

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mr. Robert Larsen
Horizon Unlimited
2252 Lenwood Court SW
Rochester, Minnesota 55902

Permit Number: 200150252

Issuing Office: U.S. Army Engineer District, Sacramento
Corps of Engineers Regulatory Branch
1325 "J" Street
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description: The Victory Ranch development is a private recreational facility that will offer resort housing (destination resort lodging and single family lots), three golf courses, Provo River fishing opportunities, horseback riding, hiking and other outdoor activities. Specific project components include the development of three golf courses, a clubhouse, 432 resort guest units, 217 residential lots, 76 employee apartments, an activities center, 6 camping huts, an equestrian center, the resort sales office, and roads and bridges to access these facilities. In addition, the permittee will complete a river restoration project in approximately one mile of the Provo River within the project area. Fishing trails will also be developed along the Provo River.

Portions of the project authorized by the Corps of Engineers under Section 404 of the Clean Water Act include: (1) the permanent discharge of fill into approximately 1.66 acres of wet meadow wetland to construct the riverine golf course; (2) the permanent conversion of approximately 0.15 acres of wet meadow wetland to open water for the construction of the riverine golf course pond features; (3) the permanent discharge of fill into approximately 0.48 acres of (a) wet meadow wetland, and (b) 5 perennial and 14 ephemeral drainages for the construction of roads throughout the development; (4) the construction of boardwalk trail that will permanently shade approximately 300 square feet (55 linear feet) of wet meadow wetlands and approximately 66 linear feet of 11 drainages; (5) the permanent discharge of fill material into 0.19 acres of wet meadow wetland and forested riparian wetland for the modification of the Weber Canal; (6) the permanent conversion of 4.09 acres of wet meadow wetland to open water for ponds and a side channel associated with the river restoration; (7) the permanent discharge of fill into approximately 2.34 acres of the Provo River channel for dikes associated with channel restoration; (8) the permanent conversion of 1.93 acres of open water on the Provo River channel to 1.93 acres of riverine wetland; (9) the temporary discharge of fill material into wet meadow wetlands for the construction of 1300 feet of a utility line; and, (10)

the temporary discharge of fill material into two perennial drainages and two ephemeral drainages for the construction of approximately 50 linear feet of utility lines.

Total project impacts to waters of the U.S., including wetlands include the permanent loss of 6.57 acres of wet meadow, including less than 0.10 acres of forested riparian wetland; approximately 4.27 acres of stream and river bottom substrate; the temporary loss of 1350 linear feet of wet meadow wetland; and, the permanent loss of 50 linear feet of two perennial and two ephemeral drainages.

All work is to be completed in accordance with the attached maps and plans referenced in the Special Conditions.

Project Location: The Victory Ranch project encompasses 5,803 acres as indicated on the attached map. This area includes approximately 730 acres of the Provo River floodplain extending from the Provo River bridge upstream along State Route 32 and Lower River Road for approximately 5 miles. The upstream project boundary is near 1000 East in Francis, Utah. The project is located in Wasatch and Summit Counties, Utah.

PERMIT CONDITIONS:

Special Conditions:

Mitigation:

1. You shall submit a construction schedule to the Corps no less than 30 days before beginning construction activities for the river restoration, river golf course, fishing access trails, and the wetland mitigation site. In order to protect both threatened and sensitive riparian wildlife species and their habitat, the schedule shall include a map that identifies "sensitive areas and time periods" to be avoided during construction.

a. Sensitive areas shall include, but are not limited to, spotted frog habitat and inhabited areas, the Great Blue Heron rookery identified on the map labeled Sheet No. RV1, riparian habitat along the Provo River below 6,600 feet in elevation, and Cottonwood trees within 50 feet of the river except within the proposed golf course turf areas.

b. Sensitive time periods must include those between one hour before sunset and 9:00 am during the winter Bald Eagle roosting season (November through March). Construction work will be avoided during that time period in the river corridor area identified as that elevation below 6,600 feet. If on-site surveys determine that the Bald Eagle is not present, observance of the roosting season may be unnecessary. As you proposed, sensitive time periods will also include the nesting season for migratory birds (mid-April through August) in which the removal of trees within the river corridor area identified as that elevation below 6,600 feet will be avoided. Special requests for construction during the month of May will be accepted provided you use protective measures approved by this office. If construction plans or the construction schedule are significantly modified to affect areas within the jurisdiction of this office, notice of these changes shall be sent to the Corps for review and approval.

2. In order to mitigate for the permanent loss of 2.29 acres of wet meadow resulting from Victory Ranch development features, you shall create 9.0 acres of wet meadow wetlands in

accordance with your proposal to mitigate at a 4:1 ratio. You shall also develop a final **comprehensive mitigation and monitoring plan** to be approved by the Army Corps of Engineers prior to the discharge of fill material into waters of the U.S., including wetlands. The plan shall include mitigation location, design drawings and goals, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines, dated October 25, 1996. The content of the plan should also include those features included in Regulatory Guidance Letter 2-02. The purpose of this requirement is to ensure replacement of functions and values of the aquatic environment that would be lost through project implementation.

3. To ensure success of the mitigation area, you shall monitor the site for 5 years or until the success criteria described in the approved mitigation plan are met. This period shall begin upon completion of the construction of the mitigation wetlands.
4. You shall submit monitoring reports to this office by November 30 for each year of the monitoring period.
5. You shall construct the compensatory mitigation prescribed by this plan prior to, or concurrently with, the discharge of fill material into waters of the U.S., including wetlands.
6. To ensure that mitigation is completed as required, you shall notify the District Engineer of the start date and the completion date of the compensatory mitigation construction, in writing and no later than 10 calendar days prior to each date.
7. To provide a permanent record of the completed compensatory mitigation work, you shall provide one complete set of as-builts of the completed mitigation to the Corps. The as-builts shall indicate changes made from the original plans in indelible red ink. These as-builts shall be provided to this office no later than 60 days after the completion of construction of the mitigation area wetlands.

Preservation of Mitigation Area:

8. To protect the integrity of the 9.0 acre wetland mitigation area, no new roads, utility lines, benches, equipment or fuel storage, grading, firebreaks, mowing, planting, disking, pesticide use, beaver control, burning, snow storage, or other structures or activities shall be constructed or occur within the mitigation area without specific, advance written approval from the Corps of Engineers.
9. In order to ensure the long-term viability of the mitigation area, you shall complete the following activities prior to disturbance to waters of the U.S., including wetlands:
 - a. Designate an appropriate conservation-oriented third party entity to function as manager of the mitigation area and to hold the required conservation easement;
 - b. Establish a fully-funded endowment to provide for maintenance and monitoring of the mitigation area;
 - c. Record a permanent conservation easement and deed restrictions (template attached) maintaining the mitigation area as wetland preserve and wildlife habitat in perpetuity.

Copies of the proposed deed restriction and conservation easement language shall be provided to the Corps of Engineers for approval prior to recordation;

- d. Provide copies of the recorded documents to the Corps of Engineers.

Minimization measures:

10. Prior to the start of any project construction, you shall establish limits of disturbance to ensure that construction activities do not disturb waters of the U.S. not authorized for filling or excavation by this permit. The limits of disturbance shall be clearly marked with brightly colored barrier fencing and/or silt fencing located 20 feet from waters of the U.S. throughout the river valley and at the permitted road and utility crossings. In the event that it is impossible to meet the 20 foot requirement, the location of the fencing shall be noted and provided in writing to the Corps. At the permitted road and utility crossings, protective silt fencing shall also be placed at the boundaries of the waters adjacent to construction activities.

11. To ensure the adequate construction of road crossings over perennial streams, you shall submit designs for these road crossings 30 days prior to their construction for Corps approval. Specifically, plan view and cross section designs for road crossings of five perennial streams as indicated on the attached map labeled Sheet No. 3 shall be submitted. Best Management Practices for Work in Utah Streams (August, 2003) shall be used where applicable.

12. A contact person, responsible for field supervision and quality control, shall be designated prior to any earth work to oversee permit compliance for this project including erosion control, channel work, revegetation and all mitigation. The name, address, and phone number(s) of this person shall be provided to this office prior to construction.

13. The attached document entitled Best Management Practices for Work in Utah Streams (August, 2003) shall be used, where applicable, where stream alteration work will be performed throughout the Victory Ranch development.

14. Best Management Practices will be used where temporary discharges of fill material to waters of the U.S., including wetlands, will occur. Examples of such practices include, but are not limited to, the use of trench plugs where utility lines cross wetlands, rubber matting in wetland areas where heavy equipment may cross, silt fencing at construction boundaries, and the revegetation of all disturbed areas with wetland species native to the project location.

15. Should a mosquito problem develop within the river golf course, river restoration area, mitigation area, or riverside trail system, abatement activities shall conform to pesticide management criteria outlined in the modified Integrated Golf Course Management Plan. Specifically, pesticide application will be prohibited within a minimum of 25 feet of wetland edges depending on local topography, method of application and vegetation characteristics in accordance with the Golf Course Management Plan.

Threatened and Endangered Species Avoidance:

16. Within winter Bald Eagle roosting areas, construction should not begin before 9 am and should conclude at least one hour prior to sunset. Winter is defined as the months of

November through March. If on-site surveys determine that the Bald Eagle is not present, observance of the roosting season may be unnecessary.

General Wildlife Impact Minimization:

17. As you proposed, you shall designate a buffer as shown on the map labeled Sheet No. RV1 around the Great Blue Heron rookery in the upper Provo River reach in order to minimize its disturbance. Within this buffer, there shall be no construction of trails or river access points for fishermen.

18. In order to ensure that the project will not detrimentally affect breeding bird populations and diversity within Victory Ranch, surveys of bird species abundance, richness and diversity will be conducted after the project is complete to document future bird response to riparian habitat protection and improvements. As you proposed, you shall conduct two surveys with follow-up reports that address changes in breeding bird populations. Protocol will follow that used in the 2001 Status Report, Analysis of Habitat Associations, and Restoration Recommendations by Elizabeth Ammon. The first of these reports will be conducted one full year after the river restoration project is complete and the second will be conducted two years after the first survey. Surveys will be conducted by an independent consultant agreed upon by the permittee and the Division of Wildlife Resources Central Region and will be submitted to the DWR and the Corps of Engineers for review.

Spotted Frog (*Rana luteiventris*) Measures:

19. In order to ensure that the project will not detrimentally affect the spotted frog population and its habitat within Victory Ranch, you proposed to conduct population surveys upon project completion to document changes in population and distribution. To fulfill this commitment, you shall conduct two surveys and submit follow-up reports that address changes in population and distribution as well as locations and quality of spotted frog habitat. The first of these reports will be conducted one full year after the river restoration project is complete and the second will be conducted two years after the first survey. Surveys will be conducted by an independent consultant agreed upon by the permittee and the Division of Wildlife Resources Central Region and will be submitted to the DWR and the Corps of Engineers for review. The DWR has voluntarily committed to perform annual surveys for egg masses within the project area.

20. You shall provide financial support in the amount of \$18,000 to the DWR Central Region over the course of three years. These funds will be used to monitor the golf course ponds to ensure that colonization by spotted frog does not occur. Because the ponds were designed to discourage frog colonization, surveys conducted by the DWR will provide confirmation that the designs meet their purpose. Should colonization occur within the three-year survey period, the DWR, as part of the referenced financial support, will relocate colonizing individuals and recommend remediation measures for implementation by the applicant.

21. In order to preserve existing spotted frog habitat, as voluntarily committed, you shall leave intact existing beaver dams within the river restoration project area and the Lady Long Hollow drainage.

22. You shall follow the construction guidelines provided in the Protocol for Avoiding and Minimizing Impacts to Columbia Spotted Frog. In compliance with the protocol, the DWR

will conduct sweeps through the wetlands to be impacted prior to construction in order to ensure that no spotted frogs are present.

23. In order to ensure that existing and future spotted frog populations are protected from predation by western mosquitofish (*Gambusia affinis*), you shall at no time introduce this species to any water located within the Victory Ranch development. (For further mosquito control measures, see 15 above).

River Golf Course Measures:

24. The Final Golf Course Management Plan will be modified to:

a. Prohibit the use of golf course pesticides Trifloxystrobin and Azoxystrobin within the project area unless, as proposed by the applicant, each undergoes risk assessment using the intensive combined Tier II model, PRZM-EXAMS. Prior to the use of these two pesticides, you shall notify the U.S. Fish and Wildlife Service with the results of the risk assessment. Should the USFWS not respond within 30 days, you may proceed with application;

b. Identify all wetland areas and prohibit pesticide application within a minimum of 25 feet of wetland edges depending on local topography and vegetation characteristics in accordance with the Golf Course Management Plan;

c. Prohibit the planting of non-native plant species outside of "turf" areas;

d. Require a risk assessment protocol for the use of any new pesticide or increased application rate of any pesticide.

The modified plan will be submitted to the Corps for approval prior to the discharge of fill material into waters of the U.S., including wetlands.

25. In order to ensure that water quality within the Victory Ranch project area is maintained, you shall prepare and submit a water quality monitoring plan to the Corps for approval and disbursement to the Fish and Wildlife Service and the Division of Wildlife Resources no less than 30 days before the start of golf course operation. This plan will outline the pesticides to be monitored and provide a sampling protocol that incorporates 3 years of monitoring at two sampling sites.

26. You shall provide detailed construction plans for the river golf course to the Corps for approval no less than 30 days before the start of golf course construction. The approval process will include the disbursement of the plans to the Fish and Wildlife Service and the Division of Wildlife Resources for review. These plans shall include the design and location maps of retention ponds, filter strips, and grass swales, course layout, drainage and water use/re-circulation plans as well as calculations used to determine surface water retention and discharge rates.

27. You shall comply with Best Management Practices and Integrated Pest Management Strategies, as described in the 2002 Victory Ranch Integrated Golf Course Management Plan.

River Restoration and Trails:

28. Each phase of the final construction plans for the river restoration project shall be submitted to the Corps of Engineers for review and approval prior to the initiation of its construction. The review process will include disbursement of the plans to the U.S. Fish and Wildlife Service and the Division of Wildlife Resources and will not extend beyond 30 days.

29. River restoration work shall begin before or concurrently with disturbance of wetlands for construction of the River golf course.

30. Final trail construction plans, including stream and wetland crossing plan views and cross sections, will be submitted to the Corps of Engineers for review and approval prior to project construction. The review process will include disbursement of the plans to the U.S. Fish and Wildlife Service and the Division of Wildlife Resources and will not extend beyond 45 days.

Water Quality Certification:

31. The State of Utah Department of Environmental Quality, Division of Water Quality authorized a Water Quality Certificate for this project on January 14, 2002, with special conditions. These conditions are as follows:

a. Whenever an applicant causes the water turbidity in an adjacent surface water to increase 10 NTU's or more, the applicant shall notify the Utah Division of Water Quality.

b. Whenever an applicant causes the Total Suspended Solids concentration in an adjacent surface water to exceed 35 mg/l (Class 3A - Cold Water Fisher) or 90 mg/l (class 3B-Warm Water Fishery) the applicant shall notify the Division of Water Quality and submit calculations indicating the load contribution expressed in pounds per day as Total Suspended Solids.

c. Applicant shall protect any potentially affected fish spawning areas.

General Conditions:

1. The time limit for completing the work authorized ends on **May 15, 2009**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good

faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - (x) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Permittee

Date

Permittee's Typed or Printed Name and Title

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE DISTRICT ENGINEER

Brooks Carter
Chief, Intermountain Regulatory Section

Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. A copy of the signed transfer form should be mailed to the appropriate Corps of Engineers office.

Transferee

Date

Typed or Printed Name, Address and Phone Number of Transferee