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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
CITY OF ST. PETERS, MISSOURI)	
)	Docket No. CWA -07-2006-0047
)	
Respondent)	
)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	

I. CONSENT AGREEMENT/FINAL ORDER

The United States Environmental Protection Agency, Region VII ("EPA") and the City of St. Peters, Missouri ("Respondent") have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) 64 Fed. Reg. 40181, 40183 (July 23, 1999), to be codified at 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

This Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Consent

Agreement/ Final Order relating to Respondent's discharge of fill material into waters of the United States through excavation activities and sidecasting of spoil into adjacent wetlands without the permit required by law.

II. ALLEGATIONS

A. Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C.

§ 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 404 of the CWA, 33 U.S.C.

§§ 1311 and 1344, and the regulations promulgated thereunder.

3. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

B. Section 404 Violation

Statutory and Regulatory Framework of Section 404

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. §§ 1344.

5. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the discharge of dredged or fill material into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, occur in accordance with a permit issued under that Section.

6. Section 404 of the CWA, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers, may issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, dredged spoil, rock, sand and cellar dirt.

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “...the waters of the United States, including the territorial seas.”

10. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines “point source” as “...any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

11. 40 C.F.R. §§ 232.2 and 33 C.F.R. Part 328 define waters of the United States, in part, as, “...lakes, rivers and streams, ...wetlands.”

12. Section 502 of the CWA defines “person” to include a State or a political subdivision of a State.

13. Section 404 of the CWA requires a person to obtain a permit from the United States Army Corps of Engineers (Corps) prior to any discharge of dredged or fill material into the navigable waters of the United States.

Factual Background

14. On or about March 26, 27, and 29, 2004, Respondent or one acting on behalf of Respondent, performed excavation activities with a trackhoe at a ditch along Interstates 70 and 370 in St. Peters, St. Charles County, Missouri, at Township 47 North, Range 4 East, north of the Norfolk Southern Railroad tracks, and west of Willow Club Road. This area is located in the floodplain of the Mississippi River. Some of the material excavated was discharged into a tributary of Spencer Creek which ultimately flows into the Mississippi River.

15. On or about July 24, 2004, Respondent or one acting on behalf of Respondent, performed excavation activities with a trackhoe in the Mississippi floodplain area referenced in Paragraph 14 above, approximately 500 feet west of Willow Club Road. The material excavated was sidecast into a wooded wetland which ultimately connects to the Mississippi River.

16. The trackhoe used by Respondent or one acting on behalf of Respondent, acted as a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

17. The earthen material that was excavated in March 2004 and in July 2004 is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The deposition of earthen material into a water of the United States constitutes the “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

19. The tributary to Spencer Creek and the wooded wetland are ultimately connected to the Mississippi River, all of which are navigable waters within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and waters of the United States as defined by 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3.

20. Respondent did not obtain a 404 permit prior to conducting the activities described in Paragraphs 14 and 15 above.

Findings of Violation

21. The facts stated in paragraphs 14 through 20 above are herein incorporated.

22. The use of a trackhoe referenced in Paragraphs 14 and 15 above indicates that Respondent or one acting on its behalf, discharged pollutants into a water of the United States by using earth-moving equipment without obtaining a Section 404 permit.

23. Respondent's failure to obtain a Section 404 permit prior to conducting activities described in Paragraphs 14 and 15 above is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

24. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region VII hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the violation cited above, in the amount of \$27,500.

III. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in this Consent Agreement/Final Order.

5. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with applicable Federal, state and local environmental statutes and regulations and applicable permits.

6. Respondent agrees, in settlement of the claim alleged in this Consent Agreement/Final Order, to pay a cash penalty of \$6,875.00 and to mitigate the remainder of the cash penalty through successful performance of a Supplemental Environmental Project ("SEP"), identified in Attachment 1, attached to and incorporated into this Consent Agreement/Final Order.

7. This Consent Agreement/Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309 of the Clean Water Act for the violation alleged herein. Nothing in this Consent Agreement/Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement/Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered

by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

A. SEP

8. The parties agree that performance of the SEP set forth in Attachment 1, attached to and incorporated into this Consent Agreement/Final Order, is intended to secure significant environmental restoration and protection.

9. Respondent shall implement the work described in Attachment 1, in accordance with the schedule contained in Paragraph 13 of Section III (Consent Agreement) and Attachment 1. All submittals to EPA shall be sent to:

Raju Kakarlapudi, Compliance Officer
Office of Water, Wetlands and Pesticides Division
EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101.

10. Respondent hereby certifies that, as of the date of this Consent Agreement/Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

11. Respondent shall provide access for EPA and its authorized representatives to the property that is the situs of the SEP, as described in Attachment 1. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

12. Any public statement, oral or written, made by Respondent making reference to the SEP, shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

13. Respondent shall submit to EPA a SEP Design, a SEP Completion Report, and Annual Reports, as described below.

a. Within thirty (30) days of the Effective Date (defined in Paragraph 12 of Section IV of the Final Order), a draft Design for the SEP, described in Attachment 1. EPA may approve the draft Design or provide comment on the draft design. If comments are provided by EPA, Respondent shall modify the Design in accordance with EPA's comments and resubmit the draft Design to EPA within thirty (30) days of receipt of EPA's comments. Within thirty (30) days of receipt of EPA's approval of the draft Design, Respondent shall implement the SEP Design, as approved.

b. Respondent shall notify EPA in writing within one week of completion of the SEP, but no later than November 25, 2006. Within thirty (30) days of the notification letter to EPA, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

(i) A description of the activities that Respondent completed in its implementation of the EPA-approved SEP Design.

(ii) An itemized accounting of the costs incurred in performance of the SEP. The itemization shall be submitted with the following statement, signed by Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

c. Respondent agrees to submit Annual Reports to EPA, beginning on the first anniversary of EPA's determination that the SEP has been completed satisfactorily, and continuing for four years thereafter. The Annual Reports shall describe, with narrative and photographs, the status of the SEP and corrective actions, if any, that will be taken to maintain at least 70% survival rate of the trees and vegetative plants that were part of the SEP.

14. Respondent agrees to execute and file with the St. Charles County Recorder's Office, St. Charles, Missouri, a restrictive covenant for the SEP Area depicted in Attachment 1, Figure 2, to maintain the SEP Area in perpetuity as a buffer to the Spencer Creek riparian corridor and to provide access to EPA, the state of Missouri, the Corps and their authorized representatives in order to inspect the SEP Area. Respondent shall identify a grantee, name EPA as a third party beneficiary, and identify the SEP Area by its legal description in the restrictive covenant. Respondent shall submit a draft restrictive covenant to EPA within thirty (30) days of the Effective Date (defined in Paragraph 12 herein) for review and comment, shall revise the restrictive covenant to conform to EPA's comments, if any, and shall resubmit the restrictive covenant to EPA within twenty (20) days of receipt of EPA's comments. Failure to address EPA's comments, if any, shall be a violation of this Order on Consent.

15. Respondent agrees to send EPA a file-stamped copy of the restrictive covenant within 10 days of receiving a final copy from the St. Charles County Recorder's Office.

B. Stipulated Penalties

16. Respondent shall pay stipulated penalties in the following circumstances:

a. For failure to submit any design to EPA in accordance with Paragraph 13 of Section III (Consent Agreement) and Attachment 1, or failure to submit any design to EPA within the time frame set forth in Paragraph 13 of Section III (Consent Agreement) and Attachment 1, Respondent shall pay a stipulated penalty in the amount of \$250.00 for each day after the due date set forth in Paragraph 13 of Section III (Consent Agreement) and Attachment 1 until the report is submitted in a form that satisfies EPA.

b. For failure to submit the SEP Completion Report, as required by Paragraph 13 of Section III (Consent Agreement) above, or failure to submit it to EPA within the time frame set forth in Paragraph 13 of Section III (Consent Agreement) above, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the due date, until the report is submitted in a form that satisfies EPA.

c. Except as provided in subparagraph (e) below, if the SEP has not been completed satisfactorily as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount that equals twice the estimated cost of the SEP as set forth in Attachment 1. If Respondent disagrees with EPA's determination that the SEP has not been satisfactorily completed, Respondent

may request reconsideration of this determination by objecting in writing to Mr. Raju Kakarlapudi, EPA Compliance Officer, within ten (10) days of receipt of notification by EPA of the unsatisfactory determination. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the written objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, Respondent may request reconsideration by the Branch Chief of the Water Enforcement Branch. The Branch Chief will provide a written statement of her decision to Respondent, which decision shall be final and binding upon Respondent.

d. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90% of the estimated SEP cost, as set forth in Attachment 1, was expended on the SEP, Respondent shall not pay any stipulated penalty.

e. If the SEP is satisfactorily completed, but Respondent spent less than 90% of the estimated SEP cost, as set forth in Attachment 1, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Attachment 1 and the amount expended in implementing the SEP.

f. If the SEP is satisfactorily completed, and Respondent spent at least 90% of the estimated SEP cost, as set forth in Attachment 1, Respondent shall not pay any stipulated penalty.

17. Payment of stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the civil penalty of \$6,875.00 or any stipulated penalty assessed herein in accordance with the provisions of the Final Order set forth below may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of a stipulated penalty shall be made in accordance with the instructions set forth in Paragraph 2 of the Final Order.

IV. FINAL ORDER

Pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319 (g)(2)(B), and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

1. Within thirty (30) days of the Effective Date of this Consent Agreement/Final Order (defined in Paragraph 12 below), Respondent shall pay a civil penalty of \$6,875.00.

2. Payment of the penalty shall be by cashier or certified check made payable to "United States Treasury" and remitted to:

U.S. EPA Region VII
P.O. Box 371099M
Pittsburgh, PA 15251.

Respondent shall reference the name of the case, In the Matter of the City of St. Peters, Missouri, Docket Number CWA 07-2006-0047, on the check. A copy of the check shall also be mailed to:

Audrey Asher, Esq.
EPA - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

4. Respondent shall perform the SEP in accordance with EPA-approved design and the schedule set forth in Paragraph 13 of Section III (Consent Agreement) above and Attachment 1. If Respondent fails to implement the SEP in compliance with Paragraph 13 of Section III (Consent Agreement) above and Attachment 1 and the schedule set forth in Paragraph 13 of Section III (Consent Agreement) above and Attachment 1, Respondent shall pay stipulated penalties as set forth in the Section III, Paragraph 14 of Section III (Consent Agreement) above.

5. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

6. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA violation identified above. EPA reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law and to enforce the terms and conditions of this Consent Agreement/Final Order.

7. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order by initiating a judicial or administrative action under Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

8. This Final Order will terminate upon satisfactory completion of all requirements as determined by EPA. Whether Respondent has complied with the terms

of this Consent Agreement/Final Order through performing the SEP as required shall be the sole determination of EPA.

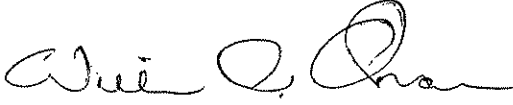
9. This Final Order shall apply to and be binding upon Respondent and its agents, successors, and assigns.

10. The parties may modify this Consent Agreement/Final Order by mutual agreement. Such modifications shall be in writing.

11. This Final Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The Effective Date shall be the date it is signed by the Regional Judicial Officer.

For Respondent City of St. Peters:

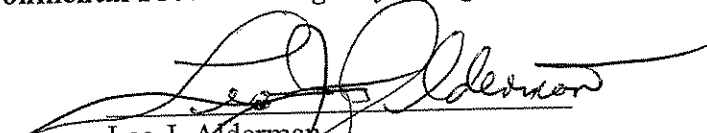
12/05/05
Date



William P. Charnisky
City Administrator, City of St. Peters, Missouri

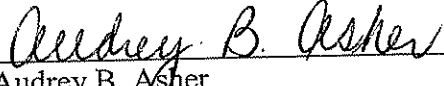
For the United States Environmental Protection Agency – Region VII

12/20/05
Date



Leo J. Alderman
Director
Water, Wetlands, and Pesticides Division


12/20/05
Date



Audrey B. Asher
Senior Assistant Regional Counsel

IT IS SO ORDERED.

Feb. 16, 2006
Date


Robert L. Patrick, Esq.
Regional Judicial Officer

**ATTACHMENT 1
SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Scope of Proposed SEP

Respondent, the City of St. Peters, shall complete a Supplemental Environmental Project (SEP) to improve a riparian corridor of the water body (Spencer Creek) that received part of the sediment from ditch digging activities performed by Respondent.

The existing riparian corridor has been adversely impacted due to lack of woody vegetation and by the presence of a 5-foot tall berm located adjacent to the tributary that has been previously used as a field access road. The berm is 10-foot wide across the top and 50-foot wide at the base. Because of past farming practices, the slopes of the berm have been periodically mowed preventing the establishment of riparian vegetation and wildlife habitat.

The SEP will restore 1,500 linear feet of the tributary by removing the adjacent berm and planting a 25-foot wide wooded corridor. The wooded corridor will enhance the environment by adding trees and vegetation to serve as a natural filter for storm water runoff improving water quality and providing riparian habitat. The location of the SEP is shown in Figure 2, on land owned by the City of St. Peters.

The initial phase of this SEP will involve the removal of approximately 8,300 cubic yards of earthen berm to restore the east edge of the tributary bank to the same level as the adjacent field. The area will be covered with 4-inches of compost and then disked to improve the topsoil. Trees as shown in Table 1, will be planted approximately 10-feet on center to establish a 25-foot wide corridor the entire length of the restoration area. Trees will be planted as 3-gallon container, 3'- 4' sized specimens. The entire area will then be seeded with the riparian restoration seed mixture as shown in Table 2.

SEP Design and SEP Completion Report

Consistent with Paragraph 13 of Section III of the Consent Agreement, Respondent shall submit a design of the SEP to EPA and shall proceed with implementation of the SEP after receiving EPA's approval of the Design. Respondent shall complete the SEP and a SEP Completion Report no later than December 31, 2006.

**Table 1
Tree Plantings**

Common Name	Scientific Name	Wetland Indicator Status	% of Total
Pin oak	Quercus palustris	FACW	30%
Swamp White Oak	Quercus bicolor	FACW	20%
Pecan	Carya illoensis	FACW	15%
Sugarberry	Celtis laevigata	FACW	15%
Swamp tupelo	Nyssa sylvatica var. biflora	FACW+	5%
Red mulberry	Morus rubra	FAC	5%
Bur oak	Quercus macrocarpa	FAC	5%
Shumard oak	Quercus shumardii	FAC	5%

**Table 2
Riparian Restoration Seed Mixture**

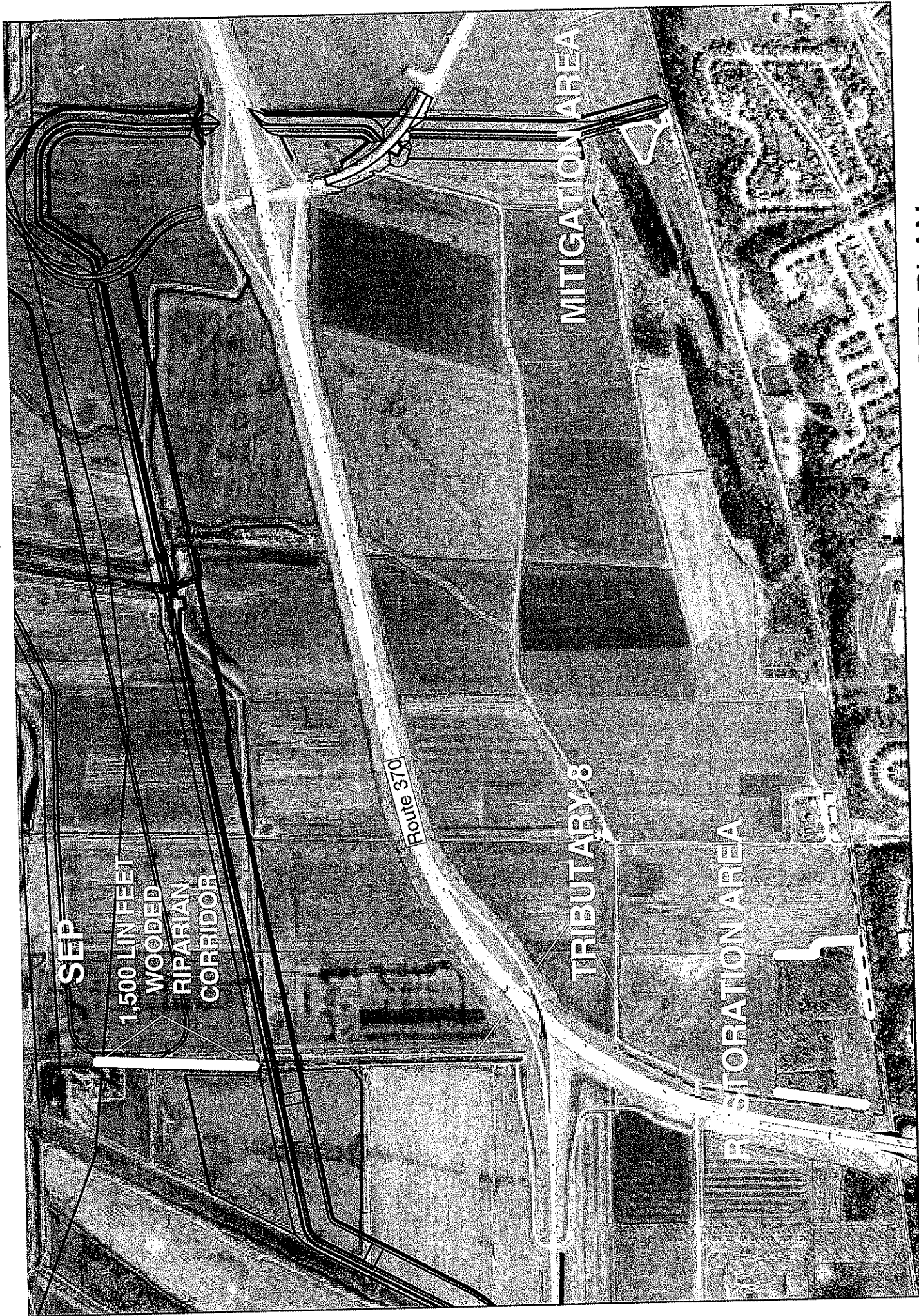
Common Name	Scientific Name	Wetland Indicator Status
Grasses/Sedges/Rushes		
Big Bluestem	Andropogon gerardii	FACU
Canada Wild Rye	Elymus canadensis	FACU
Prairie Switch Grass	Panicum virgatum	FAC
Little Bluestem	Schizachyrium scoparium	FACU-
Indian Grass	Sorghastrum nutans	UPL

Estimated Cost of SEP

The estimated cost of the SEP project is as shown in the following Table 3.

**Table 3
Project Cost Estimate**

Item	Quantity	Units	Unit Cost	Total Cost
Land Value	0.86	Acres	\$10,000	\$8,600
Remove Berm	8,300	CY	\$3.25	\$26,975
Incorporate Compost	4,166	SY	\$1.00	\$4,166
Plant Trees	Lump Sum			\$8,000
Seed Understory	4,166	SY	\$1.25	\$5,208
Project Total				\$52,949



370 FARM RESTORATION, MITIGATION AND SEP PLAN

Figure 2

IN THE MATTER OF The City of St. Peters, Missouri, Respondent
Docket No. CWA-07-2006-0047

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Audrey B. Asher
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

William P. Charnisky
City Administrator, City of St. Peters
P.O. Box 9, One St. Peters Centre Blvd.
St. Peters, Missouri 63376

2/16/06

Dated



Kathy Robinson
Regional Hearing Clerk