 3 phases), Industrial park (80 acres; phase IA), Business park (104 acres; phases IA & IIB), Service center (10 acres; phase IA), and open space (111 acres over 3 phases; includes proposed mitigation areas). Site plans are not yet available depicting how development will occur on each parcel. Site plans will be prepared by individual developers or a master developer and approved by the City of Salem. Complete build-out of the project is anticipated by 2025. Total proposed impacts to waters of the U.S. would be approximately 15.05 acres with a volume of 36,430 cubic yards. These impacts to waters of the U.S. represent a "worst case" scenario and will not occur until a specific development is associated with a parcel.

In addition, routine maintenance and redevelopment activities related to the proposed bioswales are considered as part of the project. The approximately 30,000 linear feet of proposed bioswales will be constructed from upland areas, with the exception of less than 500 linear feet, which will be constructed within jurisdictional wetlands. The impacts to these wetlands will be mitigated for. Because the proposed bioswales will provide water to the proposed wetland mitigation site, there is the potential for these bioswales to be considered as jurisdictional waters. The bioswales will require routine maintenance. Periodic adjustment of bioswale alignment may be necessary during site development to allow for construction of access points to properties. If these areas are deemed jurisdictional waters of the U.S. in the future, this permit authorization includes the routine maintenance activities of the bioswales.

**Purpose:** To create a new employment center consistent with applicable City of Salem and State livability policies.

**Project Location:** Unnamed tributaries (and adjacent wetlands) of Mill Creek in Section 8, Township 8 South, Range 2 West, Salem, Marion County, Oregon.

**Drawing:** Figures 1-3, labeled Corps ID 200400803

### 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 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.
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. 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.

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. The National Marine Fisheries Service (NMFS) issued a biological opinion (B.O.) for your project. All terms and conditions of the B.O. are terms and conditions of this permit authorization. You shall fully implement all terms and conditions from the attached NMFS B.O.
2. The U.S. Fish and Wildlife Service (USFWS) issued a biological opinion (B.O.) for your project. All terms and conditions of the B.O. are terms and conditions of this permit authorization. You shall fully implement all terms and conditions from the attached USFWS B.O.
3. The permittee shall fully implement the attached Conceptual Compensatory Wetland Mitigation Plan for the Mill Creek Industrial Park (Salem Regional Employment Center). Mitigation shall be constructed in phases as described in the plan. Phasing shall be based solely upon development construction, not on funding availability.
4. The permittee shall provide the Corps with 30 percent and final mitigation design drawings, including planting plans and plans for water control structures, weirs, culverts, any other design features that may affect surface water conveyance and the hydrology of the wetland. A final wetland mitigation plan shall be submitted to the Corps at least 90 days prior to initiating mitigation site grading activities. The permittee must receive approval from the Corps prior to implementation of the plans. Significant design changes require approval from the Corps prior to implementation.
5. The permittee shall submit an as-built report within 60 days of completion of site grading on each phase of mitigation construction or a professional engineer's statement of no deviation from final approved grading plan.
6. Monitoring shall begin immediately after the mitigation construction and continue for a period of 10 years. The monitoring period may be extended if success criteria are not achieved. Monitoring reports shall be submitted in monitoring years 1, 3, 5, 7, and 10.
7. The permittee shall plant herbaceous and woody species at the density described in the Compensatory Wetland Mitigation (CWM) plan, dated September 2006, unless subsequently modified and approved by the Corps. Within the CWM site, a minimum of 50% cover of shrubs in the scrub-shrub areas shall be planted and maintained. Within the CWM site, a survival rate of 100 stems per acre of trees and 30% cover after 10 years in the forested wetland areas shall be attained. Percent cover shall be based on vegetation that has been self-sustaining for a minimum of three years. The permittee shall prepare a management plan that will include plant survival monitoring to be sure that the site continues to meet performance standards in the future.
8. The permittee shall maintain wetland buffers as described in the September 2006 Compensatory Wetland Mitigation Plan, unless subsequently modified and approved by the Corps.
9. The permittee shall implement remedial measures if the performance standards, including, but not limited to, wetland habitat, water detention, flood control, sediment stabilization, phosphorus retention, or *Sidalcea* species are not met. Remedial actions may include, but are not limited to, weed removal, monitoring of hydrology, manipulation of hydrology, modification of hydrologic structures, plantings, seeding, and stabilization methods. The permittee shall complete off-site remedial actions should wetland mitigation and other performance standards fail to be adequately met.

10. The permittee shall conduct geotechnical studies prior to design to determine presence and locations of any aquitard or clay layers on the CWM sites. Final design of the mitigation project will incorporate these findings and ensure implementation of the mitigation project does not impact any aquitard or clay layers.
11. The permittee shall conduct visual inspections of culverts downstream of excavated areas to determine whether streambed erosion is occurring at culvert outlets and whether water is going subsurface due to project development. If erosion or subsurface flow is occurring, the permittee shall conduct remedial actions to rectify the problem. Actions could include sealing the drainage ways with natural materials (i.e., silts, fines, and graded rock), installation of grade controls, or other techniques. Actions shall be approved by the Corps prior to implementation.
12. The permittee shall address long-term management of the site through a City/State intergovernmental agreement to guarantee the financing of necessary infrastructure improvements, including wetland maintenance.
13. The permittee shall prepare and implement erosion and sediment control plans in accordance with local jurisdiction requirements and as described in the Stormwater Management Memorandum (Otak, Inc., 2005).
14. The permittee shall ensure that all stormwater is directed into pre-treatment and basic treatment facilities prior to discharge into the CWM sites. Pre-treatment and basic treatment facilities shall be located outside the CWM sites unless otherwise approved through this permit. The stormwater system must be designed to meet performance standards as described in Section 2 of the Surface Water Management Memorandum (Otak Inc., 2005). In addition, the permittee shall ensure final stormwater management and treatment plans will be consistent with the criteria outlined in the Oregon Department of Administrative Services August 8, 2006 letter regarding Stormwater Management and Treatment.
15. The permittee is responsible for maintaining all bioswales associated with this project unless otherwise approved in writing.
16. The permittee shall prepare and submit detailed construction schedules that address the various stages of infrastructure, stormwater treatment, and mitigation site construction activities, including grading, ditch filling, installation of water control structures, temporary water management, culvert replacement, fish screen installation, rock weir installation, basic stormwater treatment facilities construction/excavation, wetland site preparation, and revegetation work. The schedules shall cover a period of at least 12 months. Schedules shall be submitted to the Corps at 30 percent and final design review milestones or other significant development milestones.
17. The permittee shall implement, operate, inspect, and maintain activities and standards that ensure the capacity and proper function of the quantity and quality control features of the stormwater treatment facilities and the system's best management practices as described in the *Salem Regional Employment Center, Surface Water Management* (Otak February 15, 2005), the City of Salem's MS4 NPDES permit, and the Mill Creek Total Maximum Daily Load Implementation Plan. Monitoring shall occur in accordance with NPDES requirements.
18. The permittee shall ensure that basic stormwater treatment facilities (e.g., vegetated swales) will be constructed concurrently as infrastructure construction and phased development occurs.
19. To ensure developments are not causing degradation or adversely impacting the mitigation site, the permittee shall monitor the site at key development milestones. This monitoring plan shall be part of a long-term management plan developed for the site. The plan shall be submitted to the Corps for approval within 6 months of development within each phase.
20. The permittee shall encourage contractors and developers to minimize the installation of new impervious surfaces and implement pervious surface options.
21. The permittee shall encourage contractors, developers, and private property owners to use native, drought-resistant plants in landscaping.

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.

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)

(DATE)

---

(PRINTED NAME)

(TITLE)

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

---

(DISTRICT ENGINEER)

(DATE)

FOR

Thomas O'Donovan  
Colonel, Corps of Engineers  
District Commanding

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.

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(TRANSFEREE)

(DATE)

