



SF-19-13

**PRIVATE STORMWATER FACILITY
MAINTENANCE AGREEMENT AND EASEMENT**

This PRIVATE STORMWATER FACILITY MAINTENANCE AGREEMENT AND EASEMENT (Agreement) is made by and between EL PASO COUNTY by and through THE BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO (County), Lorson LLC as nominee for Lorson Conservation Investment I, LLLP, Lorson LLC as Nominee for Heidi, LLC, and Murray Fountain, LLC (together, the Developer), and Lorson Ranch Metropolitan District No. 1 (Metro District), a quasi-municipal corporation and political subdivision of the State of Colorado. The above may occasionally be referred to herein singularly as “Party” and collectively as “Parties.”

Recitals

A. WHEREAS, the Metro District provides various municipal services to certain real property in El Paso County, Colorado referred to as Lorson Ranch; and

B. WHEREAS, Metro District is the owner of certain real estate (the Subject Property) in El Paso County, Colorado, which Property is legally described in Exhibit A attached hereto and incorporated herein by this reference; and

C. WHEREAS, Developer has platted and developed the subdivision known as Creekside at Lorson Ranch Filing No. 1 (the Subdivision), including drainageway improvements (the Stormwater Facilities) within the Subject Property; and

D. WHEREAS, the development of the Subdivision will materially increase the volume and decrease the quality of stormwater runoff from the Property; therefore, it is in the best interest of the public health, safety and welfare for the County to condition approval of the Subdivision on Developer’s promise to construct adequate stormwater control facilities for the Subdivision; and

E. WHEREAS, the El Paso County Land Development Code, as periodically amended, requires the construction and maintenance of detention ponds and other drainage facilities adequate to maintain historic stormwater flow patterns, protect natural and man-made drainage conveyances, and prevent property damage in connection with land development and subdivisions, and further requires that developers enter into maintenance agreements and easements with the County for such drainage facilities; and

F. WHEREAS, the El Paso County Drainage Criteria Manual, Volume 2, as amended by Appendix I of the El Paso County Engineering Criteria Manual (ECM), as each may be periodically amended, promulgated pursuant to the County’s Colorado Discharge Permit System General Permit (MS4 Permit), which MS4 Permit requires that the County take measures to protect the quality of stormwater from sediment and other contaminants, requires subdividers, developers, landowners, and owners of facilities located in the County’s rights-of-way or easements to provide adequate permanent stormwater quality facilities and BMPs with new development or significant

redevelopment and to enter into maintenance agreements and easements with the County for such facilities and BMPs; and

G. WHEREAS, Section 2.9 of the El Paso County Drainage Criteria Manual, Volume I provides for a developer's promise to maintain a development's drainage facilities in the event the County does not assume such responsibility; and

H. WHEREAS, Developer has constructed for the Subdivision drainageway conveyance facilities in the East Fork Tributary of Jimmy Camp Creek (the "Stormwater Facilities") as the means for providing adequate drainage and stormwater runoff control and to meet the requirements of the County's MS4 Permit, and desires to operate, clean, maintain and repair such Stormwater Facilities; and

I. WHEREAS, Developer has constructed the Stormwater Facilities on the property as set forth on Exhibit A attached hereto and incorporated herein by this reference (the Stormwater Facilities Area); and

J. WHEREAS, Developer desires to construct and/or maintain wetlands within the Stormwater Facilities Area on the Subject Property as set forth in the U.S. Army Corps of Engineers Permit (SPA-2005-00757), attached hereto as Exhibit B and incorporated herein by this reference in conjunction with the Subdivision development, as required by the U.S. Army Corps of Engineers; and

K. WHEREAS, Developer shall be charged with the duty of constructing the Stormwater Facilities and the Metro District shall be charged with the duties of operating, maintaining and repairing the Stormwater Facilities and any appurtenant improvements on the property described in Exhibit A; and

L. WHEREAS, the County, in order to protect the public health, safety and welfare, desires the means to access, construct, maintain, and repair the Stormwater Facilities and to recover its costs incurred in connection therewith in the event the Developer or Metro District fails to meet their obligations to do the same; and

M. WHEREAS, the County conditioned approval of the Subdivision on the Developer's promise to construct the Stormwater Facilities, and further conditions approval on the Metro District's promise to clean, maintain and repair the Stormwater Facilities, and on the Metro District's promise to reimburse the County in the event the burden falls upon the County to construct, clean, maintain or repair the Stormwater Facilities serving the Subdivision; and

N. WHEREAS, the County, in order to secure performance of the promises contained herein, conditions Preliminary Acceptance of the Subdivision improvements upon Metro District's grant herein of a perpetual Easement over the Stormwater Facilities Area as described in Exhibit A for the purpose of allowing the County to periodically access and inspect the Stormwater Facilities and, when necessary, to construct, clean, maintain or repair the Stormwater Facilities and the wetlands; and

O. WHEREAS, Pursuant to Colorado Constitution, Article XIV, Section 18(2) and Section 29-1-203, Colorado Revised Statutes, governmental entities may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each.

Agreement

NOW, THEREFORE, in consideration of the mutual Promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The Parties incorporate the Recitals above into this Agreement.

2. Covenants Running with the Land: Developer and Metro District agree that this entire Agreement and the performance thereof shall become a covenant running with the land, which land is legally described in Exhibit A attached hereto, and that this entire Agreement and the performance thereof shall be binding upon themselves and their respective successors and assigns.

3. Construction: Developer has constructed the following Stormwater Facilities on the Stormwater Facilities Area described in Exhibit A: Drainageway improvements as approved by the County in the East Fork Jimmy Camp Creek Channel Design, Creekside at Lorson Ranch Filing No. 1, dated May 18, 2020 (PCD File No. CDR-19-002). Developer shall complete construction of the Stormwater Facilities in substantial compliance with the County-approved plans and specifications for the Stormwater Facilities and shall provide certification from a Colorado registered Professional Engineer that the Stormwater Facilities were constructed in compliance with and provide the volume and capacity required by such plans and specifications in accordance with ECM requirements. Developer shall maintain the Stormwater Facilities until acceptance by the Metro District and Final Acceptance of the Subdivision improvements by El Paso County. Failure to meet these requirements shall be a material breach of this Agreement and shall entitle the County to pursue any remedies available to it at law or in equity to enforce the same. Construction of the Stormwater Facilities shall be substantially completed within one (1) year (defined as 365 days), which one-year period will commence to run on the date the Erosion and Stormwater Quality Control Permit (ESQCP) and associated Construction Permit are issued.

In the event construction of the Stormwater Facilities is not substantially completed within the one (1) year period, or if the Developer is in violation of its ESQCP terms and conditions and Developer has not made an effort to remedy the violation in a reasonable amount of time as determined by the County, then the County may exercise its discretion to complete the Stormwater Facilities and shall have the right to seek reimbursement from the Developer and its respective successors and assigns for its actual costs and expenses incurred in the process of completing construction.

If Developer is required by the U.S. Army Corps of Engineers or other agency to construct and/or mitigate wetlands as described in Exhibit B in conjunction with the Subdivision

development, the wetlands mitigation plan shall be provided to the County after completion of construction, representing the as-built conditions.

4. Maintenance of Stormwater Facilities and Wetlands: The Developer and the Metro District agree for themselves and their respective successors and assigns that they will regularly and routinely inspect, clean and maintain the Stormwater Facilities in compliance with the County-reviewed Operation and Maintenance Manual, attached hereto and incorporated herein by this reference as Exhibit C, and otherwise keep the same in good repair, all at their own cost and expense. No trees or shrubs that will impair the structural integrity of the Stormwater Facilities shall be planted or allowed to grow within or adjacent to the Stormwater Facilities.

The Metro District agrees for itself and its successors and assigns that it will maintain and properly manage the grasses, wetlands and other vegetation in the Stormwater Facility Area in compliance with the USACE conditions, the "Routine Maintenance Activities" specified in Exhibit C, and any other requirements or conditions of approval.

5. Creation of Easements: Metro District hereby grants the County a non-exclusive perpetual easement upon and across the property described in Exhibit A. The purpose of the easement is to allow the County to access, inspect, clean, repair and maintain the Stormwater Facilities; however, the creation of the easement does not expressly or implicitly impose on the County a duty to so inspect, clean, repair or maintain the Stormwater Facilities or any appurtenant improvements.

6. County's Rights and Obligations: Any time the County determines, in the sole exercise of its discretion, that the Stormwater Facilities have not been properly cleaned, maintained, or otherwise kept in good repair, the County shall give reasonable notice of such to the responsible Party and its successors and assigns. The notice shall provide a reasonable time to correct the problems. Should the responsible Parties fail to correct the specified problems, the County may enter upon the properties described in Exhibit A to perform the needed work and shall have the right to seek reimbursement from the responsible Parties for its actual costs and expenses in performing the work. Notice shall be effective to the above by the County's deposit of the same into the regular United States mail, postage pre-paid. Notwithstanding the foregoing, this Agreement does not expressly or implicitly impose on the County a duty to inspect, construct, clean, repair or maintain the Stormwater Facilities.

7. Actual Costs and Expenses: The Developer and the Metro District agree and covenant, for themselves and their successors and assigns, that they will reimburse the County for its actual costs and expenses incurred in the process of completing construction of, cleaning, maintaining, or repairing the Stormwater Facilities or vegetated areas pursuant to the provisions of this Agreement.

The term "actual costs and expenses" as used in this Agreement shall be liberally construed in favor of the County, and shall include, but shall not be limited to, labor costs, tools and equipment costs, supply costs, engineering and design costs, and costs to contract with specialized professionals or consultants, including but not limited to wetlands scientists, regardless of whether the County uses its own personnel, tools, equipment and supplies, etc. to perform the work. In the

event the County initiates any litigation or engages the services of legal counsel in order to enforce the provisions arising herein, the County shall be entitled to its damages and costs, including reasonable attorney's fees, regardless of whether the County contracts with outside legal counsel or utilizes in-house legal counsel for the same.

8. Contingencies of Land Use/Land Disturbance Approval: Developer's and the Metro District's execution of this Agreement is a condition of subdivision, land use, or land disturbance approval.

The County shall have the right, in the sole exercise of its discretion, to approve or disapprove any documentation submitted to it under this Agreement, including but not limited to, any separate agreement or amendment, if applicable, identifying any specific maintenance responsibilities not addressed herein. The County's rejection of any documentation submitted hereunder shall mean that the appropriate condition of this Agreement has not been fulfilled.

9. Agreement Monitored by El Paso County Planning and Community Development Department and/or El Paso County Department of Public Works: Any and all actions and decisions to be made hereunder by the County shall be made by the Executive Director of the El Paso County Planning and Community Development Department and/or the Executive Director of the El Paso County Department of Public Works. Accordingly, any and all documents, submissions, plan approvals, inspections, etc. shall be submitted to and shall be made by the Executive Director of the Planning and Community Development Department and/or the Executive Director of the El Paso County Department of Public Works.

10. Indemnification and Hold Harmless: Developer and the Metro District agree, for themselves, their successors and assigns, that they will indemnify, defend, and hold the County harmless from any and all loss, costs, damage, injury, liability, claim, lien, demand, action and causes of action whatsoever, whether at law or in equity, arising from or related to their intentional or negligent acts, errors or omissions or that of their agents, officers, servants, employees, invitees and licensees in the construction, operation, inspection, cleaning (including analyzing and disposing of any solid or hazardous wastes as defined by State and/or Federal environmental laws and regulations), maintenance, and repair of the Stormwater Facilities and such obligation arising under this Paragraph shall be joint and several. Nothing in this Paragraph shall be deemed to waive or otherwise limit the defense available to the County pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.* C.R.S., or as otherwise provided by law.

11. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

12. Third Parties: This Agreement does not and shall not be deemed to confer upon or grant to any third party any right to claim damages or to bring any lawsuit, action or other proceeding against the County, the Developer, the Metro District, or their respective successors and assigns, because of any breach hereof or because of any terms, covenants, agreements or conditions contained herein.

13. Solid Waste or Hazardous Materials: Should any refuse from the Stormwater Facilities be suspected or identified as solid waste or petroleum products, hazardous substances or hazardous materials (collectively referred to herein as “hazardous materials”), the Developer and the Metro District shall take all necessary and proper steps to characterize the solid waste or hazardous materials and properly dispose of it in accordance with applicable State and/or Federal environmental laws and regulations, including, but not limited to, the following: Solid Wastes Disposal Sites and Facilities Acts, §§ 30-20-100.5 – 30-20-119, C.R.S., Colorado Regulations Pertaining to Solid Waste Disposal Sites and Facilities, 6 C.C.R. 1007-2, *et seq.*, Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, and Federal Solid Waste Regulations 40 CFR Ch. I. The County shall not be responsible or liable for identifying, characterizing, cleaning up, or disposing of such solid waste or hazardous materials. Notwithstanding the previous sentence, should any refuse cleaned up and disposed of by the County be determined to be solid waste or hazardous materials, the Developer and the Metro District, but not the County, shall be responsible and liable as the owner, generator, and/or transporter of said solid waste or hazardous materials.

14. Applicable Law and Venue: The laws, rules, and regulations of the State of Colorado and El Paso County shall be applicable in the enforcement, interpretation, and execution of this Agreement, except that Federal law may be applicable regarding solid waste or hazardous materials. Venue shall be in the El Paso County District Court.

15. Limitation on Developer’s Obligation and Liability: The obligation and liability of the Developer hereunder shall only continue until Final Acceptance of the Subdivision improvements by the County and the Metro District including the transfer of all applicable maintenance and operation responsibilities to the Metro District. By execution of this agreement, the Metro District agrees to accept all responsibilities and to perform all duties assigned to it, including those of the Developer, as specified herein, upon transfer of maintenance responsibilities for the Stormwater Facilities from Developer to the Metro District.

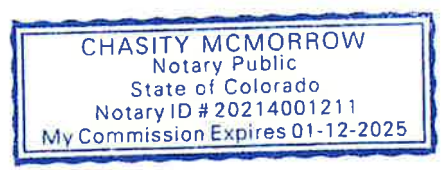
[Remainder of page intentionally left blank]

Executed this 29th day of November, 2022, by:
Lorson LLC as nominee for Lorson Conservation Investment I, LLLP

By: [Signature]
Jeff Mark, Authorized Signing Agent

The foregoing instrument was acknowledged before me this 29 day of November, 2022, by Jeff Mark as Authorized Signing Agent, Lorson LLC as nominee for Lorson Conservation Investment I, LLLP.

Witness my hand and official seal.
My commission expires: 01-12-2025



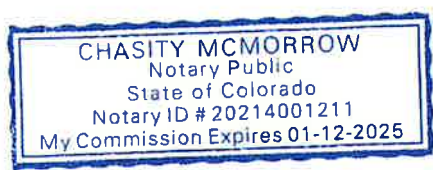
Chasity McMorrow
Notary Public

Executed this 29th day of November, 2022, by:
Lorson LLC as Nominee for Heidi, LLC

By: [Signature]
Jeff Mark, Authorized Signing Agent

The foregoing instrument was acknowledged before me this 29 day of November, 2022, by Jeff Mark as Authorized Signing Agent, Lorson LLC as Nominee for Heidi, LLC.

Witness my hand and official seal.
My commission expires: 01-12-2025



Chasity McMorrow
Notary Public

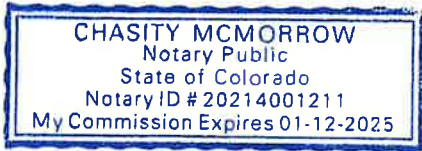
Executed this 29th day of November, 2022, by:
Murray Fountain, LLC

By: [Signature]
Jeff Mark, Authorized Signing Agent

The foregoing instrument was acknowledged before me this 29 day of November, 2022, by Jeff Mark as Authorized Signing Agent, Murray Fountain, LLC.

Witness my hand and official seal.

My commission expires: 01-12-2025



Chasity MCMORROW
Notary Public

Executed this 29th day of November, 2022 by:

Lorson Ranch Metropolitan District No. 1

By: [Signature]
Jeff Mark, President

Attest:

By: [Signature]

The foregoing instrument was acknowledged before me this 29 day of November, 2022, by Jeff Mark as President,

Lorson Ranch Metropolitan District No. 1.

Witness my hand and official seal.

My commission expires: 01-12-2025



Chasity MCMORROW
Notary Public

Executed this _____ day of _____, 20____, by:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: *Kevin Mastin*
Kevin Mastin, Interim Executive Director
Planning and Community Development Department
Authorized Signatory pursuant to LDC

The foregoing instrument was acknowledged before me this 1ST day of
December, 2022, by Kevin Mastin, Interim Executive Director, Planning and
Community Development Department.

Witness my hand and official seal.

My commission expires: Aug. 23, 2026



Notary Public *Miranda Benson*

Approved as to Content and Form:

Lori L. Seagr
Assistant County Attorney

EXHIBIT A
Subject Property / Stormwater Facilities Area

Tract A, Creekside at Lorson Ranch Filing No. 1

EXHIBIT B
U.S. Army Corps of Engineers Permit



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
SOUTHERN COLORADO REGULATORY OFFICE
200 S. SANTA FE AVENUE, SUITE 301
PUEBLO, COLORADO 81003

September 7, 2017

Regulatory Division

SUBJECT: Action No. SPA-2005-00757; Modification to the Lorson Ranch Permit in El Paso County, Colorado

Elizabeth Klein
Kiowa Engineering
1604 South 21st Street
Colorado Springs, CO 80904

Ms. Klein:

The U.S. Army Corps of Engineers (Corps) is in receipt of your letter dated August 3, 2017, requesting a modification to the Department of the Army permit for the discharge of dredged and fill material into waters of the United States associated with Lorson Ranch. This includes the bridge construction and stream configurations and updating delineation for upland swale in the Lorson ranch development, Fountain, El Paso County, Colorado.

We have reviewed and hereby approve your request. Action Number SPA-2005-00757 is modified as follows: This includes approval of the Special Condition 1 - Lorson Blvd. & Fontaine Blvd. bridge design and stream configuration, Special Condition 2 - no action required; and Upper Reach Item #2 Stabilization - No permit required.

Replace the project description on page one of your permit with: Insert the approved designs into the Permit as an attachment to the Special Condition 1.

The expiration date of your is still September 30, 2021.

This modification is effective immediately. All other terms and conditions of the original permit remain in full force and effect.

If you have any questions concerning this letter, please contact me at (719) 543-6915 or by e-mail at Van.A.Truan@usace.army.mil.

Sincerely,

TRUAN.VAN.A
LLAN.123142
2150

Digitally signed by
TRUAN.VAN.ALLAN.1231422150
DN: cn=US, o=U.S. Government,
ou=DoD, ou=PII, ou=USF,
cn=TRUAN.VAN.ALLAN.12314221
50
Date: 2017.09.07 09:15:45 -0600

Van Truan
Chief, Southern Colorado
Regulatory Branch

DEPARTMENT OF THE ARMY PERMIT

Permittee Lorson LLC nominee for Lorson Conservation Investment 1, LLLP

Permit No. 2005 00757

Issuing Office Albuquerque District Corps of Engineers

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.

Project Description: The work includes modifying the lower 3,110 linear feet of stream with bank protection while preserving the stream alignment (stream preservation reach), and reconfiguring the upper 5,825 linear feet of the stream (reconfiguration reach). Specifically:

In the lower stream preservation reach, about 3,110 linear feet will be treated on one or both banks by regrading the overbank to 3H:1V and treating with concrete or synthetic matting with seeded topsoil beneath the mat. About 350 linear feet will be treated with stone toe protection with soil coir lifts. One or two grade control structures may be built to provide protection from future channel incision.

In the upper reconfiguration reach, a breached stock pond dam will be removed. About 4,025 linear feet of the upper channel will be reconstructed with a bottom width of about 40 feet, side slopes no steeper than 6H:1V, and a natural channel bottom. The new channel side slopes will be protected with a mat material that will provide stability while allowing establishment of vegetation. Eleven boulder grade control structures will be built.

The upper 1,800 linear feet of the channel is actually an upland swale and is not a water of the U.S. However, it's channel design is included in the permit for clarity.

Two road crossings will be built in the upper reach for Lorson Boulevard and Fontaine Boulevard. These structures will be two or three concrete arch, natural bottom spans. A temporary construction crossing may be built in the upper stream portion.

The project will be constructed in accordance with the attached drawings, entitled, "Lorson Ranch channel modification in East Tributary of Jimmy Camp Creek near Fountain, El Paso County, Colorado, Application by: Lorson LLC, Application No. 2005 00757," sheets 1 through 16, dated May 17, 2006.

Project Location: In the East Tributary of Jimmy Camp Creek and adjacent wetlands in the east portion of the Lorson Ranch development located east of the intersection of Fontaine Boulevard and Marksheffel Road near Fountain, El Paso County, Colorado, Sections 13, 14 and 23, Township 15S, Range 65W (38° 44.1' N Latitude, 104° 37.9' W Longitude).

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 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.

Special Conditions:

After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of all the permit conditions.

1. Final bridge designs for Fontaine Boulevard and Lorson Boulevard will be submitted to the Corps of Engineers for review and approval 60 days prior to start of each bridge construction. Project construction of each structure may begin upon the Corps of Engineers' issuance of a start-of-work authorization.
2. The bank armoring for the stream preservation (lower) reach will be ungrouted stone toe with coir fabric lifts or similar materials. A final design for the stream preservation reach, including vegetation species list, will be submitted to the Corps of Engineers for review and

approval 60 days prior to start of bank armoring construction. Project construction may begin upon the Corps of Engineers' issuance of a start-of-work authorization.

3. The bank armoring for the reconfiguration (upper) reach will be armorflex, geogrid, or similar materials. The bank armoring will be covered with at least 6 inches of topsoil and seeded with grasses. The boulder grade control structures will be ungrouted. A final design for the reconfigured channel reach, including vegetation species list, will be submitted to the Corps of Engineers for review and approval 60 days prior to start of channel construction. Project construction may begin upon the Corps of Engineers' issuance of a start-of-work authorization.

4. Sloping boulder grade control structures will be ungrouted and designed to allow passage of small fish. For the stream preservation (lower) reach, the location of grade control structures and their design will be submitted to the Corps of Engineers for review and approval 60 days prior to the start of grade control structure construction.

5. Erosion control measures will be implemented to prevent upland erosion into the East Tributary of Jimmy Camp Creek. All upland areas disturbed by the permittee or their (sub)contractors located within 200 feet of the stream will be treated with erosion control measures including placing topsoil, seeding, and mulching within 21 calendar days after final grading or final earth disturbance or in accordance with the erosion control plan required by El Paso County. An erosion control plan or a summary of the County's approved plan will be provided to the Corps of Engineers within 60 days of permit issuance.

6. Noxious weeds will be controlled in all project-disturbed areas within 200 feet of the stream during the 5-year maintenance period. A plan for such control will be provided to the Corps of Engineers within 60 days of permit issuance, for review and approval.

7. A detailed mitigation plan will be provided to the Corps of Engineers within 60 days of permit issuance, for review and approval prior to start of project construction. Project construction may begin upon the Corps of Engineers' issuance of a start-of-work authorization. The plan will provide for the mitigation of the loss of 4.56 acres of wetland shrubs and the loss of riparian trees. The mitigation work will begin in the spring following winter construction (or in the fall following summer construction) and be completed within 6 months of project construction. The plan will include, but is not limited to, the following items:

- A typical cross section showing the area to be planted with shrubs and trees,
- Planting densities and number and species of trees,
- Methods and times of year for planting. (If willow stakes are used, they must be planted with no more than 6 inches of the stake exposed above the ground.) And,
- A plan for short and long term management and maintenance of the mitigation sites, including supplemental tree watering if needed,

replacement of failed plantings before the end of the 5-year monitoring period, and other contingency needs.

8. The mitigation efforts must be maintained for at least 5 years including 5 growing seasons or until the Corps of Engineers has determined that the mitigation efforts have been successful. Tree plantings will be deemed successful when 80% of the planted trees are alive at the end of the 5-year period. Willow shrub plantings will be deemed successful when 50% of the planted shrubs are alive at the end of the 5-year period.

9. An annual monitoring report of mitigation activities is required and will be sent to the Corps of Engineers by October 31 of each year. The monitoring report will include as a minimum:

- A drawing or sketch showing photographic monitoring points,
- Before and after photographs from fixed photographic location(s),
- A brief discussion of the overall success, any bare or problem areas, and a plan to remedy any problem areas.

10. A letter of intent from the local governing authority will be provided as financial assurances for construction, and for contingency and monitoring of the mitigation for the 5-year monitoring period. The assurances of the mitigation effort will be provided sufficient to hire an independent contractor to complete the proposed mitigation should the permittee default. The financial assurance for construction of the mitigation project will in an amount equal to 115 percent of the estimated cost of construction. The financial assurance for contingency and monitoring of the mitigation for the 5-year monitoring period will be in an amount equal to 25% of the construction costs and will be to assure the success of the mitigation. The letter of intent will be submitted to the Corps of Engineers, for approval, within 90 days of permit issuance.

11. Any changes to the project must be approved by the Corps of Engineers through a permit modification prior to the changes being implemented.

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).

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 project.
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 to 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)

11 September 2009
 (DATE)

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



Van A. Truan
Chief, Southern Colorado Regulatory Office
(for the DISTRICT ENGINEER)

22 September 2006

(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.

(TRANSFERREE)

(DATE)

City of Colorado Springs/North Lorson Ranch Boundary

PROPOSED
PROJECT SITE

Existing Fontaine Blvd.

Ex, Lorson Blvd.

East Fork Jimmy Camp Creek

Lorson Ranch South Boundary

Peaceful Valley Subdivision

Marksheffel Road

Jimmy Camp Creek

Peaceful Valley Road

FIG. 1 VICINITY MAP

SCALE: N.T.S.

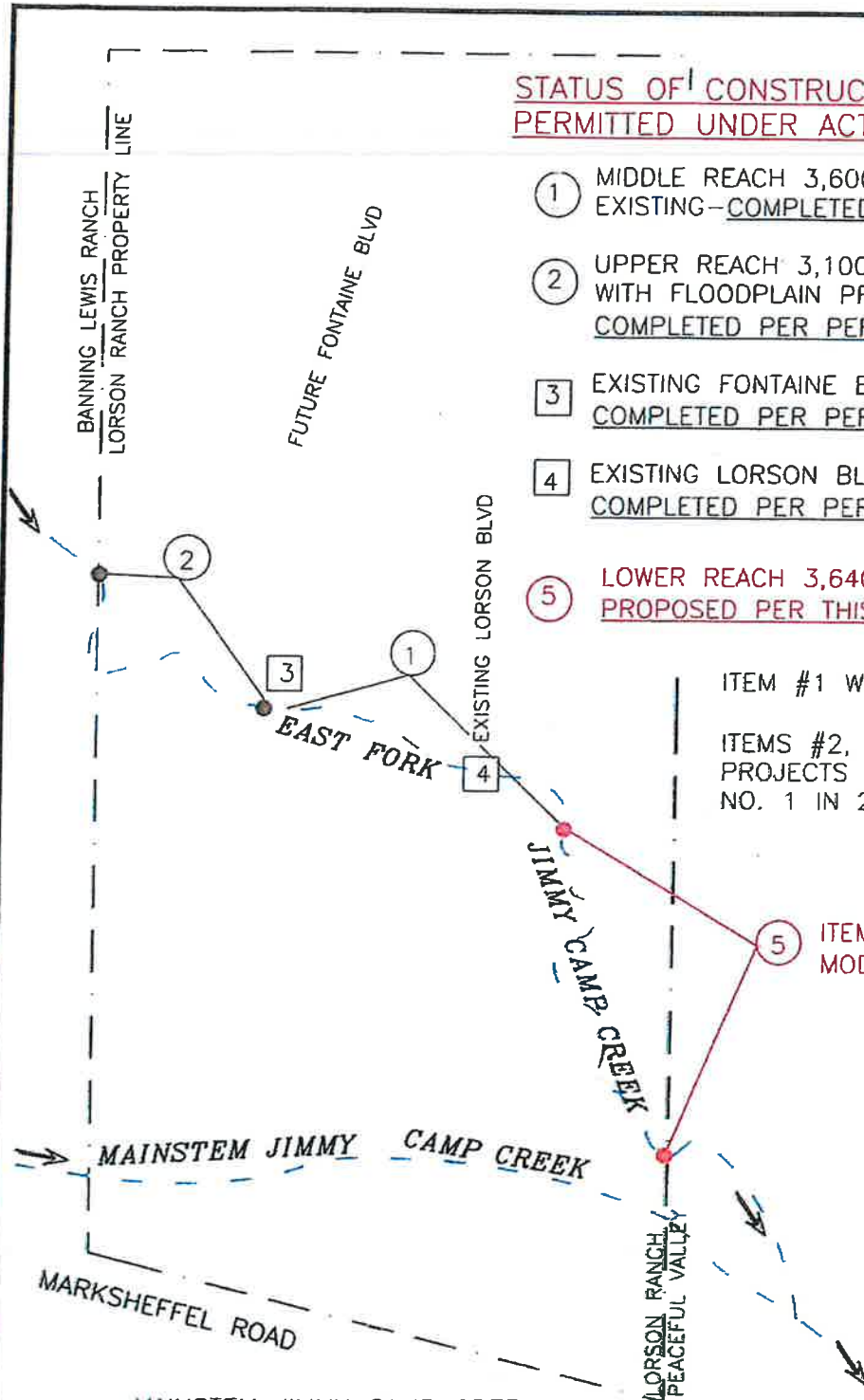
STATUS OF CONSTRUCTION ACTIVITIES IN 2020
PERMITTED UNDER ACTION NO. 2005 00757

- ① MIDDLE REACH 3,600 LF RECONFIGURED CHANNEL EXISTING—COMPLETED IN 2007 PER PERMIT
- ② UPPER REACH 3,100 LF STABILIZED CHANNEL WITH FLOODPLAIN PRESERVATION COMPLETED PER PERMIT MOCIFICAITON #1
- ③ EXISTING FONTAINE BLVD BRIDGE COMPLETED PER PERMIT MODIFICATION #1
- ④ EXISTING LORSON BLVD BRIDGE COMPLETED PER PERMIT MODIFICATION #1
- ⑤ LOWER REACH 3,640± LF STREAM PRESERVATION PROPOSED PER THIS PERMIT MODIFICATION #2

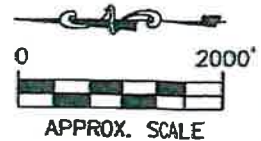
ITEM #1 WAS COMPLETED IN 2007

ITEMS #2, #3 AND #4 COMPLETED PROJECTS PER PERMIT MODIFICATION NO. 1 IN 2017 TO 2018.

ITEM #5 ADDRESSED IN MODIFICATION AMENDMENT #2.



MAINSTEM JIMMY CAMP CREEK
PERMITTED UNDER ACTION NO.
2002 00701
CONSTRUCTION COMPLETED



**LORSON RANCH
PERMIT MODIFICATION AMENDMENT NO. 2 MAP**

ACTION NO. 2005 00757
EL PASO COUNTY, COLORADO

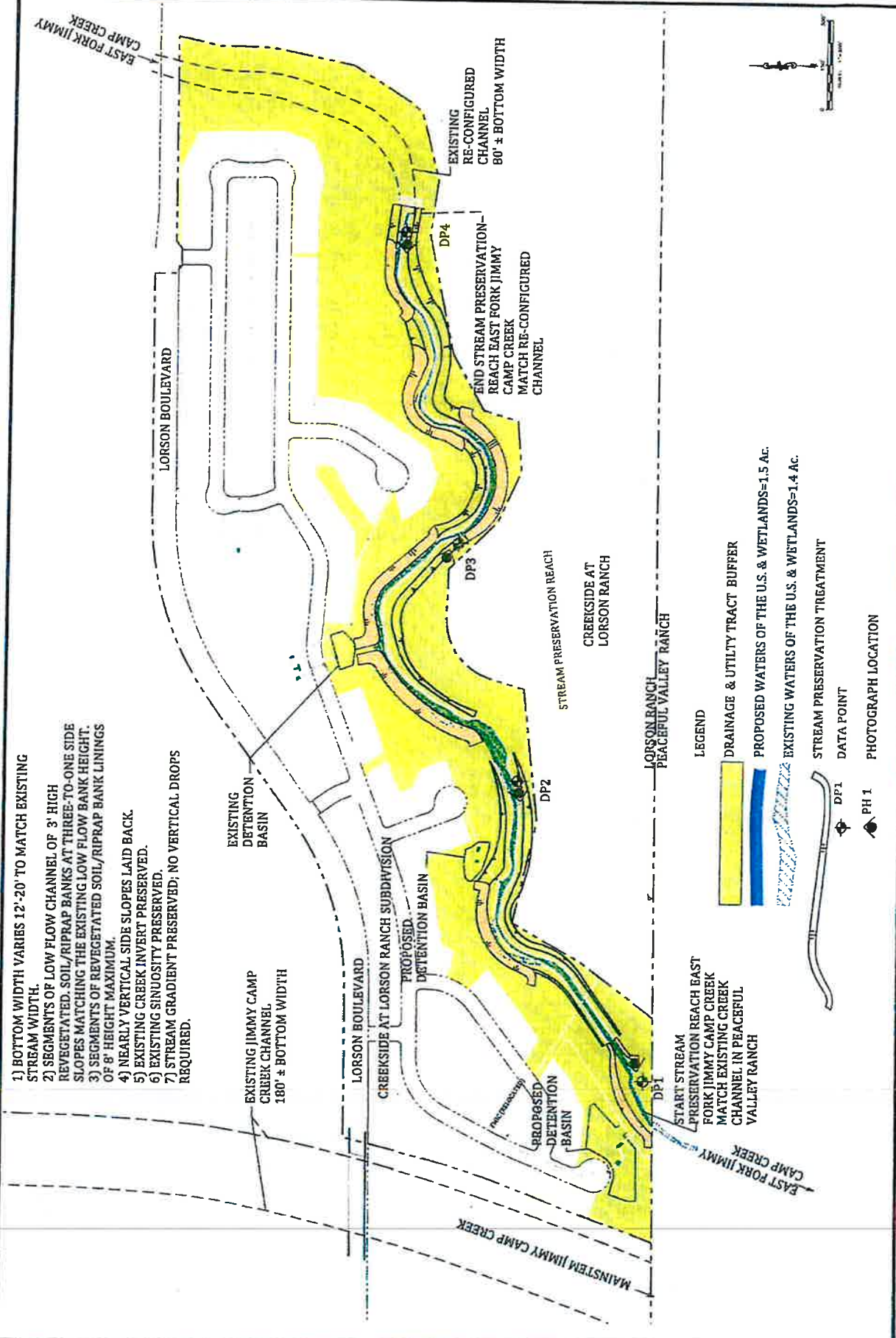
FIGURE 2

DATE: 04/1/20
PROJECT NO. 18020

Kiowa
Engineering Corporation

1804 South 21st Street
Colorado Springs, Colorado 80904
(719) 630-7342

DATE	
REVISION	
BY	
CHECKED	
DATE	
BY	
CHECKED	
DATE	
BY	
CHECKED	



- 1) BOTTOM WIDTH VARIES 12'-20' TO MATCH EXISTING STREAM WIDTH.
- 2) SEGMENTS OF LOW FLOW CHANNEL OF 3' HIGH REVEGETATED SOIL/RIPRAP BANKS AT THREE-TO-ONE SIDE SLOPES MATCHING THE EXISTING LOW FLOW BANK HEIGHT.
- 3) SEGMENTS OF REVEGETATED SOIL/RIPRAP BANK LININGS OF 8' HEIGHT MAXIMUM.
- 4) NEARLY VERTICAL SIDE SLOPES LAID BACK.
- 5) EXISTING CREEK INVERT PRESERVED.
- 6) EXISTING SINUOSITY PRESERVED.
- 7) STREAM GRADIENT PRESERVED; NO VERTICAL DROPS REQUIRED.

LEGEND

- DRAINAGE & UTILITY TRACT BUFFER
- PROPOSED WATERS OF THE U.S. & WETLANDS=1.5 AC.
- EXISTING WATERS OF THE U.S. & WETLANDS=1.4 AC.
- STREAM PRESERVATION TREATMENT
- DP1 DATA POINT
- PH1 PHOTOGRAPH LOCATION

EXHIBIT C

Open Drainage Channel Inspections, Operations and Maintenance (O&M)

Routine maintenance of the open drainage channel system consists of litter and debris pickup, vegetation management, erosion control, and sediment removal when necessary. Removal of excessive shrubs and trees is required to ensure that the channel will flow in conformance with the original design. Mowing and vegetation management shall be performed with care to ensure that soils remain stable and not to cause erosion. Noxious weed management shall be performed as necessary and as required under project approval conditions. All dead trees and trees growing in the flowline of a structure such as a bridge or culvert shall be removed.

Removal of sediment shall be performed with the use of equipment such as a skid steer, backhoe, and front-end loader. The removed materials shall be hauled to an acceptable landfill site unless otherwise legally permitted to be utilized elsewhere. Materials are not to be stored onsite. Equipment shall utilize the designated access roads and shall not be used in a manner to cause damage to adjacent vegetated and stable areas to the extent possible. If drainage channels contain wetlands many activities, including maintenance, may be subject to regulation and permitting.

Erosion control and restoration work such as side slope reconstruction, revegetation, riprap installation, and other stabilization methods will require the use of heavy equipment.

Maintaining altered watercourses is a minimum requirement of the National Flood Insurance Program (NFIP). In fact, failure to maintain such watercourses may result in a revision to the community's Flood Insurance Rate Map (FIRM). If a stream is altered after the community's FIRM is published, the NFIP requires the community to ensure that the channel's carrying capacity is not adversely altered. This is required in 44 CFR 60.3(b)(7) of the Federal Emergency Management Agency's (FEMA's) NFIP regulations.

Table 1 – General Channel Maintenance Guidelines

Activity	Maintenance Action	Frequency of Action
Mowing, vegetation management, and lawn care	Occasional mowing to limit unwanted vegetation. Maintain irrigated turf grass as 2 to 4 inches tall and non-irrigated native grasses at 4 to 6 inches tall.	Routine – depending on aesthetic requirements.
Debris and litter removal	Remove debris and litter from the entire channel to improve flow characteristics and aesthetics. Dispose of as appropriate.	Routine – including annual, pre-storm season (April and May) and following significant rainfall events.
Erosion and sediment control	Repair and revegetate eroded areas in the channel.	Non-routine –as necessary based on inspection.
Structural	Repair inflow structures, low flow channel linings, and energy dissipation structures as needed.	Non-routine – repair as needed based on regular inspections.
Inspections	Inspect channel to ensure continued function as initially intended. Check for erosion, slumping, excessive sedimentation, overgrowth, embankment and inflow integrity, and damage to any structural elements. Report any illicit discharge immediately.	Routine – annual inspection of hydraulic and structural facilities. Also check for obvious problems during routine maintenance visits.
Nuisance control	Address odor, insects, and other issues associated with stagnant or standing water.	Non-routine –as necessary per inspection or complaint.
Sediment removal	Remove accumulated sediment from the channel bottom.	Non-routine –as necessary per inspection.

Routine Maintenance Activities

The majority of this work consists of scheduled mowing, litter and debris pickups for the drainage channel during the growing season. It also includes activities such as weed control. These activities normally will be performed numerous times during the year. These items typically do not require any prior correspondence with EPC, however, completed inspection and maintenance forms shall be retained and submitted to EPC for each inspection and maintenance upon request. The Routine Maintenance Activities are summarized below, and further described in the following sections.

Table 2 – Summary of Routine Maintenance Activities

Activity	Maintenance Action	Look for:	Minimum Frequency
Mowing	2"-4" irrigated grass height; 4-6" natural grass height	Excessive grass height/aesthetics	Routine – twice annually
Litter / Debris Removal	Remove and dispose of litter and debris	Litter / debris in drainage channel	Routine – twice annually
Woody growth control / weed removal	Treat w/herbicide or hand pull	Noxious weeds, undesirable vegetation	Routine – minimum twice annually

Properly dispose of litter and debris materials at an approved landfill or recycling facility. It should be noted that major debris removal may require other regulatory permits prior to completing the work.

Noxious weeds and other unwanted vegetation must be treated as needed throughout the drainage channel. This activity can be performed either through mechanical means (mowing/pulling) or with herbicide. Consultation with the County Environmental Division is recommended prior to the use of herbicide. Herbicides should be utilized sparingly and as a last resort. All herbicide applications should be in accordance with the manufacturer's recommendations.

Minor Maintenance Activities

This work consists of a variety of isolated or small-scale maintenance/operational problems. Most of this work can be completed by a small crew, hand tools, and small equipment. These items may require prior approval from EPC depending on the scope of work. Completed inspection and maintenance forms shall be retained for each inspection and maintenance period. In the event that the drainage channel needs to be dewatered, care should be given to ensure sediment, filter material and other pollutants are not discharged. The appropriate permits shall be obtained prior to any dewatering activity.

Table 3 – Summary of Minor Maintenance Activities

Activity	Maintenance Action	Look for:	Minimum Frequency
Sediment/Pollutant Removal	Remove and dispose of accumulated sediment from the channel bottom.	Minor sediment and pollution build-up in channel bottom; potential decrease in channel flow rate	Non-routine – as needed based on inspection.
Erosion Repair	Repair eroded areas and revegetate; address cause.	Rills/gullies on sides of channel	Non-routine – as needed, based on inspection.

Major Maintenance Activities

This work consists of larger maintenance/operational problems and failures within the stormwater drainage facilities. This work will likely require approval from EPC Engineering to ensure the proper maintenance is performed. This work requires that Engineering Staff review the original design and construction drawings to assess the situation and necessary maintenance activities. This work may also require more specialized maintenance equipment, design plans/details, surveying, and assistance through private contractors and consultants. In the event that the drainage channel needs to be dewatered, care should be given to ensure sediment, filter material and other pollutants are not discharged. The appropriate permits shall be obtained prior to any dewatering activity.

Table 4 – Summary of Major Maintenance Activities

Activity	Maintenance Action	Look for:	Minimum Frequency
Major Sediment / Pollutant Removal	Remove and dispose of sediment. Repair vegetation as necessary	Large quantities of sediment in the channel and reduced conveyance rate/capacity	Non-routine –as necessary based on inspection.
Major Erosion Repair	Repair erosion – find cause of problem and address to avoid future erosion	Severe erosion including gullies, excessive soil displacement, unusual areas of settlement, holes	Non-routine –as necessary based on inspection.
Structural Repair	Structural repair to restore portions of the channel to its original design	Deterioration and/or damage to structural components – broken concrete, damaged pipe, drop/check structures or dissipators	Non-routine –as necessary based on inspection.
Drainage Channel Rebuild	Contact EPC Engineering	Overall channel failure	Non-routine –as needed due to complete failure of drainage channel

Inspection Procedures

Periodic inspections of drainage channels and associated stormwater control measures in developed areas are needed in every community to prevent the accumulation of debris deposited by storms, dumping, or natural processes. Inspections must be conducted at least once each year and after each storm that could adversely impact the drainage system. Inspections are also needed in response to citizen complaints.

Conduct annual visual inspections during the dry season to determine if there are problem inlets where sediment/trash or other pollutants accumulate. Inspection and maintenance records should be used to determine problem areas that may need to be checked more often. Appropriate action must be taken after an inspection identifies the need for maintenance or cleaning.

The attached form includes the typical information necessary for and during an inspection. Similar forms or electronic record keeping may be utilized if all relevant information is recorded. The entity responsible for channel maintenance is required to submit the periodic inspection reports upon request by County Staff. Inspections involving decisions about structural issues shall be signed by a licensed professional engineer.

Inspections of inflow structures including detention spillways and water quality outlet pipes discharging to the channel shall be coordinated with channel inspections.

Illicit discharges such as dumping of home goods or garbage, appliances, yard wastes, paint spills, abandoned oil containers and other pollutants shall be immediately reported to EPC Staff and other agencies as appropriate. Reference El Paso County Ordinance No. 07-01, as amended. EPC recommends that the responsible entity encourage public

reporting of improper waste disposal by posting "No Dumping" signs, neighborhood notices, and/or social media when available, with contact information to report violations.

Wetlands

If drainage channels contain wetlands many activities, including maintenance, may be subject to regulation and permitting. The responsible maintenance entity shall maintain wetlands vegetation as appropriate and in consultation with the proper authorities including the U.S. Army Corps of Engineers when applicable. The responsible maintenance entity shall ensure proper training / licensing of contractors and staff to minimize the potential for damages to the wetlands.

All applicable safety and environmental considerations with regards to the application of any pesticides or herbicides shall be verified. It is also strongly encouraged that the responsible entity employ or consult a wetlands specialist or certified arborist with the ability to identify invasive/exotic species. Due to the sensitive nature of using chemicals near water bodies, a written Quality Assurance/Quality Control (QA/QC) plan shall be implemented.

Employees shall be trained in accordance with any local, state, and federal regulations and laws prior to any application of chemicals. A copy of the QA/QC plan must be submitted to the County Environmental Division prior to any chemical applications. In addition to the QA/QC plan, copies of the Safety Data Sheets (SDS) for all the chemicals being used shall be provided upon request.

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972.

Section 404 - establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. CWA Section 404(b)(1) Guidelines – U.S. Environmental Protection Agency (EPA) (Although they are called "guidelines," these criteria are established in regulations (40 CFR Part 230) and are legally binding.)
<https://www.epa.gov/cwa-404/clean-water-laws-regulations-and-executive-orders-related-section-404>

Open Drainage Channel Inspection Report Form

Date: _____ Inspector: _____

Type of inspection: Post-Storm _____ Complaint _____ Routine _____

Location: (Identify stream or basin name, downstream and upstream streets or reference points, and location of problem. Provide sketch as needed.)

Type of problem: Litter ___ Minor ___ Obstruction ___ Structural ___ Illicit Discharge** ___

Recommended maintenance: _____

Is equipment needed? _____ If so, list equipment needed: _____

Date: _____ Offsite Right of entry needed? _____

Work order description: _____

State permit(s) needed? _____ Work order number: _____

Date: _____ Crew chief: _____

Maintenance performed: _____

Inspected by: _____

Use other side for additional recommendations for this site.

****Report illicit discharges to the County and appropriate agencies.**