

U.S. Army Corps of Engineers Tulsa District

# **Public Notice**

Reply To:

U.S. Army Corps of Engineers ATTN: Regulatory Office 2488 E 81<sup>st</sup> Street Tulsa, OK 74137 SWT-2022-00232 Public Notice No.

<u>February 3, 2023</u> Public Notice Date

March 5, 2023 Expiration Date

## PURPOSE

The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

## **SECTION 10**

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

### **SECTION 404**

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

## NOTICE TO PUBLISHERS

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Application No. SWT-2022-00232

#### JOINT PUBLIC NOTICE U.S. ARMY CORPS OF ENGINEERS AND OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ) (30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act (CWA). The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

- <u>Applicant:</u> Mr. Jerry Reed RECO 7033 E 40th Street Tulsa, OK 74145
- Agent: Reverend W. B. Smith HISINC, LLC 28508 W 41st Street S Mannford, OK 74044

<u>Location:</u> The proposed project is in Section 6, Township 18 North, Range 14 East, City of Tulsa, Tulsa County, Oklahoma (Enclosure 1). The project site can be found on the Broken Arrow, Oklahoma 7.5 Minute USGS Quadrangle map at North Latitude 36.069436 and West Longitude 95.861181.

<u>Project Description</u>: The application is to construct a commercial development for use as a new showroom, retail center and warehouse facility. This would include the construction of a 43,500 square foot building, outside meeting facilities, a parking lot, and an on-site stormwater detention facility.

<u>Purpose:</u> The basic purpose of this work is commercial development. The project is not a water dependent activity.

The overall project purpose is to construct a 43,500 square foot building and attendant features adjacent to U.S. Highway 64 at the previously permitted construction site associated with expired Department of the Army Permit No. OKR2010954.

#### Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Qty of Material cys below OHWM	Footprint (ac and/or lf)
	Redistribution	Sapling Shrub / Forested	Earthen /		
FS-1	of Dredge/Fill	Wetland	Concrete	1,343.5 cys	0.741 ac
FS-2	Redistribution of Dredge/Fill	Herbaceous Wetland	Earthen / Concrete	3.5 cys	0.005 ac
FS-3	Redistribution of Dredge/Fill	Ephemeral Stream	Earthen / Concrete	512 cys	0.040 ac
	Redistribution	Drainage	Earthen /		
FS-4	of Dredge/Fill	Channel	Concrete	20.2 cys	0.001 ac
cubic yards (cys), ordinary high water mark (OHWM), acre (ac), linear feet (If)					

<u>Description of Work</u>: The applicant proposes to grade the project site to facilitate the construction of a 43,500 square foot building, outside meeting facilities, a parking lot, and an on-site stormwater detention facility (Enclosures 2 and 3). This would result in the loss of 677 linear feet of ephemeral stream channel, 0.741 acre of sapling shrub/forested wetlands and 0.005 acre of herbaceous wetlands (Enclosure 4).

<u>Avoidance and Minimization Information</u>: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

Proposed work would occur on the previously permitted construction site associated with expired Department of the Army Permit No. OKR2010954.

<u>Mitigation</u>: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project:

Proposed mitigation would include improvements to the existing permittee-responsible mitigation (Enclosure 5) associated with expired Department of the Army Permit No. OKR2010954. The proposed loss of 677 linear feet of ephemeral stream channel would require 2,796.4 compensatory stream mitigation credits per the Final Compensatory Mitigation Rule and the Oklahoma Stream Mitigation Method (OSMM). Additionally, the loss of 0.741 acre of sapling shrub/forested wetlands and 0.005 acre of herbaceous wetlands would require compensatory wetland mitigation per the Final Compensatory Mitigation Rule and the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines. The City of Broken Arrow accepted a Deed of Dedication for the mitigation site to the conditions specified in expired Department of the Army Permit No. OKR2010954,

except where the applicant shall make improvements in accordance with the Final Compensatory Mitigation Rule, the OSMM and the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines.

This mitigation plan is the applicant's proposal. The Corps has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines. Compensatory Mitigation for unavoidable impacts may be required to ensure that this activity requiring a Section 404 permit, if issued, complies with the Section 404 (b)(1) Guidelines. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

#### Government Authorizations obtained or received:

Project Setting: The project and mitigation site are located within the Osage Cuestas (40b) Level IV Ecoregion of the Central Irregular Plains, characteristic of irregular to undulating plains that are broken by low hills and cuestas with east-facing scarps. Natural vegetation is mostly tall grass prairie (e.g. big bluestem, little bluestem, switchgrass and Indiangrass), grading eastward into a mosaic of tall grass prairie and oak-hickory forest. Stream substrates are composed of sand, mud and sometimes, gravel and cobbles. Mapped soil series at the project site include Dennis silt loam, 3 to 5 percent slopes, Dennis-Radley complex, 0 to 12 percent slopes, and Okemah-Parsons-Pharoah complex, 0 to 1 percent slopes. Mapped soil series at the mitigation site include Radley silt loam, 0 to 1 percent slopes, frequently flooded, and Wynona silty clay loam, 0 to 1 percent slopes, occasionally flooded. The project site is located within the Cherokee Prairies Major Land Resource Area (MLRA) and the Central Feed Grains and Livestock Region Land Resource Region (LRR). The mitigation site is located within the Arkansas Valley and Ridges, Western Part MLRA and the East and Central Farming and Forest Region LRR. The project site is located in Hydrologic Unit Code (HUC) 110701070403. The mitigation site is located in HUC 111101010501.

<u>Existing Condition</u>: Aerial imagery indicates disturbance occurred on the project site, as visible in 2005 and 2010 imagery. Vegetation present on the project site includes black willow, American elm, poison ivy, and cattail. Vegetation present on the mitigation site includes Shumard oak, ash, elm and deciduous holly. The mitigation site is located along Haikey Creek, which is listed as a 303(d) impaired waterbody for the State of Oklahoma.

<u>Cultural Resources:</u> The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended, and other cultural resources laws and Executive Orders. A preliminary review of the state's records has been completed for the presence of sites included in, or eligible for, inclusion in the National Register of Historic Places, as well as the Oklahoma Landmark Inventory Database. There are no known historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area. <u>Threatened and Endangered Species</u>: The following federally listed, proposed, or candidate species are known to occur in the vicinity or are listed for the county in which the proposed action is located: Tricolored Bat (*Perimyotis subflavus*), Piping Plover (*Charadrius melodus*), Red Knot (*Calidris canutus rufa*), Alligator Snapping Turtle (*Macrochelys temminckii*), American Burying Beetle (*Nicrophorus americanus*) and Monarch Butterfly (*Danaus plexippus*). A copy of this notice is being furnished to the U.S. Fish and Wildlife Service and appropriate state agencies. The IPAC consultation number is 2023-0039583 (project site) and 2023-0039561 (mitigation site).

We are currently assessing the potential effects of the proposed action on these species and will comply with the Endangered Species Act with regard to any effect of our decision on this permit application.

Evaluation Factors: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. That 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: 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, considerations of property ownerships, and, in general, the needs and welfare of the people. A permit will be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) Guidelines. Subject to the 404(b)(1) Guidelines and any other applicable guidelines or criteria, a permit will be granted unless the DE determines that it would be contrary to the public interest.

<u>Plans and Data:</u> Plans showing the location of the proposed activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from Mr. David Carraway, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

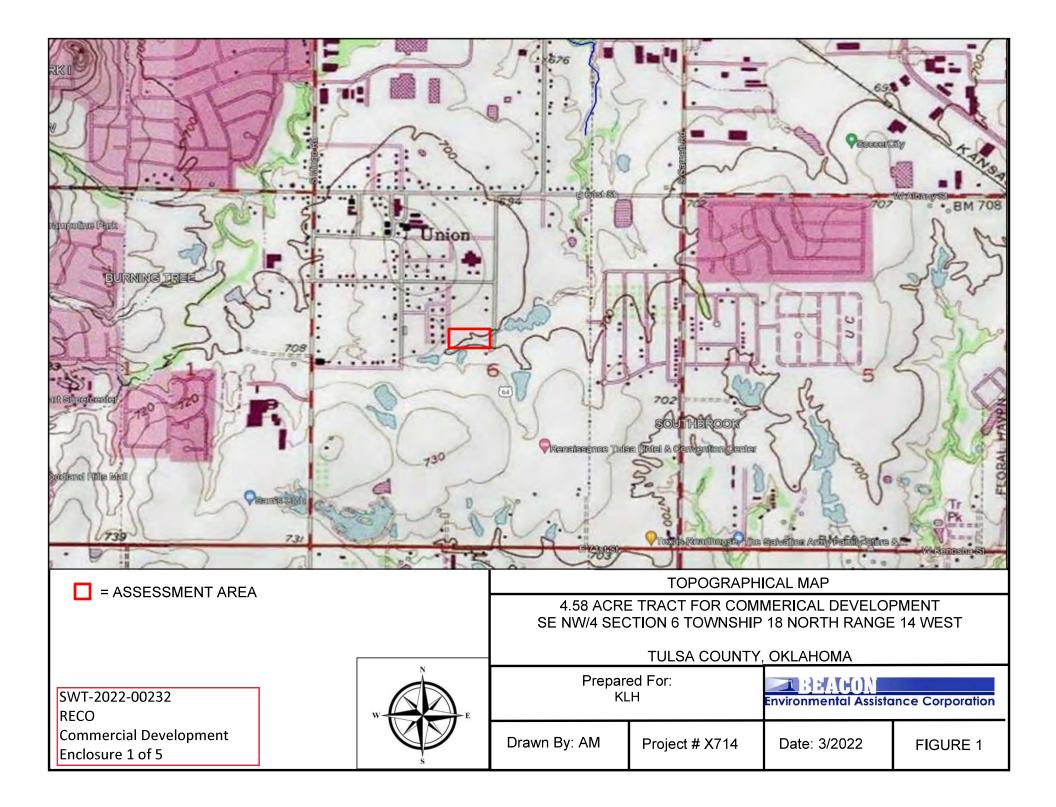
<u>Comments:</u> The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps 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.

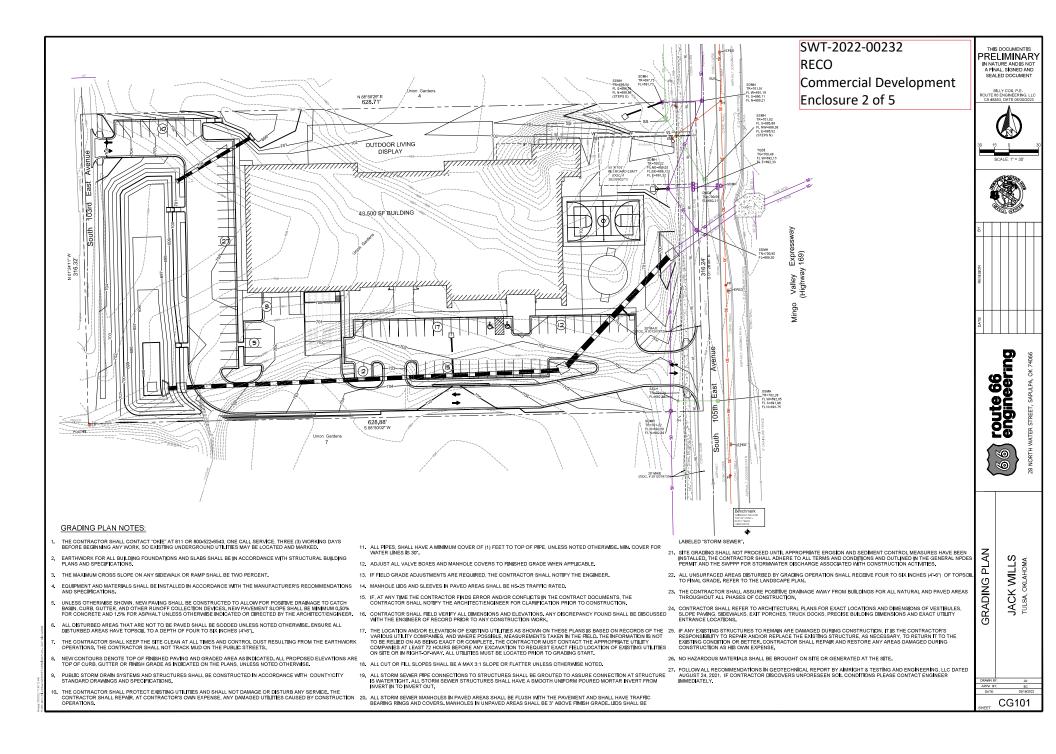
Any comments on this proposal must be submitted to be received by the Corps by the expiration date of this public notice comment period. Comments received after this date will not be considered in our decision. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137 or email CESWT-RO@usace.army.mil. Please include the public notice number SWT-2022-00232 in the subject line of your email message.

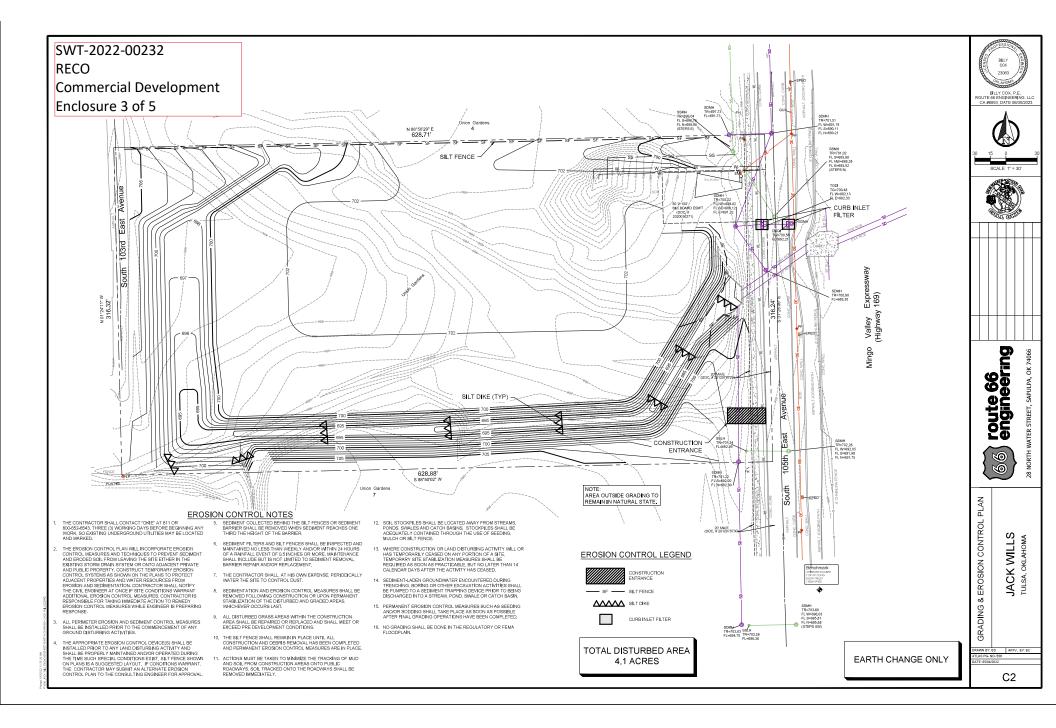
Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer Chief, Regulatory Office

Enclosures









The original planting plan exhibit showing the planting locations and selected species is provided at *Figure* 2.

