



**U.S. Army Corps
Of Engineers**
Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Public Notice:

Application for Permit

APPLICATION NO.: NWW-2022-00102

WATERWAY: Wetland Adjacent to Boise River

APPLICANT: Middleton Rivers, LLC

DATE ISSUED: March 24, 2022

END DATE: April 08, 2022

15- Day

Interested parties are hereby notified that the Walla Walla District has received an application for a Department of the Army permit for certain work in Waters of the United States, including wetlands, as described below in the attached documents:

- **PN-NWW-2022-00102_Application_Package**

APPLICANT: Mr. Dave Buich, Middleton Rivers, LLC; P.O. Box 516 Eagle, Idaho 83616

AGENT: Mr. James Fronk, James Fronk Consulting, LLC; P.O. Box 576 McCall, Idaho 83638

U.S. ARMY CORPS OF ENGINEERS PROJECT MANAGER: Christen M. Griffith, 720 E. Park Center Blvd. Suite 245, Boise Idaho 83712. Telephone: (208) 433-4470. Email christen.m.griffith@usace.army.mil

PURPOSE: The purpose of the proposed project is to construct a mixed-use development consisting of single family residential and commercial lots within the City of Middleton.

WATERWAY: Wetlands adjacent to the Boise River.

LOCATION: The proposed project would be located at 22457 Middleton Road within Section 1, Township 4 North, Range 3 West, near latitude 43.697° N and longitude -116.616° W, in Canyon County, in Middleton, Idaho.

Application Number: NWW-2022-00102

AUTHORITY: This permit will be issued or denied under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344). A Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States, including wetlands.

WORK: Discharge 2,650 cubic yards of earthen fill material within approximately 1.64 acres of Palustrine Emergent (PEM) wetlands adjacent to the Boise River.

Specifically, discharges will occur within four (4) wetland areas:

Wetland area one and two entails 0.06 acres of PEM wetland along the western border of the development which drains to the west.

Wetland area three entails 0.27 acres of PEM wetlands along the southwest boundary of the development footprint and is part of a larger wetland that drains to the west.

Wetland area four entails 1.31 acres of PEM wetlands within the western portions of the development and is an enclosed basin. It should be noted that this feature was a constructed feedlot sedimentation basin which was abandoned in the early 2000's and has developed wetland conditions.

ADDITIONAL INFORMATION: Additional work will occur within the proposed compensatory mitigation sites, located along the southern boundary of the development, as part of the creation and enhancement of unimpacted wetlands within the property. Work may include minor grading, invasive plant removal, planting of vegetation, and removal of old fills, trash and other items.

CONSTRUCTION PERIOD: Applicant proposes to start construction in June 2022. The permit would authorize construction for a period of 5 years.

PROPOSED MITIGATION: The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to Waters of the United States from activities involving discharges of dredged or fill material.

The project was designed to limit impacts to aquatic resources by developing within previously identified uplands, and to concentrate additional development fills within impacted and degraded features within the property (i.e., constructed features or fragmented wetlands).

Application Number: NWW-2022-00102

The proposed compensatory mitigation plan consists of permittee-responsible on-site in-kind, mitigation within uplands and previously impacted and degraded wetlands adjacent to the Boise River within the property. The conceptual plan intends to utilize the remaining southern portions of the property to construct 0.7 acres of Palustrine Scrub-Shrub (PSS) and 0.3 acres of PEM which will connect and overlap with existing PSS and PEM wetlands. Existing wetlands will be enhanced by removing historical dumps, invasive species, targeted grading, and vegetation plantings. In addition, a small pond will be created within the Mitigation Area, however those acreages are not included within replacement totals.

The proposal includes the construction of 1 acre of new wetlands and the enhancement of 0.43 acres of wetlands. The targeted wetlands are proposed to consist of higher value and functions than impacted wetlands resulting in an overall function replacement of greater than 1:1. Influencing factors for the proposal include being located within the floodway, increased vegetation complexity, and adjacency to forested wetland and riparian habitat of the Boise River.

The development of the Draft Mitigation Plan is ongoing, to include identification of specific performance objectives, design criteria, and long-term protections, and will be further informed by comments received during this public comment period.

OTHER ENVIRONMENTAL DOCUMENTS AND DA PERMITS ISSUED TO

APPLICANT: An Approved Jurisdictional Determination (AJD) was issued for the north and south parcels along Sawtooth Lane on 28 February 2017 (DA Number NWW-2016-00587). Wetlands identified within the project area were determined to be jurisdictional at that time. A new AJD was completed for the southern property on 21 December 2020, under the Navigable Waters Protection Rule (NWPR). At that time, it was found that the constructed sedimentation basin (Wetland Area four) was not a waters of the United States and would not require a permit to discharge fill material within. The NWPR has since been vacated by the Courts and can no longer be relied upon for permitting. The application has been revised to include previously excluded features.

WATER QUALITY CERTIFICATION: This notice will also serve as a Public Notice that the Idaho Department of Environmental Quality (IDEQ) is evaluating whether to certify that the discharge of dredge and/or fill material proposed for this project will not violate existing water quality standards. A Department of the Army permit will not be issued until water quality certification has been issued or waived by the IDEQ, as required by Section 401 of the Clean Water Act. If water quality certification is not issued, waived or denied within sixty (60) days of this public notice date, and an extension of this period is

Application Number: NWW-2022-00102

not requested by and granted to the IDEQ, certification will be considered waived. Additionally, within thirty (30) days of this Public Notice, any person may provide written comments to IDEQ, as request in writing that IDEQ provide them notice of their preliminary 401 Certification decision. Comments concerning Water Quality Certification for this project should be mailed to: Idaho Department of Environmental Quality, Boise Regional Office, Boise, Idaho 83706.

SECTION 401 (A)(2) NEIGHBORING JURISDICTION: Per 33 CFR 325(b)(1)(i), this public notice serves as notification to the Environmental Protection Agency that the Corps will provide a copy of IDEQ's water quality certification, if issued, initiating EPA's 30-day review period under Section 401(a)(2).

AQUATIC RESOURCE DESCRIPTION: The project area is located north of the Boise River and west of the Middleton Road Bridge. The general area was historically manipulated for agricultural uses to include construction of drainages, a sediment pond, historical excavation, discharges, and other uses. Current uses within the property are limited to dispersed pedestrian access along the river. Delineated uplands within the development footprint were filled and graded to targeted elevations in 2017.

Previous hydrology studies for the overall property included the installation of piezometers. Data gathered demonstrated that wetlands are generally influenced through shallow subsurface flow from the Boise River, and aerial imagery shows inundation within wetland areas during typical years. However, delineated wetlands within the review area generally do not receive surficial flow over top of bank from the Boise River until flows are above 7000 cubic feet per second, which only occurs during high-water years.

Wetlands within the footprint of the historical feedlot/livestock holding areas appear to have been excavated to a depth to catch run-off from adjacent holding areas and includes a drainage swale to the south that allowed flows into the basin. This area is isolated by levees and berms which extend several feet higher than relative grade, except for the drainage swale which flows to the basin. These features exist generally in the same location and extent as they were in historical imagery since the 1980's. It is unknown if this area was historically wetlands prior to manipulation. Wetlands within this feature are generally monotype emergent wetlands dominated by cattails, with poison hemlock and grasses along the fringe.

Application Number: NWW-2022-00102

Other wetlands within the property generally consist of emergent grasses dominated by Reed Canary Grass and Poison Hemlock, and scrub shrub areas typically include False Indigo, with other non-dominant species interspersed throughout.

The affected wetlands are separated by an existing earthen road/path from riparian forested wetlands abutting the Boise River which include Black Cottonwood, Willow, and other species. No work is proposed within these wetlands.

ANTICIPATED IMPACTS ON AQUATIC ENVIRONMENT: Impacts from the proposed project will result in direct adverse impacts resulting in a permanent loss of wetlands with the development footprint. These impacts are associated with the filling of approximately 1.64 acres of wetlands. These wetlands area generally low functioning, degraded features historically utilized in part for agricultural purposes.

Beneficial direct impacts may occur within the remaining wetlands within and adjacent to the property as part of the Conceptual Mitigation Plan, which includes enhancement and expansion of wetland types and diversity. Beneficial indirect effects may occur to the riparian wetlands abutting the Boise River, as aquatic resources are consolidated and developed into a larger contiguous riparian corridor.

CULTURAL RESOURCES: Coordination is currently being conducted with the office of the Idaho State Historic Preservation Officer to determine if this activity will affect a site that is listed on the National Register of Historic Places, or a site that may be eligible for listing on the Register. We are also coordinating with the appropriate Tribal entity for the Shoshone Paiute and the Shoshone Bannock Tribes, to determine if there are any tribal historic or cultural interests within the project area.

TRIBAL TREATY RIGHTS and INTERESTS: Federal agencies acknowledge the federal trust responsibility arising from treaties, statues, executive orders and the historical relations between the United States and American Indian Tribes. The federal government has a unique trust relationship with federally recognized American Indian Tribes, including the Shoshone Paiute and the Shoshone Bannock Tribes. The Corps has a responsibility and obligation to consider and consult on potential effects to Tribal rights, uses and interests. The Corps further recognizes there may be a need for additional and on-going consultation.

Application Number: NWW-2022-00102

ENDANGERED SPECIES: No listed threatened or endangered species or designated critical habitats are known to exist in the project area. Coordination may be conducted with the U.S. Fish and Wildlife Service (USFWS) to determine if the activity will have any effect on species designated as endangered or threatened under the Endangered Species Act, or their critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844; 16 U.S.C. 1531 et.seq.).

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the National Marine Fisheries Service on all actions or proposed actions, permitted, funded or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). No EFH Species are known to use the project area. Preliminarily, we have determined the described activity would have no effect to EFH.

ENVIRONMENTAL IMPACT STATEMENT: Preliminary review indicates the proposed activities will not require preparation of an Environmental Impact Statement. Comments provided will be considered in preparation of an Environmental Assessment.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. This decision will reflect the national concern for both protection and utilization of important resources. The benefit 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, aesthetics, general environmental concerns, wetlands, historic properties, 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, consideration of property ownership and in general, the needs and welfare of the people. In addition, our evaluation will include application of the EPA Guidelines (40 CFR 230) as required by Section 404(b)(1) of the Clean Water Act.

Application Number: NWW-2022-00102

CONSIDERATION OF PUBLIC COMMENTS: The Corps of Engineers is soliciting comments from the general public; Federal, State and local agencies and officials, Tribal entities 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 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.

PUBLIC HEARING: Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed activity. Requests for a public hearing shall state specific reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

COMMENT & REVIEW PERIOD: Interested parties are invited to provide comments on the proposed activity, which will become a part of the record and will be considered in the final decision.

Please mail all comments to:

U.S. Army Corps of Engineers
Walla Walla District
Christen Marve Griffith
Boise Regulatory Office
720 Park Boulevard, Suite 245
Boise, Idaho 83712-7757
Christen.m.griffith@usace.army.mil

Comments should be received no later than the comment due date of April 07, 2022, as indicated on this notice, to receive consideration.