



**US Army Corps
of Engineers®**
St. Louis District

PUBLIC NOTICE

FILE NUMBER: [MVS-2020-406](#)

PUBLIC NOTICE DATE: [July 9, 2024](#)

EXPIRATION DATE: [July 29, 2024](#)

Interested parties are hereby notified that an application has been received for a Department of the Army permit for certain work in waters of the United States, as described below and shown on the attached maps. The purpose of the public notice is to inform you of a proposal for work in which you may be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

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 address below or sent via email to MVS-Regulatory@usace.army.mil

U.S. Army Corps of Engineers
Regulatory Division (CEMVS-R)
1222 Spruce Street
St. Louis, Missouri 63103

[USE FOR MISSOURI WHEN WATER QUALITY CERT IS REQUESTED:] JOINT PUBLIC NOTICE:

This public notice is issued jointly with the Missouri Department of Natural Resources, Water Protection Program. The Department of Natural Resources will use the comments to this notice in deciding whether to grant Section 401 water quality certification. Commenters are requested to furnish a copy of their comments to the Missouri Department of Natural Resources by email at wp401cert@dnr.mo.gov or by mail at P.O. Box 176, Jefferson City, Missouri 65102.

APPLICANT: Todd Bauman & Vernon Bauman, 21471 Highway 32, Ste. Genevieve, Missouri 63670.

PROJECT LOCATION: The proposed activity is located within Section 4 & 9, Township 36 North, Range 8 East at approximately 37.8479° latitude and -90.153029° longitude (Figure 1). The street address is 19380 Mill Creek, Ste. Genevieve, Ste. Genevieve County, Missouri 63670.

AUTHORITY: Section 404 of the Clean Water Act (33 USC 1344)

ACTIVITY: The proposed activity is to construct a 39-acre lake within Mill Creek and its two impoundments (Ponds 6 & 7) for the private recreational use of the applicants' family & friends. To construct the impoundment a 52-ft high dam will be constructed in the approximate location of an earthen dam that was previously built, then intentionally, breached in the 1970-80s. The impoundment would require filling 400 feet of Mill Creek for the dam structure, and the impoundment of 2,711 feet of Mill Creek, 1.71 acres of Pond 6/Impoundment 1, and 2.99 acres of Pond 7/Impoundment 2 to support the normal pool. The proposed dam will span across the valley approximately 800 feet with a 90-ft wide rock-cut open spillway along the right abutment with a 12-ft wide concrete sill. Construction will also include a blanket drain upstream of downstream toe of the

dam with riprap erosion protection. A construction permit has been obtained from the Missouri Department of Natural Resources' Dam Safety, permit MO41010 for the Aly Marie Lake Dam design (Figure 2).

WETLANDS/AQUATIC HABITAT: An Approved Jurisdictional Determination was completed on April 8, 2024 under the pre-2015 regulatory regime and consistent with the Supreme Court's decision in Sackett on 25 May 2023. Perennial, Mill Creek, and its two impoundments (Ponds 6 & 7) within the project area were found to be jurisdictional. The series of shallow constructed ponds within the proposed lakebed (Ponds 1-5, 8, and 9), a forested wetland, and Channel 1 were found to be non-jurisdictional (Figures 3 & 4).

APPLICANT'S STATEMENT OF AVOIDANCE, MINIMIZATION, AND COMPENSATORY

MITIGATION FOR UNAVOIDABLE IMPACTS TO AQUATIC RESOURCES: Two additional alternatives for dam height were considered during the scoping process, in addition to the proposed top-of-dam elevation 585-ft (55-ft high dam) with a 39-acre normal pool. A dam to elevation 595-ft (582-ft normal pool) and a dam to elevation 605-ft (592-ft normal pool) were considered. Due to several factors such as constructability, amount of fill, and additional impacts to Mill Creek and its tributaries these options were dismissed. Compensatory mitigation for the proposed impacts to jurisdictional waters of the U.S. will be accomplished through a proposed plan that consists of riparian enhancement for 11,200 linear feet of perennial streams within the same watershed as the impact site. Mitigation credits required by U.S. Army Corps of Engineers have been calculated at a total of 12,781.5. The combination of permittee-responsible mitigation credits generated (11,531), in combination through the purchase of remaining credits from an In-Lieu Fee program provider (1250.5) will offset the impacts to waters of the U.S. Compensatory mitigation is not proposed for impacts to Ponds 6 & 7 (instream impoundments) as there is no proposed loss due to their existing status as open water impoundments. Pond 7 is expected to only have very minor changes in normal pool elevation and Pond 6 is expected to have an additional 5-6 feet of inundation.

ADDITIONAL INFORMATION: Additional information about this application may be obtained by contacting David Meyer, Department of the Army – Regulatory Division, 1222 Spruce Street, St. Louis, Missouri 63103 or by phone at (314) 331-8810. All comments to this public notice should be sent to MVS-Regulatory@usace.army.mil and include reference number MVS-2020-406.

CULTURAL RESOURCES: The St. Louis District will evaluate input by the State Historic Preservation Officer, Tribal Historic Preservation Officers (or Tribe designated representative) and the public in response to this public notice. The Corps will review information on known cultural resources and/or historic properties within and adjacent to the project area. The Corps will also consider the potential effects of the project on any properties that have yet to be identified to assure compliance with Section 106 of the National Historic Preservation Act. As part of its initial project due diligence, the applicant contracted a Phase I Cultural Resources Survey. The results of this survey and further testing requirements are under review and will be coordinated with the State Historic Preservation Officer and Tribes, as appropriate and independent of this public notice. Any adverse effects on historic properties will be resolved prior to the Corps authorization, or approval, of the work in connection with this project. Most of the site is disturbed by the original construction of the breached dam structure and additional surveys did not identify any eligible historic properties. The Corps is considering a determination of "no historic properties affected." The MDNR SHPO has reviewed the report and in a letter dated, May 23, 2024, concurred with the proposed finding of "no historic properties affected."

ENDANGERED SPECIES: The St. Louis District will comply with Section 7 of the Endangered Species Act. In order to complete our evaluation of this activity, comments are solicited from the U.S. Fish and Wildlife Service and other interested agencies and individuals. The proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), and proposed endangered Tri-colored Bat (*Perimyotis subflavus*). A preliminary determination, in compliance with the Endangered Species Act as amended, has been made that the tree clearing activities associated (6.4 acres) with the project may affect these listed species.

FLOODPLAINS: This activity is being reviewed in accordance with Executive Order 11988, Floodplain Management, which discourages direct or indirect support of floodplain development whenever there is a practicable alternative. By this public notice, comments are requested from individuals and agencies that believe the described work will adversely impact the floodplain. This area is outside of the "Limits of Study" of Mill Creek and no official floodplain designation has been made by Federal Emergency Management Agency nor Ste. Genevieve County.

WATER QUALITY CERTIFICATION: The Clean Water Act (CWA) Section 401 Water Certification Improvement Rule (Certification Rule, 40 CFR 121), effective November 27, 2023, requires certification for any license or permit that authorizes an activity that may result in a discharge. The scope for CWA Section 401 certification by the certifying authority shall evaluate whether the activity will comply with applicable water quality requirements. The certifying authority's evaluation is limited to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation. The applicant is solely responsible for requesting certification and providing required information to the certifying agency. In accordance with Certification Rule part 121.12, the Corps will notify the U.S. Environmental Protection Agency Administrator when it has received a Department of the Army (DA) permit application and the related certification. The Administrator is responsible for determining if the discharge may affect water quality in a neighboring jurisdiction. The DA permit may not be issued pending the conclusion of the Administrator's determination of effects on neighboring jurisdictions.

PUBLIC INTEREST REVIEW: The decision to issue a permit will be based on an evaluation of the probable impact including the cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, esthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (33 USC 1344). The 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 this proposed activity. Any comments received will be considered by the 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 the other public interest factors listed above. Comments are used in 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.

ENVIRONMENTAL JUSTICE: In accordance with E.O. 12898, E.O. 14008, and E.O. 14096, the Corps of Engineers will specifically consider the effects of the proposed action on communities with environmental justice concerns, including economically disadvantaged communities, communities of color, and other socioeconomic groups that could be disproportionately affected by environmental and other effects. Following our initial screening of the project, our preliminary determination is that the project will have no effect upon communities having environmental justice concerns. As part of our environmental justice review, the Corps of Engineers seeks additional information from the public, community leaders, local officials and others regarding issues of environmental justice as related to the proposed action.

COMMENTS: The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Tribes; and other interested parties 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. Additional information may be obtained by contacting David Meyer, Project Manager, U.S. Army Corps of Engineers, via e-mail at David.P.Meyer@usace.army.mil

To join our public notice mailing list and receive all of our Public Notices electronically, please email your request to: MVS-Regulatory@usace.army.mil and include your name, email, and phone number with your statement of request to be added to the Public Notice mailing list.

PUBLIC HEARING: Any person may request, in writing, prior to the expiration date of this public notice, that a public hearing be held to consider this application. Such requests shall state, with particularity, the reasons for holding a public hearing.

Robert S. Gramke

Robert S. Gramke
Chief, Regulatory Division

Attachments

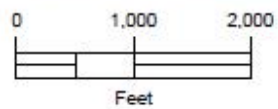
NOTICE TO POSTMASTERS:

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



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Section 4, T26N, R8E



LEGEND

- Dam Centerline
- Normal Pool 580 FT
- Streams

Aly Marie Dam
Saint Genevieve County, MO

TOPOGRAPHIC MAP

February 2023

106184-001

Figure 1. U.S. Geological Survey's topographic map of project area.

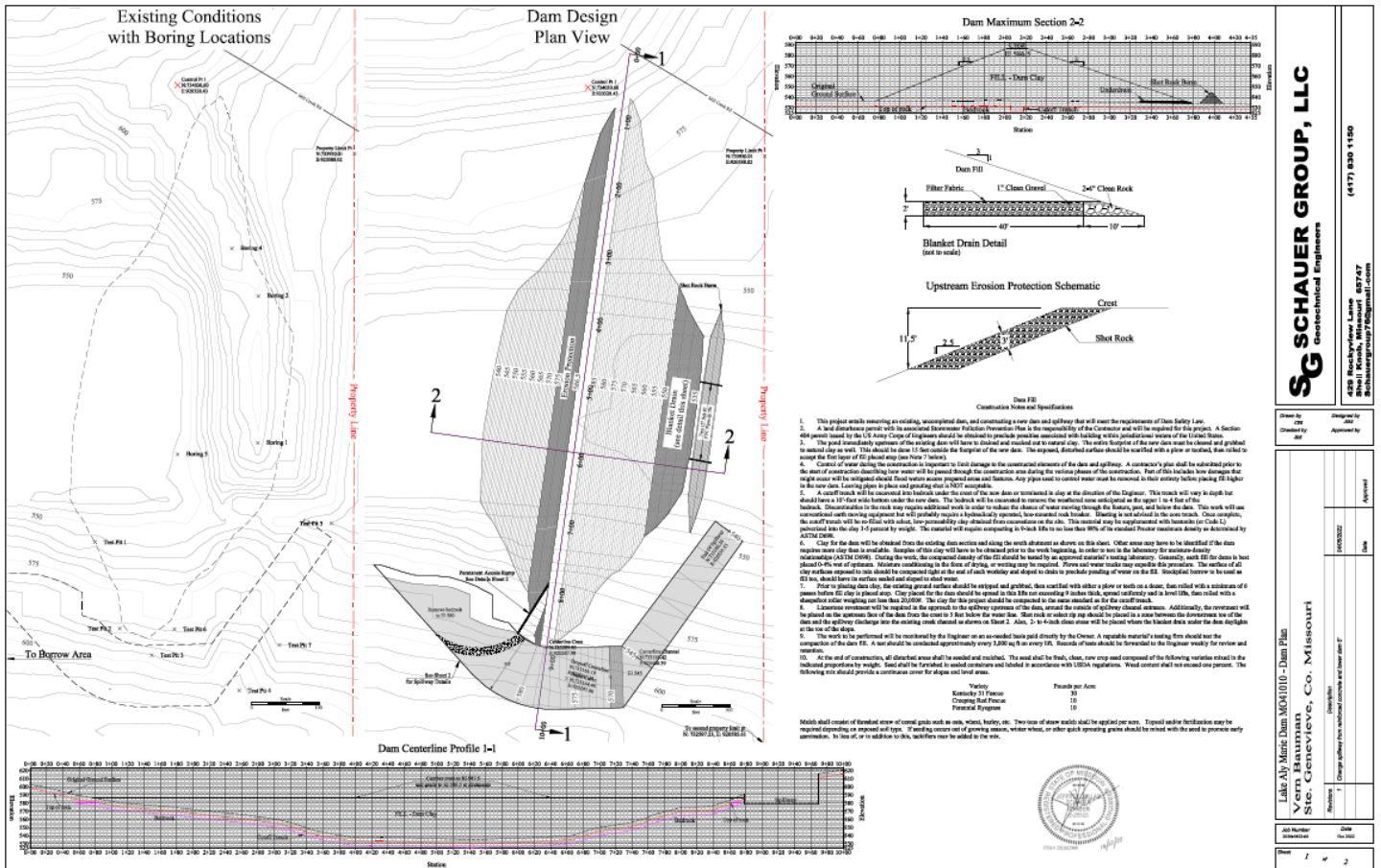


Figure 2. Aly Marie Dam construction plans.

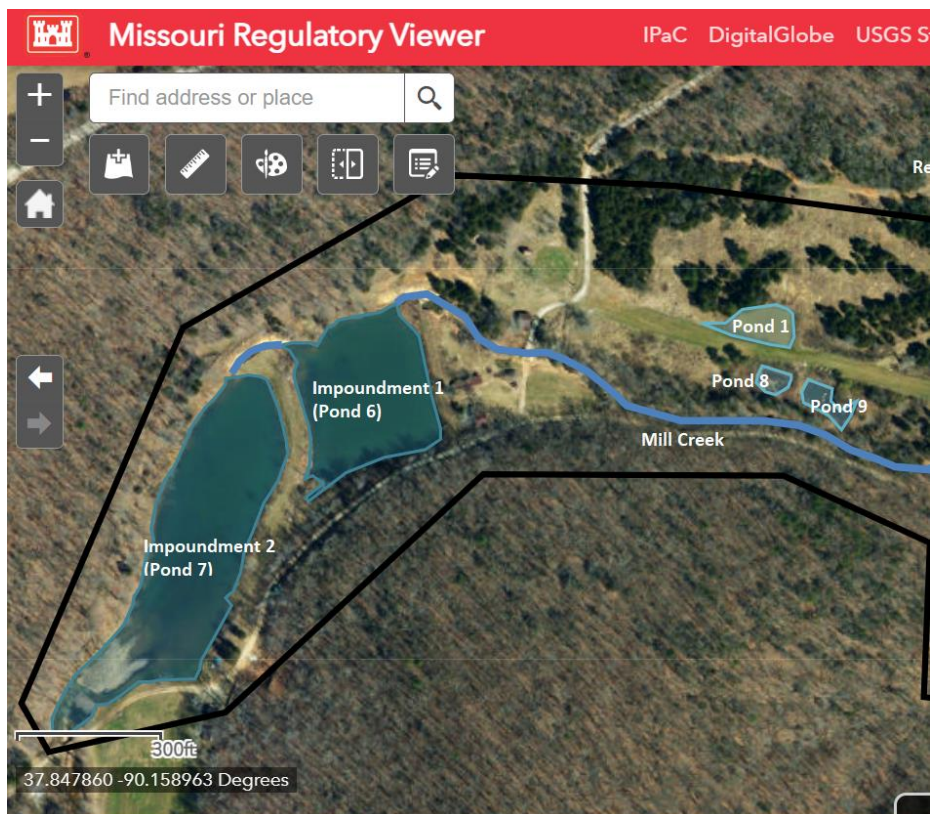


Figure 3. Approved Jurisdictional Determination Western Review Area.

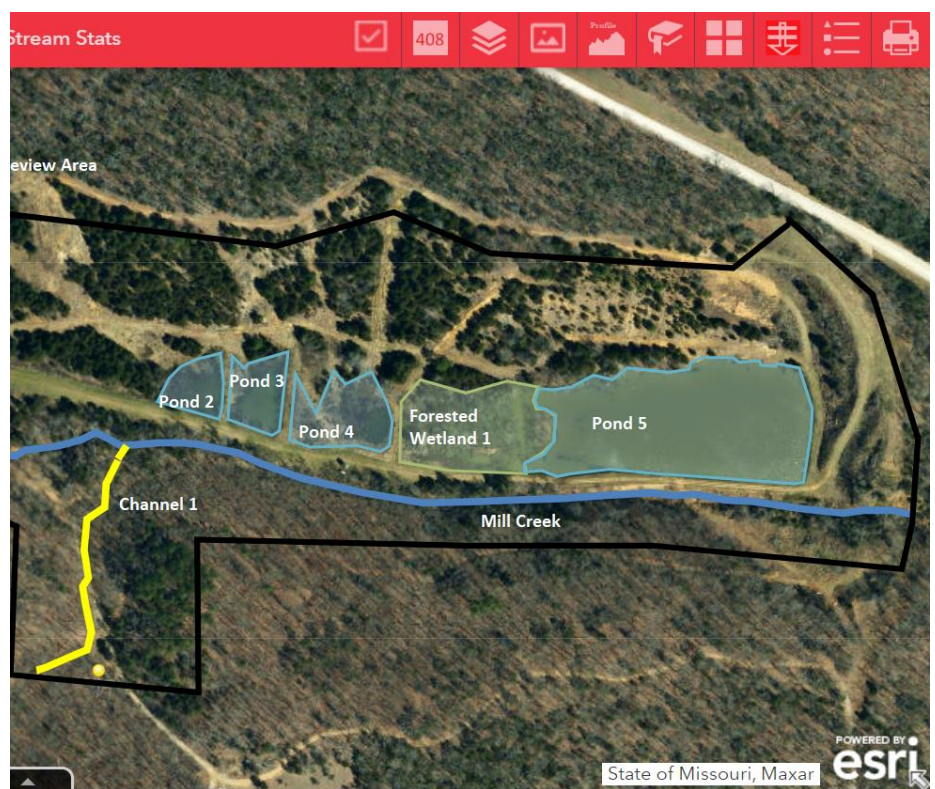


Figure 4. Approved Jurisdictional Determination Eastern Review Area.