



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
3319 UNIVERSITY DRIVE
BISMARCK, NORTH DAKOTA 58504-7565

February 12, 2020

NWO-2003-60272-BIS
Amendment No. 2

Lazy S Ranch
Attn: Mr. Steve McCormick
1721 Burlington Drive
Bismarck, North Dakota 58504

Dear Mr. McCormick:

We are responding to your October 22, 2019 request to modify your Department of the Army Permit Number NWO-2003-60272-BIS. The permit was issued on March 22, 2005 authorizing construction of the Misty Waters Development. The permit was modified on October 31, 2005 to allow minor design modifications. Misty Waters is located on and adjacent the Missouri River between River Miles 1319.2L and 1319.9L in part of the W $\frac{1}{2}$ of Section 11, all of Parcel 1 of Government Lot 1 in the NE $\frac{1}{4}$ of Section 10 and part of the E $\frac{1}{2}$ of Section 10, all in Township 139 North, Range 81 West, Latitude 46.868255° North, Longitude -100.872032° West, Burleigh County, North Dakota.

The original permit did not authorize individual boat docks on the Missouri River as the development plan provided community docking facilities in the marina. You request the permit be modified to allow riverfront lot owners to apply for a dock permit, provided that the dock is shared between two lots. The exception would be for Lots 39 and 40 of Block 2, which are designated as duplex/condo lots. One shared dock system could be applied for per duplex/condo lot. This modification would be applicable to all lots that have not already installed docks or had docks authorized by the Corps. Currently, no docks have been authorized on the river, but aerial imagery shows that one has been installed.

After considering all comments received in response to our public notice describing your proposal, the Corps has determined it appropriate to approve your request. Therefore, the second paragraph of the Project Description found on the first page of Permit Number NWO-2003-60272-BIS is replaced with the following:

This permit does not authorize bank stabilization beyond that necessary to protect the water circulation system, access channel and boat ramp. All other initially proposed bank stabilization was removed from the final plan to achieve compliance with the Endangered Species Act and facilitate issuance of the permit.

Lot owners with marina frontage must obtain authorization from the Corps for individual boat docks, irrigation systems or other work affecting the marina proper prior to installation or commencement of construction. Approval of the projects by

the Misty Waters Homeowner's Association (HOA) must be provided with the application. Approval by the HOA does not guarantee that authorization will be granted.

Lot owners with river frontage must obtain authorization from the Corps for individual boat docks, irrigation systems or other work affecting the river prior to installation or commencement of construction. Approval of the projects by the Misty Waters Homeowner's Association must be provided with the application. Approval by the HOA does not guarantee that authorization will be granted. To be considered, boat docks on the river must be shared by two lots, with the exception of Lots 39 and 40 of Block 2, which are designated as duplex/condo lots. One shared dock system could be considered per duplex/condo lot. To properly address concerns brought forward during the public interest review for this modification, applications for boat docks on the river shall be evaluated on a case-by-case basis using the Letter of Permission process. Authorization from the North Dakota State Water Commission, Office of the State Engineer, is also required.

Contact the Corps of Engineers, North Dakota Regulatory Office, at 3319 University Drive, Bismarck, North Dakota 58504 or CENWO-OD-RND@usace.army.mil with questions or to obtain application information. Corps permitting program information is available on the North Dakota Regulatory website at <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/North-Dakota/>.

Contact the North Dakota State Water Commission, Office of the State Engineer, at 900 East Boulevard Avenue, Bismarck, North Dakota 58505-0187 or phone (701) 328-4935 for questions or to obtain application information.

All other terms and conditions of the permit remain in full force and effect. Failure to comply with the terms and conditions of this authorization may result in the suspension or revocation of your permit.

Enclosed is a Notification of Applicant Options ["NAO"] which explains the options available to you in your evaluation of the enclosed permit modification. The Final rule establishing an Administrative Appeal Process from the Regulatory Program of the Corps of Engineers was issued in the Federal Register on March 9, 1999. The rule became effective on August 6, 1999.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey. If you do not have internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

Please refer to identification number NWO-2003-60272-BIS in any correspondence concerning this project. If you have any questions, please contact Toni Erhardt at the above address, by email at Toni.R.Erhardt@usace.army.mil, or telephone at (701) 255-0015, extension 2003. For more information regarding our program, please visit our website at <http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/NorthDakota.aspx>.

Sincerely,

Patricia L. McQueary
State Program Manager
North Dakota

Enclosure