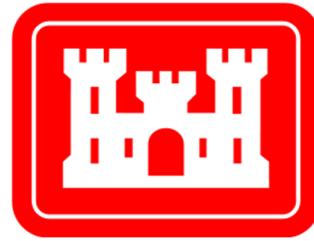




**DEPARTMENT OF THE ARMY
33 U.S.C. § 408 PERMISSION
U. S. Army Corps of Engineers
Los Angeles District**



REQUESTER / NON-FEDERAL SPONSOR: Orange County Flood Control District, 300 North Flower Street, Santa Ana, CA 92703-5000

THIRD-PARTY PERMITTEE: Majestic Realty Co., 13191 Crossroads Parkway North Sixth Floor, City of Industry, CA 91746-3497

PERMISSION NUMBER: 408-SPL-2022-0009

ISSUING OFFICE: U.S. Army Corps of Engineers, Los Angeles District (USACE-SPL)

USACE-SPL SECTION 408 COORDINATOR: Mr. Rafi Talukder, (213) 452-3745,
spl.408permits@usace.army.mil

AFFECTED USACE PROJECT AND DESCRIPTION: Prado Dam, a feature for flood control in the Santa Ana River Main Stem flood control system (USACE Project)

LOCATION: LAT 33.957541° N, LONG -117.662515° W

APPROVED ALTERATION OF THE USACE PROJECT:

Majestic Chino Heritage Project: 1) excavate 600,000 cubic yards of material from five sites on Orange County Flood Control District-owned land within the Prado Dam Reservoir; 2) place the excavated material as fill on Orange County Flood Control-owned land encumbered by a USACE flowage easement and construct two warehouses; and 3) construct a 48-inch Reinforced Concrete Pipe (RCP) drain connection to Cypress Channel (Section 408 Activity).

The "approved plans and specifications," dated 14 April 2019, upon which this Permission is based are retained by USACE-SPL and filed under the Permission Number listed above.

I. General Conditions

1. USACE-SPL acknowledges that the Section 408 Activity shall be carried out by the Third-Party Permittee and that this Permission is being issued to the Requester, pursuant to the Requester's obligations under any applicable U.S. Army Corps of Engineers (USACE) project agreement(s) and as codified in 33

U.S.C. 2213 (j). USACE-SPL reserves the right to enforce all conditions stated herein against the Requester directly. The Requester, Third-Party Permittee, and their contractor(s), shall comply with all General Conditions and Special Conditions detailed herein.

2. This permission doesn't grant any property rights or exclusive privileges to the Requester and the Third-Party Permittee. The flowage easements remain on the property as is and no change shall be made or imputed to the Project Cooperation Agreement affirming that the property shall remain in public ownership and limited to uses compatible with the Prado Dam Project, including inundation to any elevation for project operations.
3. The Requester and the Third-Party Permittee shall not build any structure within the existing flowage easement areas, to include any portion of the proposed commercial warehouses. Any request to encroach upon the flowage easement to construct surface parking lots, loading docks, utilities, and any other structure must be approved by the District prior to initiation of any such activity.
4. The Requester and the Third-Party Permittee shall not build any underground storage tanks, and on-site waste storage on the property. Above ground storage tanks, vehicles, storage containers, or any other article that could float during a flood must each be adequately anchored to prevent it from becoming dislodged due to buoyancy and/or swift currents.
5. In the event the Third-Party Permittee fails to maintain the Section 408 Activity in good condition and in conformance with the terms and conditions of this Permission or the agreement or separate permit referenced in General Condition 3 and Special Conditions, below, the Requester shall be responsible for taking any and all actions necessary to prevent or mitigate any interference with the operation and maintenance of the USACE Project that may result from the Third-Party Permittee's failure, in accordance with the following:
 - a. Except when immediate action is necessary to prevent or minimize injury to persons or damage to property or the environment, the Requester shall, prior to commencing any such actions other than the Section 408 Activity, provide notice to USACE-SPL of the proposed actions and obtain USACE-SPL's approval.
 - b. When the Requester takes immediate action to prevent injury to persons or damage to property or the environment, the Requester shall notify the USACE-SPL Section 408 Coordinator of such actions as soon as reasonably practicable and shall obtain USACE-SPL's approval of any additional actions reasonably necessary to prevent or mitigate the interference with the operation of the USACE Project.
 - c. In the event that the Requester fails to prevent interference or potential interference with the operation of the USACE Project resulting from

modifications or alterations by the Third-Party Permittee, the Requester then shall be responsible to remove the Section 408 Activity in a manner acceptable to USACE-SPL. Removal shall be conducted only after consultation with USACE-SPL and upon amendment of this Permission.

6. The Requester shall be bound by the following requirements, and prior to the commencement of any construction related to the Section 408 Activity, the Requester shall enter into an agreement with, or issue a separate permit to, the Third-Party Permittee which shall impose the following requirements on the Third-Party Permittee:
 - a. This Permission only authorizes the Third-Party Permittee and the Requester to undertake the Section 408 Activity described herein under the authority provided in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 408). This Permission does not obviate the need to obtain other federal, state, or local authorizations required by law. This Permission does not grant any property rights or exclusive privileges, and the Third-Party Permittee and the Requester must have appropriate real estate instruments in place prior to construction and/or installation.
 - b. Any Lease or Sub-Lease instrument shall include an indemnification clause binding the Requester fully indemnifying the United States, the Secretary of the Army, the Army Corps of Engineers, or any officer or employee thereof, from any future claim for damages to property, injuries to persons, or lives lost as a proximate or indirect result of inundation of the property pursuant to the operation of Prado Dam. Any Lease or Sub-Lease instrument shall also include a waiver clause binding the Third-Party Permittee fully waiving and affirmatively disclaiming any future claim against the United States, the Secretary of the Army, the Army Corps of Engineers, or any officer or employee thereof, for any and all damages to property, injuries to persons, or lives lost as a proximate or indirect result of inundation of the property pursuant to the operation of Prado Dam. Such indemnification and waiver clauses shall be disclosed to the USACE for timely review and approval prior to the signing of any real estate instrument between the Requester and the Third-Party Permittee, and the Third-Party Permittee and any sub-lessee.
 - c. The time limit for completing the Section 408 Activity ends two (2) years after the effective date of this Permission. If the Third-Party Permittee finds that it requires more time to complete the Section 408 Activity, the Requester shall submit a request for a time extension to USACE-SPL for consideration at least one month before the above time limit is reached. Should construction activities fail to commence within two (2) years after the effective date of this Permission, this Permission shall be immediately revoked.

- d. Without prior written approval of the USACE, the Third-Party Permittee and the Requester must neither transfer nor assign this Permission nor grant any interest, privilege, or license whatsoever in connection with this Permission. Any sublet of the premises must be reviewed and approved by the USACE prior to signing of the real estate instrument to ensure that all appropriate indemnification and waiver clauses are fully and accurately addressed. Failure to comply with this condition will constitute noncompliance for which the Permission may be revoked immediately by the USACE.
- e. The Third-Party Permittee and the Requester understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the Section 408 Activity herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said work will cause unreasonable conditions and/or obstruction of the USACE Project authorized design, the Third-Party Permittee and the Requester will be required upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim can be made against the United States on account of any such removal or alteration.
- f. The United States will in no case be liable for:
 - 1. any damage or injury to the structures or work authorized by this Permission that may be caused or result from future operations undertaken by the United States, and no claim or right to compensation will accrue from any damage; or
 - 2. damage claims associated with any future modification, suspension, or revocation of this Permission.
- g. The United States will not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of the project requested by the Third-Party Permittee or by the Requester, nor for damages to the property or injuries to the Third-Party Permittee's or the Requester's officers, agents, servants, or employees, or others who may be on the Third-Party Permittee's or the Requester's premises or project work areas or the USACE Project(s) rights-of-way. By accepting this Permission, the Third-Party Permittee and the Requester hereby agree to fully defend, indemnify, and hold harmless the United States and USACE from any and all such claims, subject to any limitations in law.
- h. Any damage to the water resources development project or other portions of any USACE Project(s) resulting from the Third-Party Permittee's activities must be repaired at the Third-Party Permittee's expense. The repairs shall be accomplished to the satisfaction of USACE-SPL.

- i. The determination that the activity authorized by this Permission would not impair the usefulness of the USACE Project and would not be injurious to the public interest was made in reliance on the information the Requester and Third-Party Permittee provided.
- j. USACE-SPL, at its sole discretion, may reevaluate its decision to issue this Permission at any time circumstances warrant, which may result in a determination that it is appropriate or necessary to modify or revoke this Permission. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - 1. The Third-Party Permittee or Requester fails to comply with the terms and conditions of this Permission;
 - 2. the information provided in support of the Requester's Section 408 Permission request proves to have been inaccurate or incomplete; or
 - 3. significant new information surfaces which this office did not consider in reaching the original decision that the activity would not impair the usefulness of the water resources development project and would not be injurious to the public interest.
- k. The Third-Party Permittee is responsible for implementing any requirements for mitigation, reasonable and prudent alternatives, or other conditions or requirements imposed as a result of environmental compliance.
- l. Work/usage allowed under this Permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the USACE Project.
- m. In the event of any deficiency in the design or construction of the Section 408 Activity, the Requester and Third-Party Permittee are responsible for taking remedial action to correct the deficiency.
- n. The right is reserved to the USACE to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to operate and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Third-Party Permittee and the Requester will have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.
- o. The Requester must provide copies of pertinent design, construction, and/or usage submittals/documents. The USACE may request that survey

and photographic documentation of the alteration work and the impacted project area be provided before, during, and after construction and/or installation.

- p. The USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.
- q. If the scope of the Section 408 Activity changes from the approved plans and specifications upon which this Permission is based, the Requester must resubmit the Section 408 Permission request with the Permission Number and revisions clearly identified. Work associated with the Section 408 Activity that does not pertain to the revised portion of the project may continue while the revisions are being reviewed unless USACE-SPL indicates otherwise. If USACE-SPL determines that changes in scope or details have an impact outside approved alteration area, a new Section 408 Permission request will be required.
- r. The Requester shall comply with any USACE review requirements for all design elements. The Requester shall fund for all major milestones (i.e. 35%, 65%, and 95%) review and ensure the final design elements meet USACE requirements.
- s. The Third-Party Permittee shall notify the USACE-SPL Section 408 Coordinator and the Requester of the start date for construction and submit a copy of the construction schedule at least two (2) weeks prior to starting. Updated construction schedules shall be made available upon request. Construction activities shall not impair USACE-SPL access to perform maintenance services, inspections, and patrolling activities. Routine construction progress report will be required. An invitation shall be sent to USACE-SPL for any kick-off meetings and final walk-through, as applicable.
- t. Upon completion of construction of the Section 408 Activity, the Third-Party Permittee shall submit to USACE-SPL and the Requester electronic copies of the as-built plans showing the new work as it relates to identifiable feature of the USACE Project with post compilation of topographic survey information. The as-built plans must be signed by the Third-Party Permittee's Engineer of Record. Electronic copies of the as-built plans shall be submitted in .pdf format to the Requester and USACE-SPL. As-built plans must be provided within 60 days of construction completion.
- u. O&M Manual Updates. The Requester is responsible for O&M of this basin of the USACE Project. However, the Lessee of the property will be responsible for the O&M of the proposed Section 408 Activity and such requirement shall be incorporated into any Lease and Sub-Lease instruments. So long as Third-Party leases the property, it shall be

responsible for the O&M of the proposed Section 408 Activity and such requirement shall be incorporated into any Lease and Sub-Lease instruments. The Requester and Third-Party Permittee shall have their own O&M agreement for the proposed alteration and shall provide an executed copy to the USACE within 10 days of construction completion.

- v. The Third-Party Permittee and the Requester must maintain the Section 408 Activity in good condition and in conformance with the terms and conditions of this Permission. The Third-Party Permittee and the Requester shall not be relieved of this requirement even if the Section 408 Activity is abandoned. Should the Third-Party Permittee or the Requester wish to cease to maintain the Section 408 Activity or desire to abandon it, the Requester must obtain an amendment of this Permission from USACE-SPL and may be required to perform additional construction activities prior to abandonment of the facility.

II. Special Conditions

1. If previously unknown historic or archaeological remains are discovered while carrying out the Section 408 Activity, the Third-Party Permittee shall immediately cease activity and protect the site in conformance with 36 C.F.R. § 800.13. Within 24 hours of the discovery, the Requester shall notify USACE-SPL Section 408 Coordinator. The Third-Party Permittee shall not resume construction or activity in the area containing the potential cultural resources until USACE-SPL issues a notice to proceed to the Requester.
2. The Third-Party Permittee and any contractors must have in place accidental spill prevention and response plan for all hazardous materials that may be used on site. In the event of a spill or release of hazardous substances at the site, the spill and/or release shall be immediately contained, excavated, and treated per federal and state regulations developed by the U.S Environmental Protection Agency as well as local hazardous waste ordinances.
3. The Third-Party Permittee shall implement Best Management Practices (BMPs) such as sediment control and erosion control measures as necessary to ensure water quality is not adversely affected by the Section 408 Activity in compliance with federal, state and local ordinances.
4. The Third-Party Permittee shall post “Construction Zone” and detour signs for vehicular traffic and pedestrians per local ordinances.
5. To reduce noise to the maximum feasible extent, the Third-Party Permittee shall maintain construction equipment with properly functioning mufflers on all internal combustion and vehicle engines used during construction. Construction must

comply with local noise ordinances.

6. Work shall not begin in waters/navigable waters of the United States until the Requester first obtains a separate, additional Department of the Army permit for activities which involve the discharge of dredge or fill material into waters of the United States or work or structures in or affecting navigable waters of the United States, pursuant to the provisions of Section 404 of the Clean Waters Act, as amended (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 403).
7. The requester and the third party shall comply with all commitment measures and conditions included in the environmental assessment document of June 2022.
8. The requester and the third party shall not store any construction material or any construction equipment's inside flowage easement area and shall remove all the debris by the end of each working day.
9. Ensure all evacuation routes within the development are above 566-ft.
10. Clear signage with direction toward evacuation routes must be placed outside, and inside of all facilities and ensure signage for elevation 566-ft line is clearly identified in at least six places along the property line.
11. Sufficient internal and external egress for vertical evacuation (finished floor to roof) must be available and accessible for all employees at workplace. A vertical evacuation plan must be prepared and included with the Flood Emergency Action Plan. The vertical evacuation plan must be kept on-site.
12. The Requester and the third-party permittee shall develop a Flood Emergency Action Plan (e.g. Contingency Plan referenced in SPD Regulation 1110-2-1), specific to the Majestic project, and update it annually. The Flood Emergency Action Plan must be briefed to all employees upon employment and annually thereafter and a copy of the current Emergency Action Plan must be regularly provided to the USACE-SPL. The Flood Emergency Action Plan must include requirements listed in SPD Regulation 1110-2-1, paragraph 6, but is not limited to the following topics: 1) flood preparedness, 2) announcement/notification of flood threat to all occupants, 3) evacuation routes (with maps) and 4) biennial tabletop exercises to simulate flood threat. The Applicant OCFCD will provide all tabletop exercise invitations to USACE. Applicant OCFCD will fund USACE participation in the reference tabletop exercises.

Nothing in this Permission shall be construed as abrogating or otherwise diminishing the responsibility of the Requester and the Third-Party Permittee to hold and save the USACE, its officers and agents, free and harmless from all liability and damages of any nature arising from construction, operation, maintenance, repair, rehabilitation, or

replacement of the USACE Project and any alterations, including any alteration approved herein, except to the extent caused by the fault or negligence of USACE-SPL.

By signing this Permission, the signatory to this Permission hereby represents and warrants that they are duly authorized to execute and bind Orange County Flood Control District to the terms and conditions contained within this Permission. This Permission shall become effective upon signature below by USACE-SPL official.

Thomas A. Miller
Chief Real Estate Officer
Orange County Flood Control District

Date

Julie A. Balten
JULIE A. BALTEN
COL, EN
Commanding
Los Angeles District
U.S. Army Corps of Engineers

Date