

Public Notice

**US ARMY CORPS
OF ENGINEERS**
St. Louis District
Gateway to Excellence

Reply To:
U.S. Army Corps of Engineers
Attn: CEMVS-OD-F
1222 Spruce Street
St. Louis, Missouri 63103-2833

Public Notice No.
P-2785
Public Notice Date
March 15, 2011
Expiration Date
April 5, 2011

Postmaster Please Post Conspicuously Until:

File Number: 2009-737

Interested parties are hereby notified that an application has been received for an **After-the-Fact** Department of the Army permit to approve previously unauthorized filling activities that occurred in a jurisdictional water of the United States, as described below and shown on the attached figures.

COMMENTS AND ADDITIONAL INFORMATION: Comments on the described work should reference the U.S. Army Corps of Engineers File Number shown above and must reach this office no later than the above expiration date of the Public Notice to become part of the record and be considered in the decision. Comments should be mailed to the following address:

U.S. Army Corps of Engineers
Regulatory Branch
1222 Spruce Street
St. Louis, Missouri 63103-2833
ATTN: Shawn Sullivan

APPLICANT: Mr. Kenny Foeste, 377 County Road 649, Cape Girardeau, Missouri 63701. (573) 334-0172.

AGENT: Koehler Engineering & Land Surveying, Inc., Attn: Mr. Chris Koehler, 194 Coker Lane, Cape Girardeau, Missouri 63701. (573) 335-3026.

LOCATION: In Section 21, Township 31 North, Range 14 East, Cape Girardeau County, Missouri. More specifically, the unauthorized activity occurred at Latitude 37.34104 and Longitude -89.49719. The project location can also be described as being situated at the intersection of State Highway 177 and Old Route V (CR 657).

PROJECT DESCRIPTION: The applicant seeks an after-the-fact Department of the Army permit for the discharge of fill material into a water of the United States. On December 8, 2009, St. Louis District Regulatory staff conducted a field inspection and confirmed that the work being conducted on the project area resulted in an unauthorized discharge of fill material in a jurisdictional water of the United States. A Notice of Violation was issued on January 19, 2010, stating that the project is in violation of Sections 301 [33 U.S.C. 1311] and 404 [33 U.S.C. 1344] of the Clean Water Act (CWA). The unauthorized activity consisted of encasing approximately 350 linear feet unnamed intermittent tributary into twin concrete pipes. A soil and rubble mix has been placed over the piped channel with

the intent of creating a level ground surface to build upon. The unnamed intermittent tributary affected by the unauthorized work, flows directly into Juden Creek, which is a primary tributary to the Mississippi River. The project area is mapped on the Federal Emergency Management Agency – Flood Insurance Rate Map as lying within a special flood hazard area that is inundated by the 100-year flood (panel 2907900135B).

The project purpose is to facilitate commercial development and will consist of a proposed convenience store and storage units. The applicant requests after-the-fact authorization to allow for the pipes and fill to remain within the jurisdictional tributary and will provide the necessary authorization which will assist the applicant in completing the overall commercial development.

The applicant has proposed a permittee-responsible compensatory mitigation site along 1,130 linear feet of Soakie Creek. Soakie Creek is an upper perennial tributary to Little Flora Creek, which is within the same watershed as Juden Creek. The proposed mitigation project will consist of riparian restoration work along the right descending creek bank. The specific objective of the mitigation plan includes the restoration of 1,130 linear feet of 100 foot wide and relatively continuous riparian corridor and notching existing spoil banks to re-establish an interaction between the creek and its flood plain. The floodplain interaction coupled with the vegetative structure added to the corridor will assist in improving: channel stability; water quality; shading; and reducing peak discharge as well as providing quality habitat for wildlife. The creek channel bank which parallels the proposed mitigation area is owned and managed by the Nell Holcomb R-IV School District. This paralleling creek bank is managed as an outdoor classroom by the school and contains riparian wetlands and an established wooded riparian corridor. A real estate protection instrument in the form of a deed restriction will be placed on the proposed mitigation site to permanently protect the mitigation area in perpetuity.

LOCATION MAPS AND DRAWINGS: See attached.

ADDITIONAL INFORMATION: Additional information may be obtained by contacting Shawn Sullivan, Project Manager, U.S. Army Corps of Engineers, at (314) 331-8580. Your inquiries may also be sent by electronic facsimile to (314) 331-8741 or by e-mail to shawn.f.sullivan@usace.army.mil.

AUTHORITY: This permit will be processed under Section 404 of the Clean Water Act (33 U.S.C. 1344).

WATER QUALITY CERTIFICATION: The project plans have been submitted to the Missouri Department of Natural Resources, Water Protection Program for state certification of the proposed work in accordance with Section 401 of the Clean Water Act. The certification is requested as of the date of this Public Notice, and if issued, will express the Agency's opinion that the proposed activities will not violate applicable water quality standards. Written comments concerning possible impacts to waters of Missouri should be addressed to: Water Protection Program, Post Office Box 176, Jefferson City, Missouri 65102-0176, with a copy provided to the Corps of Engineers.

SECTION 404 (b)(1) EVALUATION: The impact of the activity on the public interest will be evaluated in accordance with the Environmental Protection Agency guidelines pursuant to Section 404 (b)(1) of the Clean Water Act.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the applicant's proposal. Any request for a public hearing shall state, with particularity, the reason for the hearing, and must be based on issues that would warrant additional public review.

ENDANGERED SPECIES: A preliminary determination, in compliance with the Endangered Species Act, as amended, has been made that the work that will have no effect on species designated as threatened or endangered, or adversely affect critical habitat. Therefore, no formal consultation request has been made to the United States Department of Interior, Fish and Wildlife Service. In order to complete our evaluation, comments are solicited from the Fish and Wildlife Service and other interested agencies and individuals through this Public Notice.

CULTURAL RESOURCES: The St. Louis District will evaluate information provided by the State Historic Preservation Officer and the public in response to this public notice and we may require a reconnaissance survey of the project area.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that may reasonably be expected to accrue from the described activity must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the activity described, will be considered including the cumulative effects. Among factors considered are: conservation; economics; aesthetics; general environmental concerns; wetlands; historic properties; fish and wildlife values; flood hazards; flood plain values; land use; navigation; shoreline erosion and accretion; recreation; water supply and conservation; water quality; energy needs; safety; food and fiber production; mineral needs; consideration of property ownership; and in general the needs and welfare of the people.

SOLICITATION OF COMMENTS: The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed activity. Any comments received will be considered by the U.S. Army Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

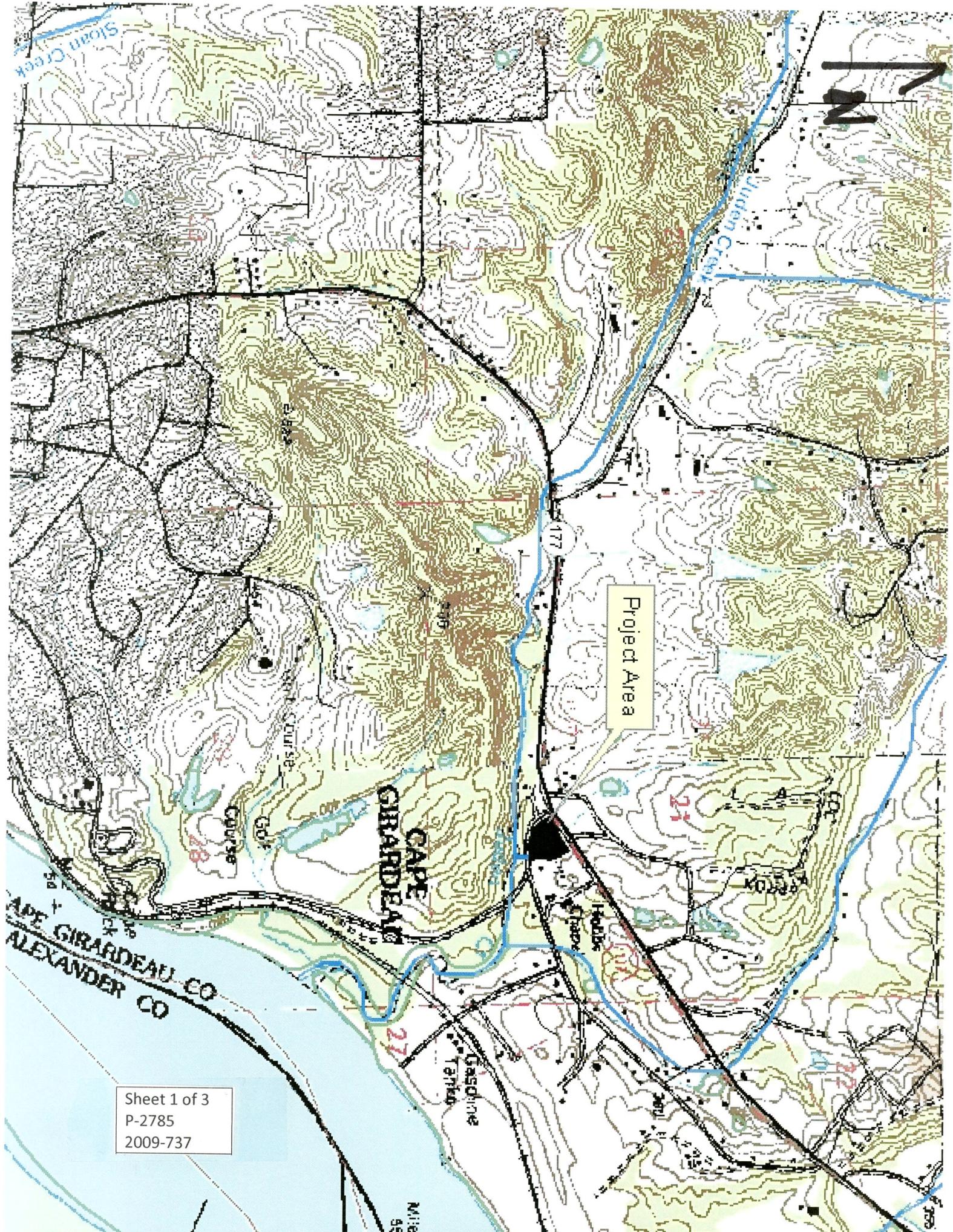


DANNY D. MCCLENDON
Chief, Regulatory Branch

Attachments

NOTICE TO POSTMASTERS:

It is requested that this notice be conspicuously and continually placed for 21 days from the date of this issuance of this notice.



Project Area

CAPE GIRARDEAU CO
ALEXANDER CO

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Project Area

Big Bend

Blossing

Scenic View

Cedar Hills

Cedar Ridge

177

State Hwy 177

County Road 654

Big Bend

Old Route 177

Chickasaw

Cherokee

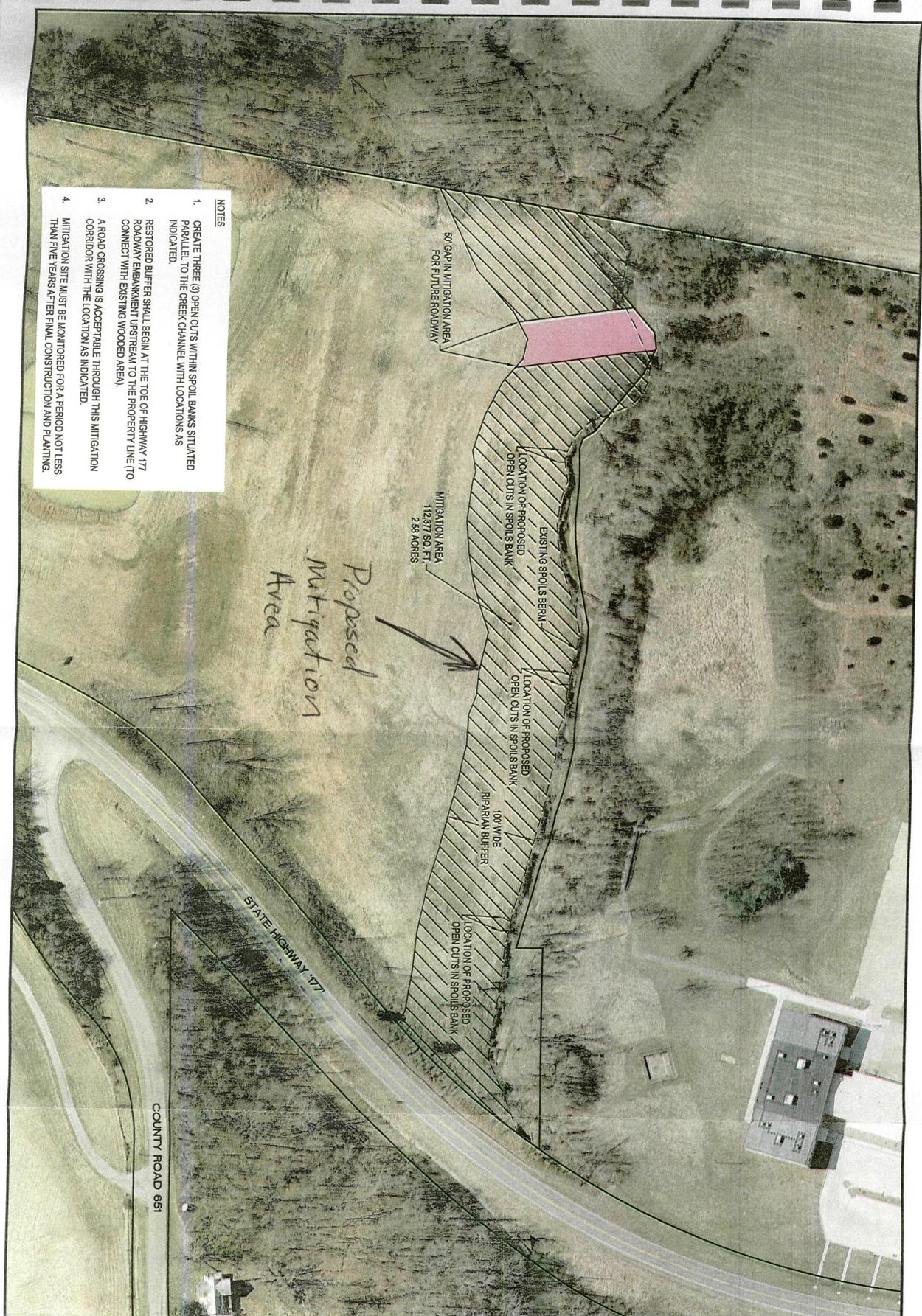
River Ridge

Cape Rock

Jordan Creek

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- NOTES**
1. CREATE THREE (3) OPEN CUTS WITHIN SPOIL BANKS SITUATED PARALLEL TO THE CREEK CHANNEL WITH LOCATIONS AS INDICATED.
 2. RESTORED BUFFER SHALL BEGIN AT THE TOE OF HIGHWAY 177 ROADWAY EMBANKMENT (UPSTREAM TO THE PROPERTY LINE (TO CONNECT WITH EXISTING WOODED AREA).
 3. A ROAD CROSSING IS ACCEPTABLE THROUGH THIS MITIGATION CORRIDOR WITH THE LOCATION AS INDICATED.
 4. MITIGATION SITE MUST BE MONITORED FOR A PERIOD NOT LESS THAN FIVE YEARS AFTER FINAL CONSTRUCTION AND PLANTING.



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FOESTE STREAM MITIGATION	
DATE: 11-29-2010	
EXHIBIT 2 OF 4	OVERALL PLAN VIEW

KOEHLER ENGINEERING

194 COKER LANE
CAPE GIRARDEAU, MO 63701
(573) 335 - 3026

GRAPHIC SCALE

(IN FEET)
1 inch = 100 ft.