

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

07 MAY -8 AM 11:02  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 )  
 ) Docket No. CWA-07-2007-0016  
 )  
JG Holdings, L.L.C. )  
 )  
 ) FINDING OF VIOLATION  
Respondent )  
 ) AND ORDER FOR  
 ) COMPLIANCE ON CONSENT  
 )  
 )  
Proceedings under Section 309(a)(3) of the )  
Clean Water Act, 33 U.S.C. § 1319(a)(3) )  
 )

Preliminary Statement

1. The following Findings of Violation and Order for Compliance on Consent (Order on Consent) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA, Region VII and further delegated to the Director of Region VII's Water, Wetlands and Pesticides Division.

2. Respondent, JG Holdings, L.L.C., is a corporation incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

3. 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.

4. 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.

5. 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.

6. 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.”

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

8. 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.”

9. 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.”

10. 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.”

11. Section 502 of the CWA defines “person” to include an individual, corporation, partnership or association.

12. 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

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

14. At all times relevant to this action, Respondent J.G. Holdings, L.L.C. operated or otherwise controlled the property located in Section 16, Township 37 North, Range 33 West, in Washington County, Missouri, which contains a portion of Johns Creek (hereinafter “Johns Creek Property”).

15. At various times beginning around December 2000 and continuing until at least August 30, 2002, Respondent J.G. Holdings, L.L.C. and/or persons acting on its behalf discharged dredged or fill material into Johns Creek at the Johns Creek Property. Respondent J.G. Holdings, L.L.C. and/or persons acting on its behalf, using earth moving equipment, placed fill material into the main channel of Johns Creek for the purpose of constructing a dam to impound water. The dam constructed on the Johns Creek property created a 22 acre private recreational lake.

16. The discharge and disposal of dredged and/or fill material and the filling of Johns Creek has altered the natural drainage pattern and hydrology of the area, impacting and inundating approximately 1,520 linear feet of Johns Creek at the Johns Creek Property.

17. The earth moving equipment, referenced in Paragraph 15 above, constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. The fill and/or dredged materials excavated and discharged and disposed of into Johns Creek at the Johns Creek property include rock, sand and dirt, and are "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. The discharge and disposal of the fill and/or dredged material into Johns Creek on the Johns Creek Property, as described in Paragraph 15 above, constitute the "discharge of a pollutant" within the meaning of Section 501(12) of the CWA, 33 U.S.C. § 1362(12).

20. Johns Creek flows into bodies of water that flow into the Mississippi River. Johns Creek and the Mississippi River are "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), 40 C.F.R. § 232.2 and 33 C.F.R. Part 328.

## **FINDINGS OF VIOLATION**

### Count 1 Unpermitted Discharge

21. The facts stated in paragraphs 1 through 20 above are herein incorporated.

22. The Respondent did not obtain a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to perform the work described in paragraph 15 above, nor was the Respondent performing the work described in paragraph 15 above under any prior permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

23. Respondents' discharge and disposal of pollutants from a point source into waters of the United States, as described above, occurred without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and, therefore, these discharges and disposals violated Section 301 of the CWA, 33 U.S.C. § 1311.

24. The Respondent has not removed any of the fill material placed in waters of the United States and, therefore, the violation is continuing.

## ORDER FOR COMPLIANCE ON CONSENT

### Specific Provisions

25. Based on the authority of Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent CONSENTS and is hereby ORDERED as follows:

26. Respondent agrees to implement the Mitigation Project in accordance with the Mitigation Plan, set forth in Attachment A and modified by Paragraph 27 of this Order on Consent, and in adherence with the schedule contained therein.

27. Respondent agrees to modify the Mitigation Plan, set forth in Attachment A, attached to and incorporated into this Order on Consent, as follows:

a. Mitigation Guidelines: Address all Mitigation and Monitoring Guidelines published by the U.S. Army Corps of Engineers, St. Louis District, on June 30, 2004;

b. Mitigation Buffer: Establish a 100 foot wide riparian corridor on both sides of Johns Creek;

c. Tree Planting: During the appropriate season, plant containerized trees as described in the mitigation plan with a staggered spacing of 20 feet. In the event that existing trees, of sufficient size, are located within the mitigation site boundaries, Respondent shall plant containerized trees in conjunction with existing trees to maintain a spacing of 20 feet between both existing and containerized trees. Respondent shall achieve a minimum yield of 109 trees per acre of existing and containerized trees. Respondent shall ensure an 80% survival rate of planted trees and existing trees within the mitigation site boundaries for 5 years. During this five year period, planted and existing tree species that die shall be replaced annually to the extent that Respondent maintains an 80% yearly survival rate;

d. Monitoring: Monitoring reports shall be submitted annually to EPA and the Corps, for five years, beginning at the end of the first full growing season following mitigation construction. Monitoring reports shall be submitted no later than August 15 of each year, and contain photo-documentation and written descriptions of on-site conditions to ensure compliance with mitigation conditions. If, at the end of the five-year monitoring period, the mitigation area is functioning as required, and meeting vegetative survival rates, then additional monitoring will not be required. If mitigation functioning requirements are not met at the end of the five-year monitoring period, then corrective measures and

additional monitoring shall be implemented for that area;

e. Schedule: Include a schedule for initiation and completion of all mitigation activities, including monitoring; and

f. Signage: Post signs at the boundaries of the mitigation site that indicate the presence of the mitigation site and that it was developed by agreement with the United States Environmental Protection Agency (EPA) and may not be disturbed without prior approval from the EPA.

28. Respondent shall submit the Mitigation Plan, modified pursuant to paragraph 27 above, to EPA within 30 (thirty) days of the effective date of this Administrative Compliance Order on Consent.

29. In the event that Respondent finds that implementation of the Mitigation Plan, set forth in Attachment A and modified by Paragraph 27 of this Order on Consent, is not possible, Respondent shall provide to EPA in writing the following: 1) a description of the impediment(s) to implementation; 2) an explanation of how the impediment(s) affect Respondent's ability to implement the Mitigation Plan; and 3) recommendations for modification to the Mitigation Plan. Respondent shall provide the above information to EPA prior to the date of initial tree planting indicated in the Mitigation Plan schedule. EPA will review the information Respondent provides. If EPA, in its sole discretion, determines that implementation of the Mitigation Plan is no longer possible, EPA will notify Respondent and will revise the Mitigation Plan through an addendum to Attachment 1 of the Order on Compliance.

29. Respondent agrees that it shall be in EPA's sole discretion to determine whether Respondent has fully implemented the Mitigation Project in accordance with the Mitigation Plan and whether Respondent has adhered to the schedule contained therein. In making this determination, EPA will take into account Respondent's good-faith efforts as well as any factors beyond Respondent's control.

31. Respondent shall submit annual reports to EPA, beginning on the first anniversary of the Effective Date of this Order on Consent and continuing until EPA notifies Respondent in writing that the project is complete. The annual reports shall outline the status of the project and dates of initiation and completion of all activities required to be completed by the Mitigation Plan.

32. Respondent shall arrange to have the mitigation site boundaries surveyed by a licensed surveyor in order to execute and file with the Register of Deeds for Washington County, Missouri, an easement/deed restriction/covenant that encompasses the area contained within the mitigation site boundaries. The easement/deed restriction/covenant shall be filed with the Register of Deeds for Washington County within 30 days of the Effective Date of this Order on

Consent. The easement/deed restriction/covenant shall set aside the mitigation site for the purposes described in Attachment A.

33. Respondent agrees to send EPA a file-stamped copy of the easement/deed/covenant within 10 days of receiving a final copy from Washington County, Missouri Register of Deeds.

34. Respondent agrees that this Order on Consent shall not constitute a permit under the CWA. Compliance with the terms of this Order on Consent shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits. Specifically, Respondent agrees to consult with the Corps and agrees to obtain all permits that the Corps determines necessary before commencing any work required by this Order on Consent.

35. Respondent agrees that no changes shall be made to the Mitigation Plan without prior written approval from EPA.

36. Respondent shall submit all reports and deliverables required by this Order on Consent to EPA and the Corps at the following addresses:

Mr. Raju Kakarlapudi, Enforcement Officer  
Water, Wetlands and Pesticides Division  
U. S. Environmental Protection Agency – Region VII  
901 N. Fifth Street  
Kansas City, Kansas 66101; and

Mr. Ward Lenz  
U.S. Army Corps of Engineers  
St. Louis District, Regulatory Branch  
1222 Spruce Street  
St. Louis, MO 63103-2833.

#### General Provisions

37. Respondent admits the jurisdictional allegations in this Order on Consent and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Order on Consent.

38. Respondent neither admits nor denies the factual allegations contained in this Order on Consent.

39. Nothing contained in the Order on Consent shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

40. Compliance with the terms of this Order on Consent shall not relieve Respondent of liability for any violations of the CWA not addressed in this Order on Consent or in the Consent Agreement and Final Order that was filed as a companion to this Order on Consent. In addition, nothing in this Order on Consent shall prohibit EPA from seeking additional injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

41. Nothing in this Order on Consent shall limit EPA's right to obtain access to the area where the mitigation is being performed and to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and any other authority.

42. If any provision or authority of this Order on Consent, or the application of this Order on Consent to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order on Consent shall remain in force and effect and shall not be affected by such a holding.

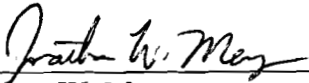
43. The signatory below certifies that he is fully authorized to enter into the terms and conditions of this Order on Consent.

44. The terms of this Order on Consent shall be effective and enforceable against Respondent on the Effective Date, which is the date this Order on Consent is signed by EPA.


45. This Order on Consent shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order on Consent have been met.

In the Matter of JG Holdings, L.L.C.  
CWA-07-2007-0016  
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**For the Complainant:**  
The United States Environmental Protection Agency

  
\_\_\_\_\_  
Jonathan W. Meyer  
Assistant Regional Counsel

5-2-07  
Date

  
\_\_\_\_\_  
William A. Sprathin  
Division Director  
Water, Wetlands and Pesticides Division

5/2/07  
Date



**For the Respondent:**

*Gregory Han Tak*  
Gregory Han Tak

*4/3/07*

Printed Name:

Date

Title:

*VV*

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Finding of Violation and Order for Compliance on Consent to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Notice of Violation and Order for Compliance on Consent by first class certified mail, return receipt requested, to:

John M. Horas  
Registered Agent for JG Holdings, L.L.C.  
Horas Radice & Kellett, L.L.C.  
Suite 400  
911 Washington Avenue  
St. Louis, Missouri 63101

I further certify that on the date noted below I sent a copy of the foregoing Notice of Violation and Order for Compliance on Consent by first class mail to:

Mr. Kevin Mohammadi, Chief  
Enforcement Section  
Water Pollution Control Program  
Missouri Dept. of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

May 8, 2007

John W. Mey



**SCI ENGINEERING, INC.**

9701 GREEN PARK INDUSTRIAL DRIVE  
ST. LOUIS, MISSOURI 63123  
314-845-6677 FAX 314-845-6667  
[www.sciengineering.com](http://www.sciengineering.com)

**Formal Mitigation Plan**

**JOHN'S CREEK DAM  
WASHINGTON COUNTY, MISSOURI**

**December 2005**

**Prepared for:  
J.G. HOLDINGS, L.L.C.**

**SCI No. 2003-2207.30**

**In the Matter of JG Holdings, L.L.C.  
CWA-07-2007-0016  
Attachment A**

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**Formal Mitigation Plan**  
**JOHN'S CREEK DAM**  
**WASHINGTON COUNTY, MISSOURI**

**1.0 INTRODUCTION**

On behalf of J.G. Holdings, L.L.C. (J.G. Holdings), SCI Engineering, Inc. (SCI) has prepared a formal mitigation plan to offset 120 linear feet (LF) of unauthorized fill and 1,400 LF of backwater flooding impacts to John's Creek. As previously identified in SCI's Wetland Delineation Report dated August 3, 2005, it is likely that 1,520 LF of John's Creek has been impacted through the relocation of an existing dam. The relocation of the dam increased the historic lake size of John's Lake from approximately 9 acres to approximately 22 acres. The activities were considered by the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (CE) as a violation of Section 404 of the Clean Water Act (CWA). To offset these impacts, SCI has prepared a formal mitigation plan for J.G. Holdings.

SCI has incorporated suggestions into the mitigation plan that were provided by Mr. Larry Long of the USEPA to Mr. Jack Horas and SCI during a conference call on December 7, 2005. The following mitigation plan proposes that J.G. Holdings create approximately 7.68 acres of riparian corridor through tree planting in pastures along John's Creek. The amount of mitigation proposed is based upon a 2:1 mitigation ratio, as suggested by the USEPA during the conference call. The mitigation site is located approximately 400 LF downstream of the current lake dam, on property that was recently acquired from the adjacent landowner to accommodate the mitigation needs established by the USEPA. A deed restriction is proposed to encompass the 7.68-acre created riparian corridor.

**2.0 MITIGATION OVERVIEW**

The following mitigation plan has been provided in accordance with requests made by the USEPA. During a conference call on December 7, 2005, the USEPA requested compensatory mitigation to be provided at a ratio of 2 acres of mitigation for each 1 acre of impact (2:1). Appropriate stream mitigation acreage is determined through multiplying the length of stream impact (1,520 LF) by the average width of the stream channel segment (10 feet), plus its surrounding wooded corridor (not to exceed 50 feet on either side). Therefore, the following calculation was utilized to determine appropriate mitigation acreage.

1,520 LF of stream channel impact X (10 foot wide channel + 50 foot wide wooded corridor + 50 foot wide wooded corridor) = 3.84 acres. At the requested 2:1 mitigation ratio, approximately 7.68 acres of mitigation has been calculated as acceptable mitigation acreage.

### 3.0 MITIGATION PLAN

J.G. Holdings is proposing to create a forested riparian corridor adjacent to John's Creek. The mitigation plan includes planting approximately 7.68 acres along John's Creek (see Figure 2). The mitigated buffer will enhance the overall ecosystem by providing a wider wildlife corridor, increased shade within the creek, and aid in the stabilization of the tributary. This mitigation plan will convert land currently managed as pasture into a forested stream corridor. This shift in management and vegetative cover should also decrease the potential for sediment input into John's Creek.

The proposed mitigation will include tree planting within areas where the forest canopy coverage is non-existent. Tree species to be included in the created forested corridor will consist of a mix that is mesic to somewhat flood tolerant. The trees planted in these locations will consist of 2- to 3-gallon containerized air root pruned trees (RPM). This method produces faster growing trees with high survival rates. The RPM trees will be planted with an approximate 30-foot staggered spacing, which is the recommended spacing by tree suppliers. This equates to 48 trees per acre. Therefore, a total of 184 trees will be planted within the project site. The species that may be planted in the corridor are shown below in Table 3.1.

**Table 3.1 – Recommended Riparian Corridor Tree Species**

Common Name	Scientific Name	Indicator Status
Shingle Oak	<i>Quercus imbricaria</i>	FAC-
Swamp White Oak	<i>Quercus bicolor</i>	FACW+
Black Walnut	<i>Juglans nigra</i>	FACU
Bur Oak	<i>Quercus macrocarpa</i>	FAC
Shellbark Hickory	<i>Carya laciniosa</i>	FACW
Gray Dogwood	<i>Cornus foemina</i>	FACW
Silky Dogwood	<i>Cornus amomum</i>	FACW+
Common Persimmon	<i>Disopyros virginiana</i>	FAC
American Sycamore	<i>Platanus occidentalis</i>	FACW
Pin Oak	<i>Quercus palustris</i>	FACW
Sweet Gum	<i>Liquidambar styraciflua</i>	FACW

#### **4.0 SITE CONSERVATION**

The boundaries of the mitigation area will be provided to the USEPA and CE in a legal description. The proposed 7.68 acres of mitigation surrounding John's Creek will be protected under a Declaration of Covenants and Restrictions. The restrictions will be recorded with the Washington County Recorder of Deeds to protect the mitigation area from future development and disturbance. J.G. Holdings will provide the CE with a copy of the recorded Declaration of Covenants and Restrictions, including the date, book, and page number of the recording with Washington County. The Declaration of Covenants and Restrictions for the project site will preserve the area for aquatic habitat and wildlife purposes.

#### **5.0 MAINTENANCE AND MONITORING**

The CE typically requires that specific performance criteria are met when stream and associated riparian creation is offered as mitigation. The permittee will be responsible for ensuring the successful establishment of the riparian corridor. Monitoring of the planted riparian corridor will be conducted yearly, for a minimum period of five years following planting completion. The survival rate of tree species planted in the riparian corridor should be at least 80 percent, after five growing seasons. Planted trees that have died will be replaced annually, to maintain at least an 80 percent survival rate. Trends indicating poor performance of specific tree species will be noted.

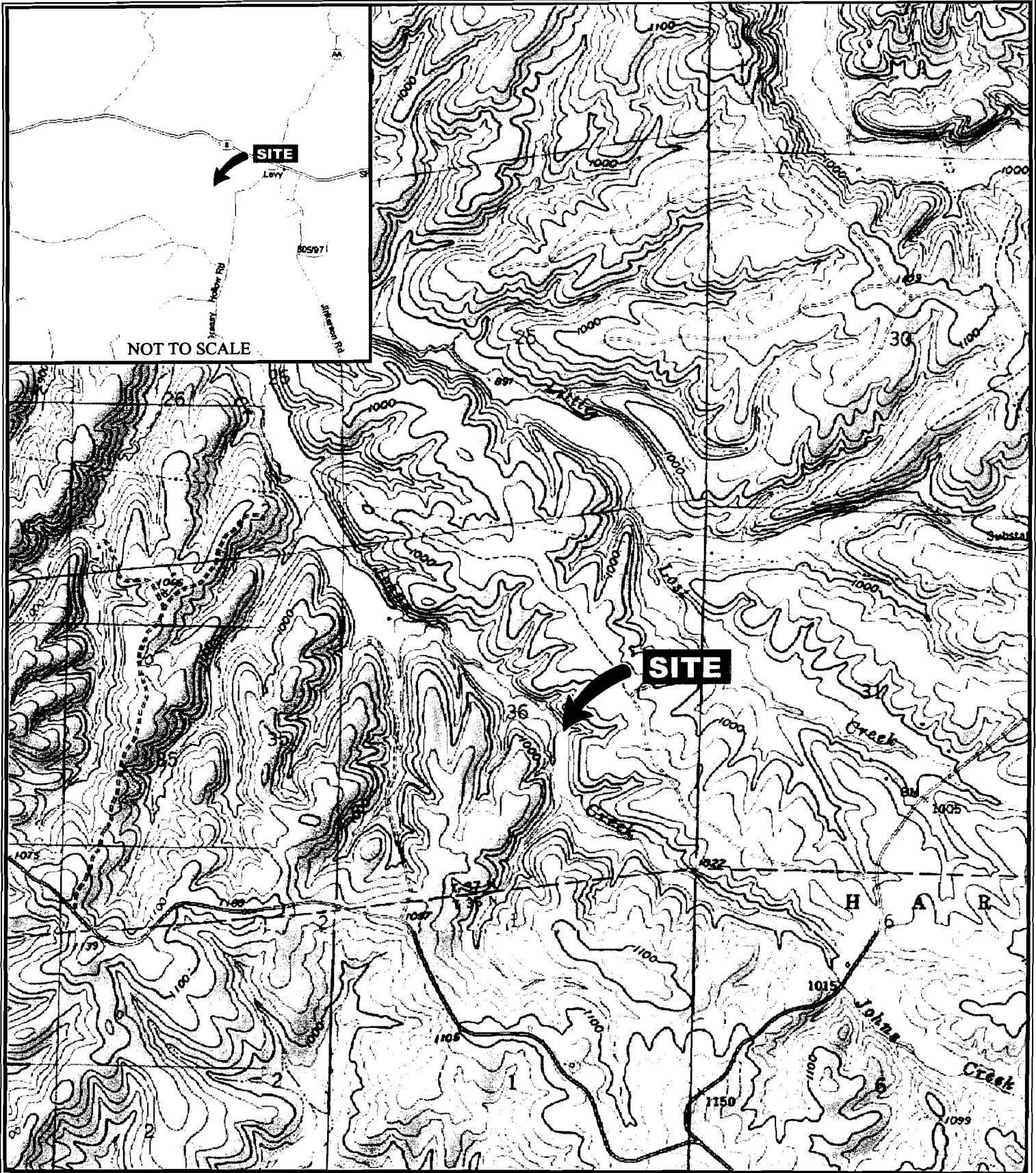
If, after five years, the area has met or shows progressive improvements toward meeting the standards set by the CE, monitoring is generally no longer necessary. However, if John's Creek or its created riparian corridor is not functioning in a manner that meets the requirements of the CE, further monitoring and improvements may be required at the discretion of the USEPA and the CE. The data collected in each yearly study will be detailed in a formal report to the USEPA and the CE, including suggestions or plans to improve or repair any deficiencies that may exist. It is the responsibility of the CE to advise the applicant which remediation plan to implement. The monitoring reports, as well as, any corrective measures are the responsibility of the 404 Permit recipient.

#### **6.0 LIMITATIONS**

This report has been prepared for the exclusive use of J.G. Holdings. SCI is not responsible for independent conclusions or recommendations made by others. The quantification of the proposed impacts described within this document was determined by SCI through aerial photographs and development plans that were prepared by Volz, Inc. SCI is not responsible for surveys, calculations, or plans that were prepared by others. Furthermore, written consent must be provided by SCI should

anyone other than our clients and its lender (if applicable) wish to excerpt, or rely on, the contents of this report. Additionally, SCI in no way guarantees the successful establishment of the aforementioned mitigation areas. The plan is based on practices commonly performed and accepted. Various unforeseen factors can lead to the failure of a mitigation area.





PROJECT NAME  
**JOHN'S CREEK DAM**  
**WASHINGTON COUNTY, MISSOURI**

**VICINITY AND TOPOGRAPHIC MAP**

<b>DRAWN BY</b>	LAP	<b>DATE</b>	12/2005	<b>JOB NUMBER</b>	2003-2207.30
<b>CHECKED BY</b>	LMF				

**General Notes/Legend**  
 USGS TOPOGRAPHIC MAP  
 SHIRLEY, MISSOURI QUADRANGLE  
 PALMER, MISSOURI QUADRANGLE  
 DATED 1958  
 PHOTO REVISED 1980  
 20' CONTOURS

MICROSOFT STREETS AND TRIPS 2005

**SCALE** 1" = 2000'  
**FIGURE** 1



General Notes/Legend

MEASUREMENTS AND LOCATIONS ARE APPROXIMATE; ACTUAL MAY VARY.  
DRAWING SHALL NOT BE USED OUTSIDE THE CONTEXT OF THIS REPORT FOR WHICH IT  
WAS GENERATED.

PROJECT NAME  
JOHN'S CREEK DAM  
WASHINGTON COUNTY, MISSOURI

AERIAL PHOTOGRAPH  
AND MITIGATION PLAN



SCALE 1" = 500'

JOB NUMBER  
2003-2267-30

DATE  
12/2005

DRAWN BY  
LAP

CHECKED BY  
LJMF

FIGURE  
2

