

Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
☎ 503-986-5200

Permit No.:	<u>50271-RF</u>
Permit Type:	<u>Removal/Fill</u>
Waterway:	<u>Wetland</u>
County:	<u>Washington</u>
Expiration Date:	<u>July 2, 2013</u>

LANGER GRAMOR LLC

IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE ATTACHED COPY OF THE APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:

1. This permit does not authorize trespass on the lands of others. The permit holder shall obtain all necessary access permits or rights-of-way before entering lands owned by another. For new linear facility projects, the removal-fill activity cannot occur until the permit holder obtains either the landowner's consent, a right, title or interest with respect to the property that is sufficient to undertake the removal or fill activity, or a court order or judgment authorizing the use of the property.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands and all duly authorized representatives of the Director shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, the Department of State Lands makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee shall defend and hold harmless the State of Oregon, and its officers, agents, and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

NOTICE: If removal is from state-owned submerged and submersible land, the applicant must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940. This permit does not relieve the permittee of an obligation to secure appropriate leases from the Department of State Lands, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact the Department of State Lands, 503-986-5200.

Lori Warner-Dickason, Northern Region Manager
Wetlands & Waterways Conservation Div.
Oregon Department of State Lands



Authorized Signature

July 2, 2012

Date Issued

ATTACHMENT A

Permit Holder: Langer Gramor LLC

Project Name: Langer Farms Road Construction

Special Conditions for Removal/Fill Permit No. 50271-RF

READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. DSL has the right to stop or modify the project at any time if you are not in compliance with these conditions. A copy of this permit shall be available at the work site whenever authorized operations are being conducted.

1. **Responsible Party:** By signature on the application, Barry Cain is acting as the representative of Langer Gramor LLC. By proceeding under this permit, Langer Gramor LLC agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL.
2. **Authorization to Conduct Removal and/or Fill:** This permit authorizes the placement of up to 107 cubic yards (0.05 acres) in a wetland and the placement of 105 cubic yards (0.04 acres) of material in a ditched intermittent stream (tributary to Rock Creek), and the removal of 5 cy (0.05 ac) of material in a wetland for road construction purposes. The project is located at the SE corner of the Tualatin Sherwood Road in Sherwood, Washington County, T2S, R1W, Section 29, Tax Lot 300. The project is described in the attached permit application, map and drawings, received April 16, 2012. In the event information in the application conflicts with these permit conditions, the permit conditions prevail.
3. **Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation and/or operating conditions to comply with conditions imposed by other permits must be approved by DSL prior to implementation.
4. **DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.
5. **DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

Pre-Construction

6. **Local Government Approval Required Before Beginning Work:** Issuance of this permit is contingent upon acquisition of a Development Permit from the City of Sherwood.
7. **Stormwater Management Approval Required Before Beginning Work:** Issuance of the permit is contingent upon acquisition of a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality.

8. **Pre-construction Resource Area Flagging:** Before any site grading, the surveyed boundaries of the avoided wetlands shall be surrounded by bright orange construction fencing, which shall be maintained during construction of the project. There shall be no heavy equipment within fenced areas, except during mitigation construction.

General Construction Conditions

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
10. **In-Water Work:** Any work conducted in the ditched tributary shall be accomplished while the tributary is dry, i.e., no flowing water.
11. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) shall be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
- a. All exposed soils shall be stabilized during and after construction in order to prevent erosion and sedimentation.
 - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used to prevent movement of soil into waterways and wetlands.
 - c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities shall be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the permitted work, they shall be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
 - e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch shall be used so the seed does not wash away before germination and rooting.
 - f. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways and wetlands.
 - g. Erosion control measures shall be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.
 - h. All erosion control structures shall be removed when the project is complete and soils are stabilized and vegetated.

12. **Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials shall not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges shall have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state shall be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
13. **Federally Listed Endangered or Threatened Species:** When listed species are present, the authorization holder must comply with the Federal Endangered Species Act. If previously unknown listed species are encountered during construction, all construction activity shall immediately cease and the permit holder must contact DSL.
14. **Archaeological Resources:** If any archaeological resources and/or artifacts are encountered during construction, all construction activity shall immediately cease. The State Historic Preservation Office shall be contacted (phone: 503-986-0674).
15. **Mitigation Bank Credit Purchase:** Mitigation for the unavoidable loss of 0.09 acres of wetland has been accomplished via purchase of 0.09 credits from the Tualatin Valley Wetland Mitigation Bank, per the proof of purchase.

Issued: July 2, 2012



US Army Corps
Of Engineers (Portland District)

Joint Permit Application Form

DEPARTMENT OF STATE LANDS
DATE STAMP

RECEIVED

APR 16 2012



AGENCIES WILL ASSIGN NUMBERS

Corps Action ID Number

Oregon Department of State Lands No

50271

SEND ONE SIGNED COPY OF YOUR APPLICATION TO EACH AGENCY

US Army Corps of Engineers:

District Engineer
ATTN: CENWP-OD-GPPO
Box 2946
Portland, OR 97208-2946
503-808-4373

AND

DSL - West of the Cascades:

State of Oregon
Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
503-986-5200

OR

DSL - East of the Cascades:

State of Oregon
Department of State Lands
1645 NE Forbes Road, Suite
112
Bend, Oregon 97701
541-388-6112

Send DSL Application Fees to:

State of Oregon
Department of State Lands
PO Box 4395, Unit 18
Portland, OR 97208-4395

(Attach a copy of the first page of the application)

(1) APPLICANT INFORMATION

Applicant Name and Address	Attn: Barry Cain Langer Gramor LLC 19767 SW 72 nd Avenue, Suite 100 Tualatin, OR 97062	Business Phone # Home Phone # Fax # Email	503.783.1306 barry@gramor.com
Authorized Agent Name and Address	Martin Schott Schott and Associates PO Box 589 Aurora, OR 97002	Business Phone # Home Phone # Fax # Email	503.678.6007 503.678.6011 martin@schottandassociates.com
Check one			
Consultant	<input checked="" type="checkbox"/>		
Contractor	<input type="checkbox"/>		
Property Owner Name and Address <i>If different from above¹</i>	Matt Langer Langer Gramor LLC 19767 SW 72 nd Avenue, Suite 100 Tualatin, OR 97062	Business Phone # Home Phone # Fax # Email	503.956.9220 matt.langer04@gmail.com

(2) PROJECT LOCATION

Street, Road or Other Descriptive Location		Legal Description (attach <i>tax lot map</i> [*])			
SE corner of Tualatin Sherwood Road and SW Langer Farms Parkway		Township	Range	Section	Quarter/Quarter
		2S	1W	29	SE
In or near (City or Town)	County	Tax Map #	Tax Lot # ²		
Sherwood	Washington	2S1W29	300		
Wetland/Waterway (pick one)	River Mile (if known)	Latitude (in DD.DDDD format)	Longitude (in DD.DDDD format)		
Wetland	unknown	45.362	-122.8339		
Directions to the site	South on SW Langer Farms Parkway from Tualatin Sherwood Road				

¹ If applicant is not the property owner, permission to conduct the work must be attached.

² Attach a copy of all tax maps with the project area highlighted.

• *Italicized areas are not required by the Corps for a complete application, but may be necessary prior to final permit decision by the Corps.*

The Langers own Centennial Self Storage located off Tualatin Sherwood Road. Currently the demand exceeds their capacity for both RV and boat storage indicating a need for an additional facility of this type.

There is an existing water quality facility onsite, which was created to serve the housing development located on the other side of SW Adams Avenue, with the plan for development of the proposed regional facility to replace it. The existing water quality facility was intended to be a temporary facility until the regional facility was built. Regional water quality facilities are more efficient and take up less space than local facilities which allows for maximum development potential of an area. The proposed facility will meet the needs of all onsite development as well existing upstream development. It was sized to include the pallet plant if it ever gets redeveloped. The pipeline leading to the Water Quality facility will cross over an existing culvert located on the northeast property line. This area will have to be raised to provide adequate cover of the line. Because of the need for the cover there will be a small wetland impact.

Project Description:

Please describe in detail the proposed removal and fill activities, including the following information:

- Volumes and acreages of all fill and removal activities in waterway or wetland separately
- Permanent and temporary impacts
- Types of materials (e.g., gravel, silt, clay, etc.)
- How the project will be accomplished (i.e., describe construction methods, equipment, site access)
- *Describe any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes.*
- Is any of the work already complete? Yes No If yes, please describe the completed work.

Project Drawings

State the number of project drawing sheets included with this application: 16

A complete application must include a location map, site plan, cross-section drawings and recent aerial photo as follows and as applicable to the project:

- **Location map** (must be legible with street names)
 - Site plan including;
 - Entire project site and activity areas
 - Existing and proposed contours
 - Location of ordinary high water, wetland boundaries or other jurisdictional boundaries
 - Identification of temporary and permanent impact areas within waterways or wetlands
 - Map scale or dimensions and north arrow
 - Location of staging areas
 - Location of construction access
 - Location of cross section(s), as applicable
 - Location of mitigation area, if applicable
- **Cross section drawing(s)** including;
 - Existing and proposed elevations
 - Identification of temporary and permanent impact areas within waterways or wetlands
 - Ordinary high water and/or wetland boundary or other jurisdictional boundaries
 - Map scale or dimensions
- **Recent Aerial photo** (1:200, or if not available for your site, the highest resolution available)

Will any construction debris, runoff, etc., enter a wetland or waterway? Yes No

If yes, describe the type of discharge and show the discharge location on the site plan.

Project Criteria

Project criteria are (1) appropriate zoning (commercial) (2) RV parks are located on commercial lands with restrictions limiting other types of development (site is restricted by access, limited visibility, making it undesirable for most commercial development) (3) develop a permanent regional stormwater quality facility in a portion of the site with the least amount of impact for the development potential, and located in a low enough topographic position to receive stormwater via gravity (4) Maximize efficiency for large vehicle traffic (circulation) (5) Maximize developable area (RV spaces) (6) meet required 100 foot separation between proposed and existing access (7) maintain maximum developable area on the remainder of the site (8) minimize environmental constraints such as wetlands,

Alternative Sites

Site development is proposed as a joint partnership with the property owner of the Langer Family LLC property. The family has owned the property since 1876, well before any wetland regulations had been adopted (See attached Chain of Title report and Chain of Title Documents). No alternative sites were considered or should be required, because of the long term ownership of the property by the Langer family. The proposed project consists of development of the defined project area only.

Alternative Designs

Access to the RV site and water quality facility is restricted to the west side because of the railroad track. The railroad defines the southeastern property boundary and will not allow access for private development. Four alternatives were considered which provide access from the west. The location of the southern access is determined by the required separation between access points. Through discussion with Tualatin Valley Fire and Rescue (TVFR) the road width was minimized as much as possible while meeting all reviewing agency standards. TVFR has agreed to a road width of 26 feet with one turn out point 30 feet in width for a distance of 30 to be installed approximately half way along the access road.

Alternative 1

In Alternative 1 the road extends straight from the access point and crosses the wetland and Vegetated Corridor at the southwesterly corner of site. It crosses at a perpendicular angle to minimize impact to the resources then continues to Langer Farms Parkway parallel to the southerly property boundary. The location of the access to Langer Farms Parkway is determined by a required 100 foot separation between the proposed access and the existing access to the south. Crossing at this location is within the natural portion of the drainage.

Connection to the southwesterly corner of the RV site is ideal as it creates a reasonable circulation pattern for the anticipated RVs, boats, trailers, and other large vehicle traffic for development of the site.

Crossing the wetland/waterway at a near perpendicular angle helps minimize impacts to the resources. However, the proposed crossing location is within the naturalized portion of the drainage with adjacent wetlands and is a higher quality resource than the ditched portion. Crossing at this location divides the onsite wetland and associated Vegetated Corridor in two and creates a short, isolated segment south of the access lane. Segmenting the resource in this manner would reduce the function of both resources and the isolated section south of the access road would provide minimal functions.

Additionally, locating the access lane away from the southerly property line creates a narrow (70 foot wide) strip of land south of the access lane that is essentially undevelopable for commercial use. In addition, this alternative would significantly impact the potential development of the remaining portion of the site by reducing the developable area to the north.

Alternative 2

In Alternative 2, the road crosses the wetland and Vegetated Corridor at a near perpendicular angle at a convenient intersection of drive aisles within the future development of the RV site. The location of the drive aisles and intersection was chosen to maximize efficient area use within the site. The access lane continues to Langer Farms Parkway by the most direct route.

Crossing the wetland/waterway at a near perpendicular angle helps minimize impacts. However, the proposed crossing location is within the naturalized portion of the wetland and waterway, where the Vegetated Corridor provides a buffer to a higher quality resource. Crossing at this location divides the onsite wetland and associated Vegetated Corridor in two and creates a short, isolated segment south of the access lane. Although the isolated segment is larger than in Alternative 1, segmenting the resource in this manner would still reduce the function of both resources and the isolated section south of the access road would provide minimal functions.

Locating the access lane through the middle of the southern portion of the site significantly impacts the future development of this parcel. It creates a substantial area of land south of the access lane which will not be allowed to take access from Langer Farms Parkway (due to the required 100 foot separation between accesses) and will have to take access from or across the proposed access lane. The large vehicle traffic of the RV site would be forced to merge with the future retail/commercial traffic the rest of the site, which is undesirable and would likely cause congestion.

Finally, not connecting to the RV site at the southwesterly corner will result in a far less efficient circulation pattern due to the large turning radii required for RVs, boats, and the other large vehicle traffic anticipated onsite. The circulation pattern largely controls the layout of the parcel and would therefore reduce the area available for RV pads and result in a less efficient use of the site.

The proposed project proposes to fill the upstream portion of the onsite wetland/waterway which has been modified from historical conditions and is currently maintained as a ditch. The location of the access to Langer Farms Parkway is determined by a required 100 foot separation between the proposed access and the existing access to the south. Although the proposed design has a larger impact area than the other alternatives, impact to functionality is minimized by limiting the majority of impacts to the ditched upstream end which currently is managed as a ditch, contains no native vegetation and provides fewer functions than other portions of the onsite drainage. Impacting this area also avoids fragmentation of the onsite resource. Additionally, the ditch is in a portion of the site with gentler topography, resulting in proportionally far less cut and fill for the area disturbed.

Best management practices including placement of silt fencing and inlet protection will be followed during construction to avoid erosion and sedimentation (See Erosion Control Plan). The drainage is intermittent and no flow is expected to be present during in water work. No native migratory fish are present and no fish passage requirements will be necessary.

One on-site drainage with associated wetlands was located onsite. The drainage is an unnamed tributary of Rock Creek. The combined area of onsite drainage and wetland is 37,898sf or 0.87 acres of palustrine emergent, scrub-shrub and palustrine forested wetland.

The drainage enters the site from a culvert under the Billet plant. It starts off as a ditch which follows the property line along the southwest corner of the property. Historically, the drainage was one contiguous channel that originated off-site to the southwest. At the time of the site visit, a remnant portion of the drainage remained off-site with a portion culverted under the pallet plant. The 8" culvert outfall ran into a ditched channel that flowed east onsite along the southern property boundary. The ditch was defined by the top of bank for approximately the first 200 feet. The channel was U-shaped with a predominately mud substrate. The depth of the channel from the top of bank to the bed substrate was approximately 2.5 feet deep. This portion of the drainage is ephemeral, and the drainage basin is approximately 20 acres

As the ditch curved to the northeast the channel broadened and the depth decreased almost matching the surrounding grade. Small fringe wetlands classified as palustrine emergent were identified on the west side of the channel. A palustrine scrub-shrub wetland community was identified adjacent to and within a portion of the drainage. Wetland plants included Nootka rose (*Rosa nutkana*) and slough sedge (*Carex obnupta*). Willows (*Salix sp.*) lined the drainage as it extended to the north. Hawthorn (*Crataegus douglasii*) was scattered throughout the willow community. A large water quality facility was located west of this portion of the drainage. The water quality facility drained into the creek through a 36-inch culvert where the drainage turned to the east. Large black cottonwood (*Populus trichocarpa*) was the dominant tree cover in this portion of the drainage. The drainage broadened further in this corner and developed into small braided channels with mud and small cobble substrate. It transitioned into a single channel and flowed through a dense scrub-shrub community comprised of large, impenetrable thicket of Nootka rose. Scattered hawthorn was observed as well. After several hundred feet, the rose community transitioned to an established willow community.

As the drainage flowed east, it dropped through a ravine with a forested community on the adjacent slopes and an emergent community on the wetland terrace. The drainage channel was braided and flowed through a broad terrace that extended between the adjacent slopes. Vegetation along the creek terrace included skunk cabbage (*Lysichiton americanum*), lady fern (*Athyrium filix-femina*), and slough sedge as the dominant vegetation.

The channels joined together to form a single channel for a few feet before exiting east off site through a 24 inch culvert. The channel had a depth of approximately 1.5 to two feet deep and a mud substrate. Vegetation along this portion of the drainage consisted of reed canary grass (*Phalaris arundinacea*).

Vegetation along the north side of the drainage as well as near the eastern edge of the property was dominated by dense thickets of Himalayan blackberry (*Rubus discolor*). Where the drainage flowed east, it dropped through a ravine with a forested community on the adjacent slopes. The forested community was comprised of a mix of English walnut (*Juglans regia*), choke cherry (*Prunus virginiana*), hazelnut (*Corylus cornuta*) and vine maple (*Acer circinatum*) along the slopes. Himalayan blackberry was also prominent in this portion of the site.

The ditched portion of the drainage is believed to be ephemeral/intermittent. It is a man-made ditch, which was created when the Billet Pallet plant was constructed. Billet installed a culvert that redirected the water further to the west. Since that time there have been numerous development activities within the drainage basin which diverted water away from, or further down-slope from the basin. The Channel along this ditch is U shaped, and is devoid of vegetation. Down-slope of this ditched portion the channel is narrow, about a foot deep, and has nearly vertical sides until it reaches the outfall of the temporary water quality facility, where the channel bottom widens out and the banks become gradual.

A functional assessment using the Hydrogeomorphic (HGM) method was conducted. Wetland impacts are less than 2/10ths of an acre so the judgmental method was used.

The wetland is a mix of emergent, shrub and forested wetland communities with an ephemeral to intermittent drainage. The drainage is located in a very small basin. Water quality and storage functions were low. Vegetation is a mix of native and non-native species and includes a variety of forms. Support of characteristic vegetation and habitat functions were low to moderate. The majority of the impacted portion of the resource was a ditched ephemeral waterway with no wetland vegetation.

Because the drainage is at best intermittent there is no fish use and limited wildlife use of this resource.

There are no vernal pools, bogs, fens, mature forested wetland, seasonal mudflats, or native wet prairies in or near the project area

Describe the existing navigation, fishing and recreational use of the waterway or wetland.*

The wetland/waterway is located on private property. There is no navigation, fishing or recreational use.

(6) ADDITIONAL INFORMATION

Adjacent to R-F Site and Physical Mitigation Site Property Owners and Their Address (*if more than 5, attach printed labels**)

Bilet Products Co
PO Box 1227
Sherwood, OR 97140

Orwa Sherwood LLC
8320 NE Highway 99
Vancouver, WA 98665

Firf LLC
1601 NW Expressway #59
Oklahoma City OK 73118

St Francis Parish
400 Oregon Street
Sherwood, OR 97140

Portland & Western Railroad, Inc.
Willamette & Pacific Railroad, Inc.
200 Hawthorne Ave. SE
Suite C-320
Salem, OR 97301

Has the proposed activity or any related activity received the attention of the Corps of Engineers or the Department of State Lands in the past, e.g., wetland delineation, violation, permit, lease request, etc.?

Yes No

If yes, what identification number(s) were assigned by the respective agencies:

Corps #		State of Oregon #	WD#07-0466
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Has a wetland delineation been completed for this site?

Yes No

*If yes by whom?**

Schott and Associates

Has the wetland delineation been approved by DSL or the COE?

Yes No

*If yes, attach a concurrence letter. **

Attached.

* *Italicized areas are not required by the Corps for a complete application, but may be necessary prior to final permit decision by the Corps.*

(9) SIGNATURES FOR JOINT APPLICATION

Application is hereby made for the activities described herein. I certify that I am familiar with the information contained in the application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. By signing this application I consent to allow Corps or Dept. of State Lands staff to enter into the above-described property to inspect the project location and to determine compliance with an authorization, if granted. I hereby authorize the person identified in the authorized agent block below to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. *I understand that payment of the required state processing fee does not guarantee permit issuance. The fee for the state application must accompany the application for completeness.*

Amount enclosed \$ 670.00

Print /Type Name	Title	Print /Type Name	Title
BARRY A. CAIN	PRESIDENT	Martin R. Schett	Cons. Agent
Applicant Signature	Date	Authorized Agent Signature	Date
	3/29/12		3/29/12

Landowner signatures: For projects and /or mitigation work proposed on land not owned by the applicant, including state-owned submerged and submersible lands, please provide signatures below. A signature by the Department of State Lands for activities proposed on state-owned submerged/submersible lands only grants the applicant consent to apply for authorization to conduct removal/fill activities on such lands. This signature for activities on state-owned submerged and submersible lands grants no other authority, express or implied.

Print /Type Name	Title	Print /Type Name	Title
Property Owner Signature	Date	Mitigation Property Owner Signature	Date

Italicized areas are not required by the Corps for a complete application, but may be necessary prior to final permit decision by the Corps.

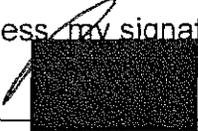
INCUMBENCY CERTIFICATE FOR CORPORATIONS AND PARTNERSHIPS

Langer Gramor LLC, by Gramor Sherwood Langer LLC (manager), by Gramor Investments, Inc. (manager) (business entity name as recorded with the Secretary of State, Oregon)

I, Barry A. Cain, President, do hereby certify that:

1. I am the duly elected and acting Manager of Langer Gramor LLC (business entity name as recorded with the Secretary of State, Oregon), an Oregon limited liability company, organized and existing in good standing under the laws of the State of Oregon (the "Company").
2. I certify that I have the authority to submit, on behalf of the Company, this application for a permit to conduct removal fill within waters of the state (as evidenced by my signature on the application) and to commit the Company to comply with all resulting permit conditions, including any mitigation obligations, resulting from the issuance of the permit.

Witness my signature and the seal of the Company this 29 day of March, 2012



Signature

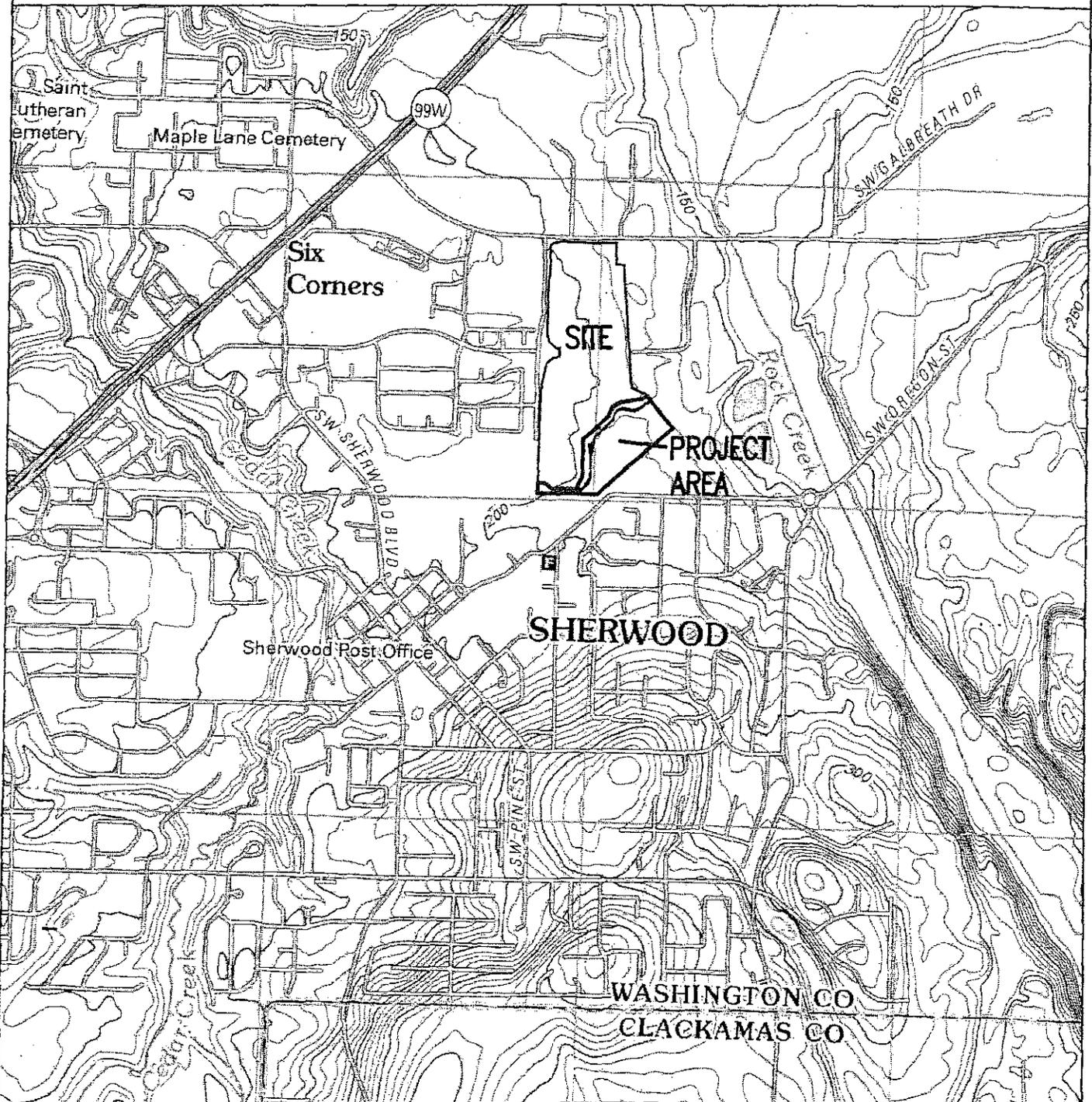
Name: BARRY A. CAIN

Title: PRESIDENT

Company Seal: (NO SEAL)

VICINITY MAP

USGS SHERWOOD QUAD, OREGON, 2011



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: QMP

CHECKED BY: AHH

DWG NO.: 2929DSL 1/12

ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE
FORESTRY • SURVEYING

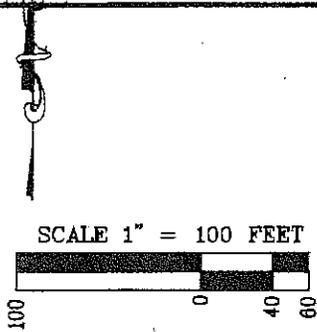
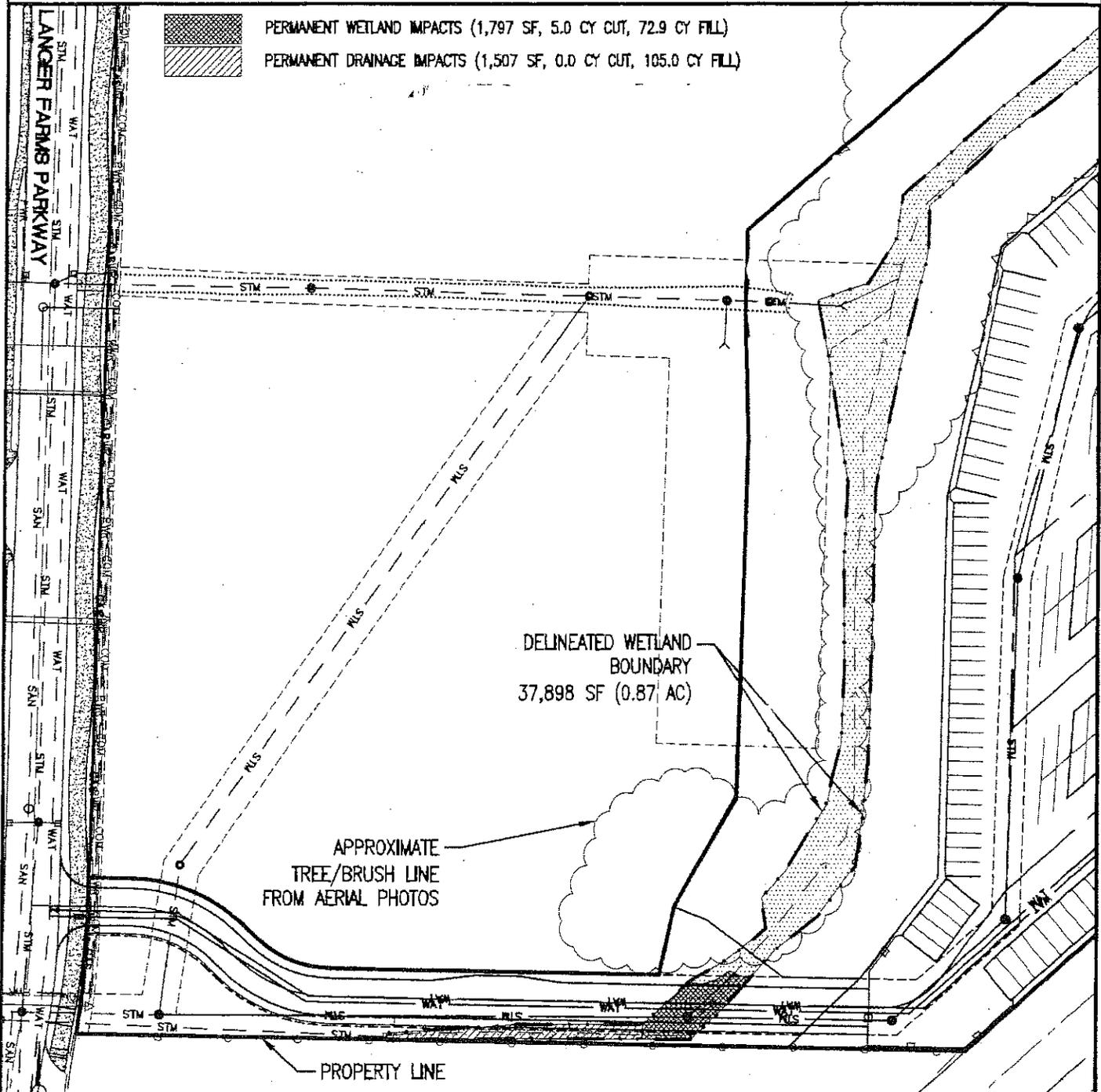


LICENSED IN OR & WA

13910 SW GALBREATH
DRIVE, SUITE 100
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PHONE: (503) 925-8799
FAX: (503) 925-8969

OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

SITE 'A' DEVELOPMENT PLAN



JOB NAME: LANGER FARMS
JOB NUMBER: 2929
DRAWN BY: QMP
CHECKED BY: AHH
DWG NO.: 2929DSL 5/12

ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE
 FORESTRY • SURVEYING

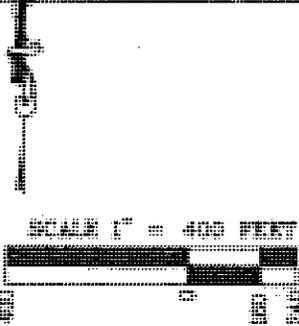
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13910 SW GALBREATH DRIVE, SUITE 100
 SHERWOOD, OR 97140
 PHONE: (503) 925-8799
 FAX: (503) 925-8969

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AERIAL PHOTOGRAPH



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: CMP

CHECKED BY: ANH

DWG NO.: 2929DCL 9/12

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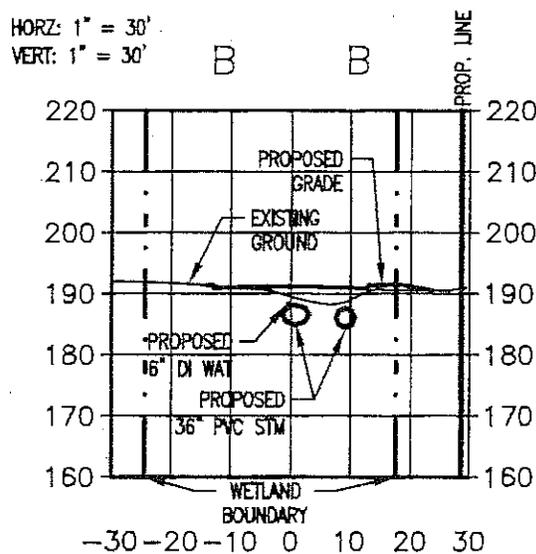
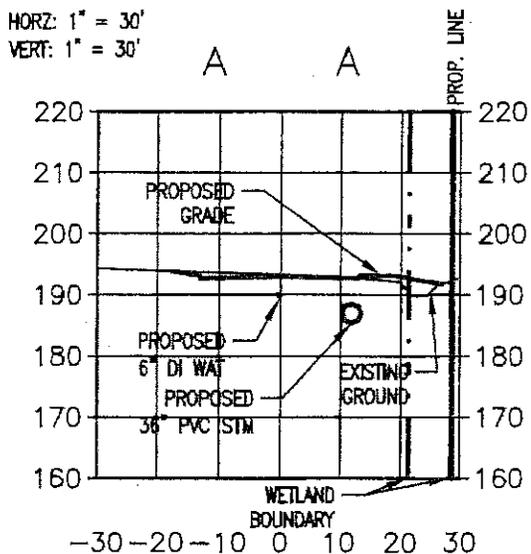
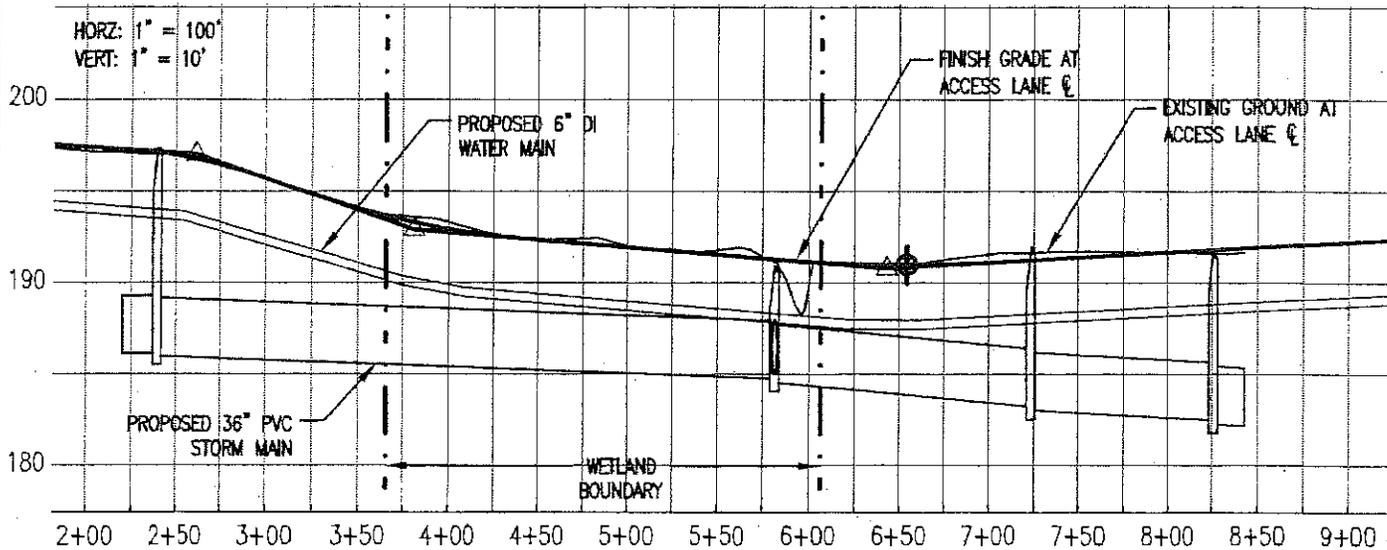


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SHERWOOD, OR 97140
PHONE: (503) 825-8799
FAX: (503) 825-8869

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SITE 'A' PROFILE AND CROSS SECTIONS



JOB NAME: LANGER FARMS
JOB NUMBER: 2929
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DWG NO.: 2929DSL 11/12

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 13910 SW GALBREATH
 DRIVE, SUITE 100
 SHERWOOD, OR 97140
 PHONE: (503) 925-8799
 FAX: (503) 925-8969

OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

GRADING EROSION AND SEDIMENT CONTROL PLAN

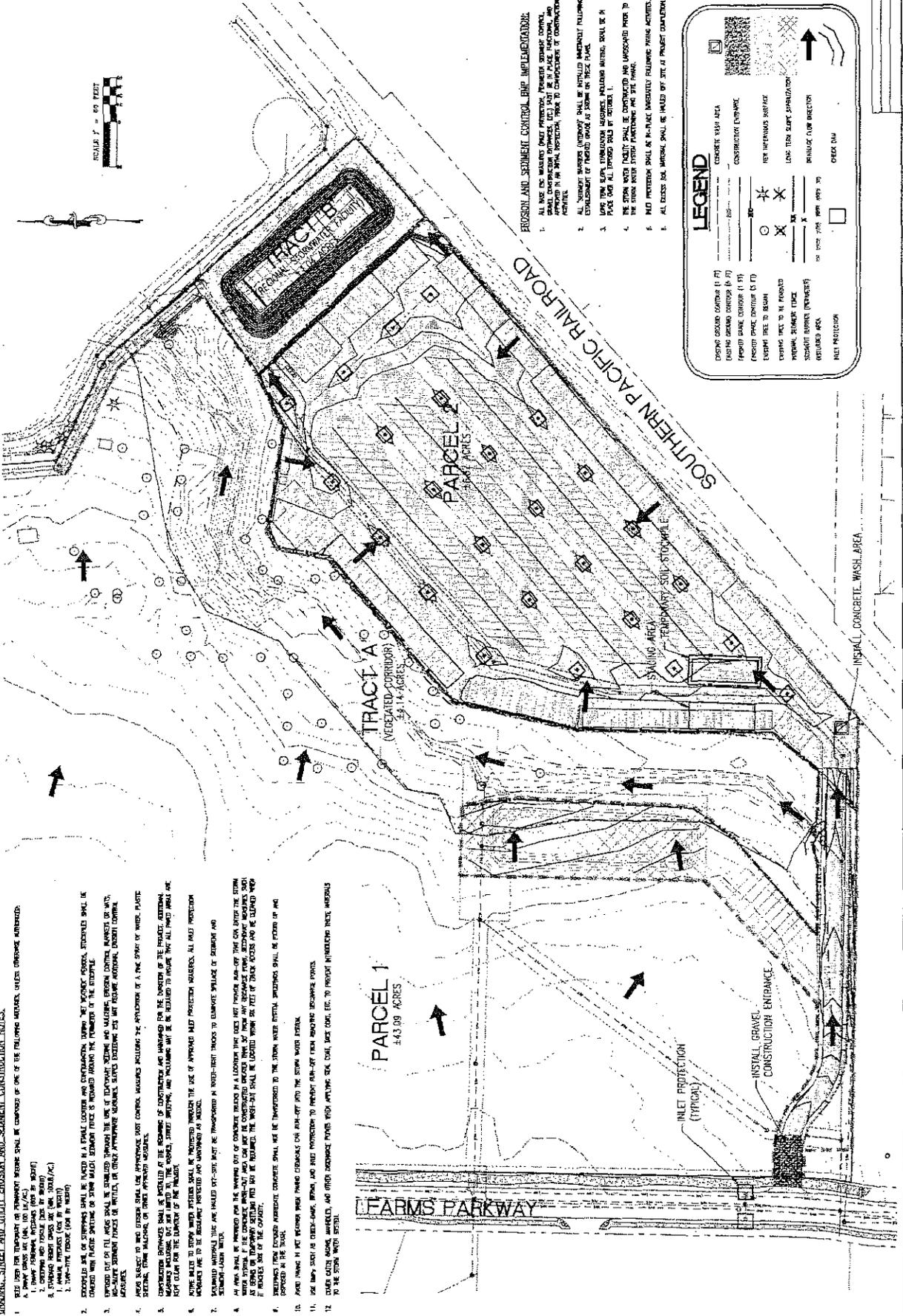
SENTINEL SELF STORAGE ANNEX
 BERTWOOD OREGON



AKS ENGINEERING & PLANNING
 1000 N. W. 10th St., Suite 100
 Portland, OR 97227
 Phone: (503) 251-1000
 Fax: (503) 251-1001
 Website: www.aks-engineering.com



DATE: 05/17/17
 SHEET: 0052



- GENERAL, STREET AND UTILITY, EROSION AND SEDIMENT CONSTRUCTION NOTES:**
1. THIS PLAN FOR THE PROPOSED ANNEX TO THE EXISTING SENTINEL SELF STORAGE ANNEX SHALL BE CONSIDERED AS ONE OF THE FOLLOWING MEASURES:
 - a. EROSION CONTROL MEASURES (SEE PLAN)
 - b. SEDIMENT CONTROL MEASURES (SEE PLAN)
 - c. STORM WATER CONTROL MEASURES (SEE PLAN)
 - d. SLOPE PROTECTION MEASURES (SEE PLAN)
 - e. TEMPORARY EROSION CONTROL MEASURES (SEE PLAN)
 2. EROSION CONTROL MEASURES SHALL BE INSTALLED AS A SMALL COASTLINE AND CONSTRUCTION DURING THE WORKING PERIOD. STRUCTURES SHALL BE CONSTRUCTED WITH PLASTIC SHEETING OR STORM MATS. EROSION CONTROL MEASURES SHALL BE INSTALLED AT THE BEGINNING OF THE CONSTRUCTION PERIOD AND MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
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 12. EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.

- EROSION AND SEDIMENT CONTROL BMP IMPLEMENTATION:**
1. ALL BMP'S SHALL BE INSTALLED PRIOR TO THE START OF CONSTRUCTION. BMP'S SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD. BMP'S SHALL BE MAINTAINED THROUGHOUT THE CONSTRUCTION PERIOD.
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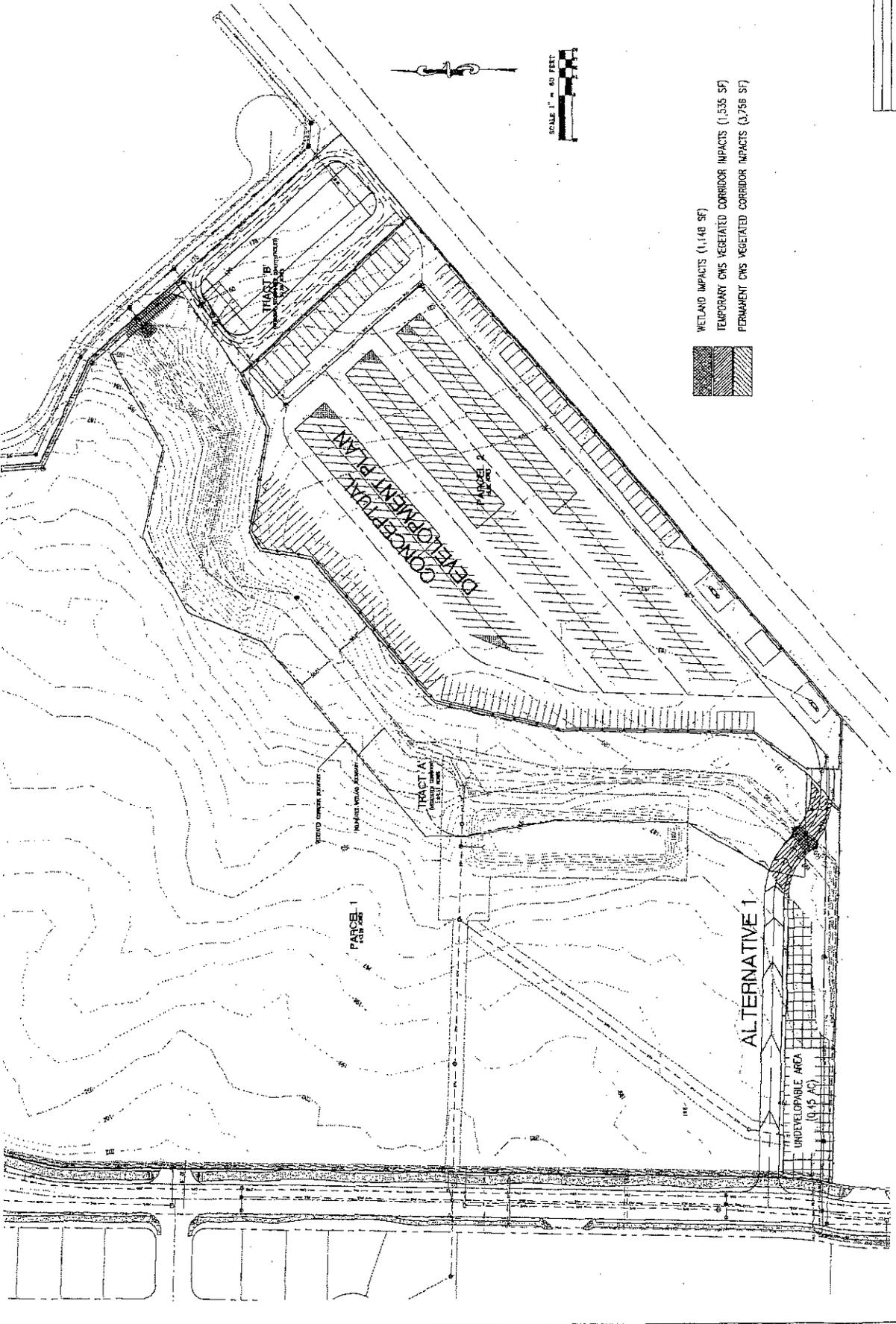
LEGEND

CONCRETE VEST AREA	CONSTRUCTION ENTRANCE
EROSION CONTROL MEASURES (E.C.M.)	PERMANENT SURFACE
EROSION CONTROL MEASURES (E.C.M.)	LONG TERM STORM WATER TREATMENT
EROSION CONTROL MEASURES (E.C.M.)	INLET PROTECTION
EROSION CONTROL MEASURES (E.C.M.)	OR STATE (SEE PLAN SHEET 0053)
EROSION CONTROL MEASURES (E.C.M.)	OR STATE (SEE PLAN SHEET 0053)



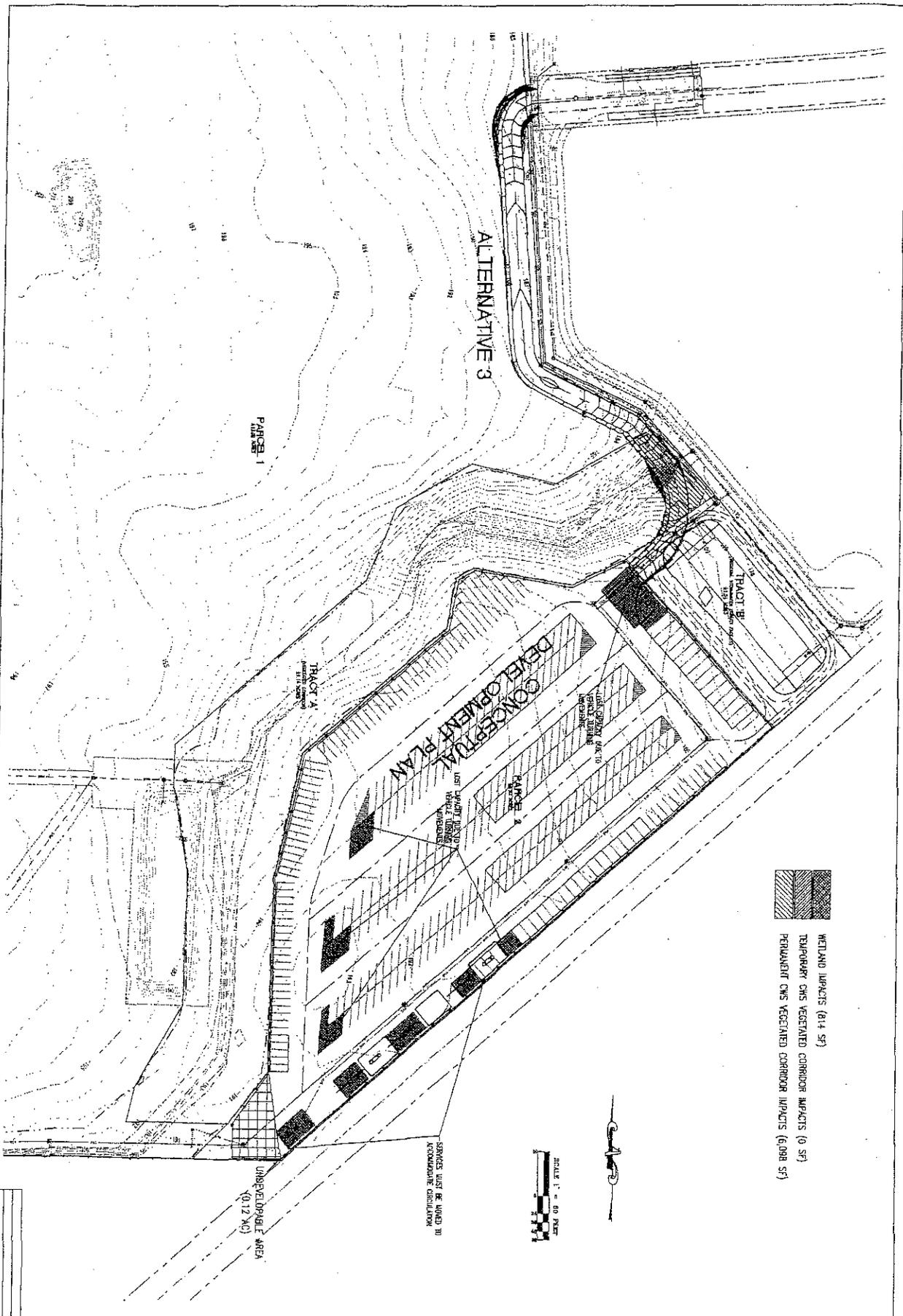
AKS ENGINEERING & ARCHITECTURE
1000 WEST 10TH AVENUE
DENVER, CO 80202
TEL: 303.733.1100
FAX: 303.733.1101
WWW.AKS-ENG.COM

JOB NUMBER
2929
SHEET
2 OF 4



WETLAND IMPACTS (1,148 SF)
TEMPORARY CMS VEGETATED CORRIDOR IMPACTS (1,538 SF)
PERMANENT CMS VEGETATED CORRIDOR IMPACTS (3,756 SF)





 WETLAND IMPACTS (614 SF)
 TEMPORARY CWS VEGETATED CORRIDOR IMPACTS (0 SF)
 PERMANENT CWS VEGETATED CORRIDOR IMPACTS (6,098 SF)

SCALE 1" = 60 FEET

SERVICES MUST BE MOVED TO APPROPRIATE DISBURSER

UNDEVELOPABLE AREA (0.12 AC)

JOB NUMBER
 29229
 SHEET
 4 OF 4

DATE 12/17/12
 PROJECT NO.
 SHEET NO.
 SCALE 1/8" = 10' 0"
 DRAWN BY
 CHECKED BY
 PROJECT MANAGER
 PROJECT ENGINEER
 PROJECT SUPERVISOR

ENGINEERING - PLANNING
 SURVEYING - FORESTRY
 LARRY W. CALMEAN, INC.
 1000 N. GARDNER DR.
 SUITE 200
 SHERWOOD, OR 97140
 PHONE: (503) 922-0700
 FAX: (503) 922-0700



LANGER FARMS PARTITION
 SHERWOOD OREGON

SITE ACCESS ALTERNATIVE 3



REPLY TO
ATTENTION OF:

Operations Division
Regulatory Branch
Corps No.: NWP-2012-165

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, PORTLAND DISTRICT
P.O. BOX 2946
PORTLAND, OREGON 97208-2946

August 7, 2012

AUG 09 2012

GRAMOR DEVELOPMENT INC.

Mr. Barry Cain
Langer Gramor, LLC
19767 SW 72nd Avenue, Suite 100
Tualatin, OR 97062

Dear Mr. Cain:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to construct an RV storage facility. The project is located on the SE Corner of Tualatin Sherwood Road and SW Langer Farms Parkway, in the city of Sherwood, Washington County, Oregon. (Section 29, Township, 2 South, Range 1 West).

Langer Gramor LLC will construct a recreational vehicle storage facility. As a result of development, a new access road, potable water system, and a stormwater water quality treatment facility will be constructed permanently impacting waters of the U.S., including wetlands.

Fill materials will include rock, soil, sand, and gravel. Equipment used for construction will include, but not limited to, track-hoes and haulers. Site access will be via the new road as it is constructed. Access to the east side of the project site will be via SW Century Drive. A stockpile/staging area will be located at the east end of the project area in uplands.

The new access road will impact a palustrine flow through waterway at the southwesterly corner of the property. Road construction will result in 1,797square feet (0.04 acres) of permanent impacts from the placement of 72.9 cubic yards of fill below the ordinary high watermark (OHWM).

Permanent waterway impacts will occur for the placement of new six inch diameter water line and 36 inch diameter sanitary sewer line for a regional water quality facility along the northeastern property boundary. This will result in the permanent placement of 34.1 cubic yards of fill within an area of 297square feet below the OHWM.

Permanent impacts to waters of the U.S. for the project will total 3,601square feet (0.09 acres) for the placement of up to 212 cubic yards of fill below the OHWM of an unnamed waterway. No temporary impacts are proposed. The project is shown on the enclosed drawings (Enclosure 1).

This letter verifies that your project is authorized under the terms and limitations of Nationwide Permit (NWP) No.: 39 (Commercial and Institutional Developments). Your activities must be conducted in accordance with the conditions found in the Portland District NWP Regional Conditions (Enclosure 2) and the NWP General Conditions (Enclosure 3). You must also comply with the Oregon Department of Environmental Quality (DEQ) Water Quality Certification Conditions (Enclosure 4) and the project specific conditions lettered (a) through (c) below. **Failure to comply with any of the listed conditions could result in the Corps initiating an enforcement action.**

- a. Permittee shall notify the Regulatory Branch with the date the activities authorized in waters of the United States are scheduled to begin. Notification shall be sent by e-mail to cenwp.notify@usace.army.mil or mailed to the following address:

U.S. Army Corps of Engineers
CENWP-OD-GC
Permit Compliance, Washington County
PO Box 2946
Portland, Oregon 97208-2946

The subject line of the message shall contain the name of the county in which the project is located followed by the Corps of Engineers permit number.

- b. Permittee shall immediately notify the Corps at the letterhead address if at any time during the authorized work, human remains and/or cultural resources are discovered within the permit area. We also draw your attention to Regional Condition 2:
- c. In the event cultural resources and/or historic properties are discovered during the any phase of the authorized work, the Permittee shall fully implement the recommendations outlined in the Inadvertent Discovery Plan (Enclosure 5).

We direct your attention to NWP General Condition 29 and Regional Condition 16 (Enclosure 3) that requires the transfer of this permit if the property is sold, and NWP General Condition 30 that requires you to submit a signed certificate when the work is completed. A "Compliance Certification" is provided (Enclosure 6).

We have prepared a Preliminary Jurisdictional Determination (JD), which is a written indication that wetlands and waterways within your project area may be waters of the United States (Enclosure 7). Such waters have been treated as jurisdictional waters of the United States for purposes of computation of impacts and compensatory mitigation requirements. If you concur with the findings of the Preliminary JD, please sign it and return it to the letterhead address within two weeks. If you believe the Preliminary JD is inaccurate, an Approved JD

maybe requested, which is an official determination regarding the presence or absence of waters of the United States. If you would like an Approved JD, one must be requested prior to starting work within waters of the United States. Once work within waters of the United States has been started, the opportunity to request an Approved JD will no longer be available.

This authorization does not obviate the need to obtain other permits where required. Permits, such as those required from the Oregon Department of State Lands (ODSL) under Oregon's Removal /Fill Law, must also be obtained before work begins. The DEQ water quality certification conditions (Enclosure 4) require you to obtain DEQ approval of your stormwater management plan prior to initiating construction. Please contact Mr. Pete Anderson, Oregon Department of Environmental Quality, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201-4987, by telephone at (503) 229-6030, or via e-mail at anderson.peter@deq.state.or.us.

This verification is valid for a period of two years from the date of this letter unless the NWP expires, is modified, or revoked prior to that date. The nationwide permits are scheduled to expire on March 18, 2017. If you commence or are under contract to commence this activity before the date the NWP expires, is modified, or revoked, you will have 12 months from the date of the expiration, modification, or revocation to complete the activity under the present terms and conditions of the current NWP.

We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form at the following address: <http://per2.nwp.usace.army.mil/survey.html>.

If you have any questions regarding this NWP verification, please contact Mr. Brian A. Villalon at the letterhead address, by telephone at (503) 808-4368, or e-mail: Brian.A.Villalon@usace.army.mil.

Sincerely,

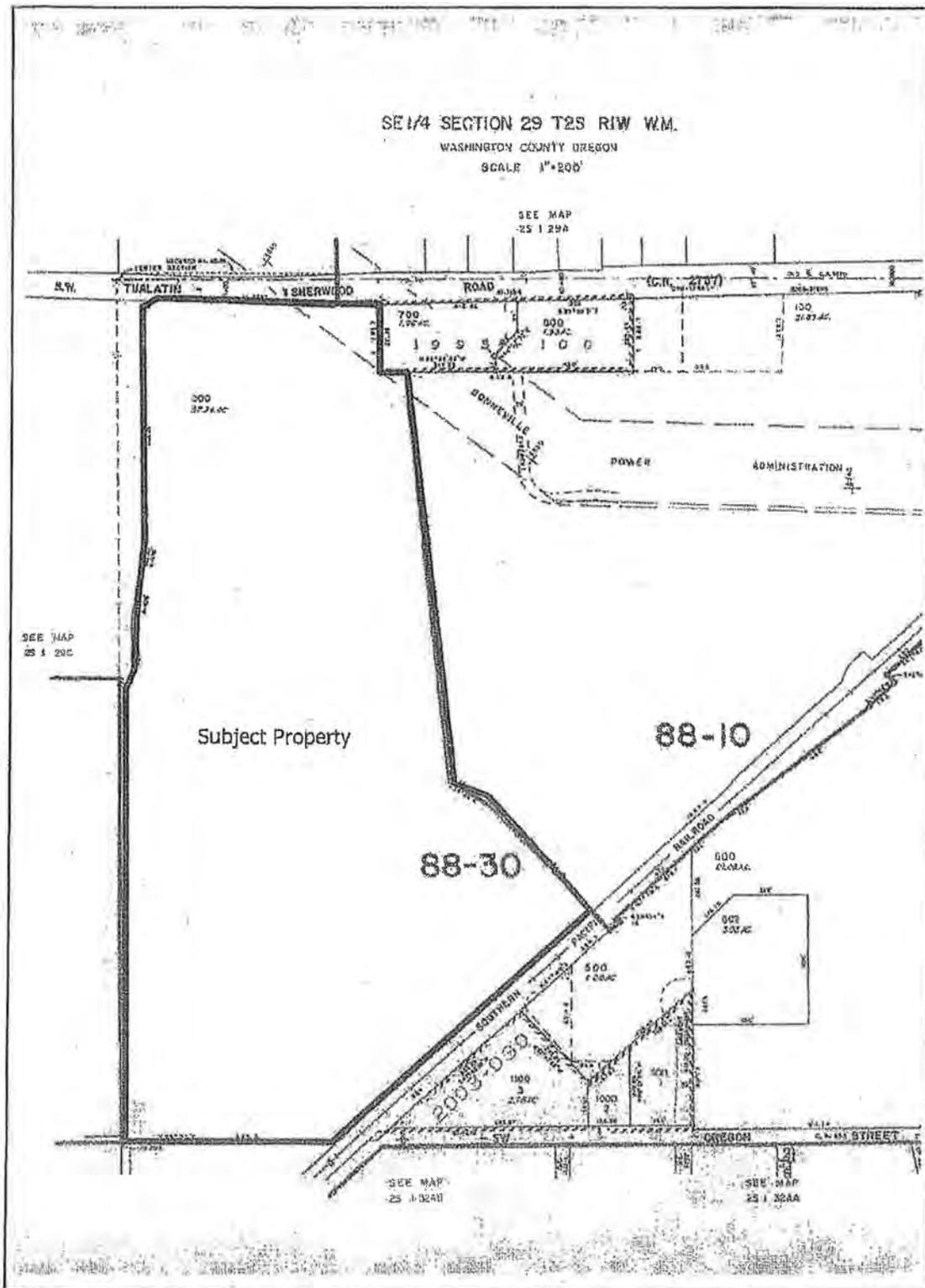


James Holm
Team Leader
Regulatory Branch

Enclosures

Copy Furnished:

Oregon Department of State Lands (McCabe)
Oregon Department of Environmental Quality (Anderson)
Schott and Associates, LLC (Schott)

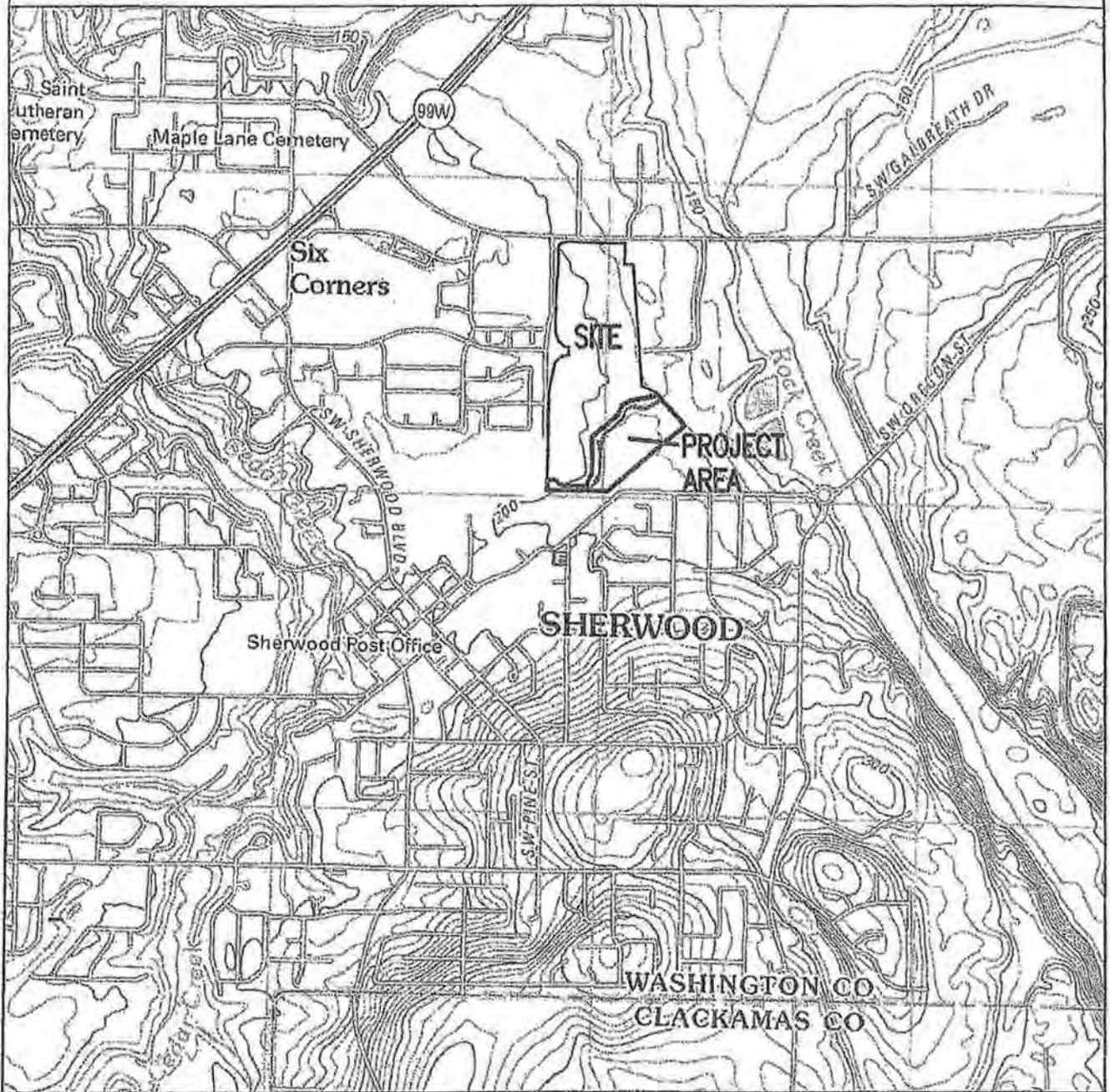


Tax Map T2S R1W 29
 Langer Farms
 S&A#2216

Schott & Associates
 P.O. Box 589
 Aurora, OR. 97002
 503.678.6007

VICINITY MAP

USGS SHERWOOD QUAD, OREGON, 2011



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: QMP

CHECKED BY: AHH

DWG NO.: 2929DSL 1/12

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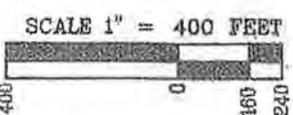
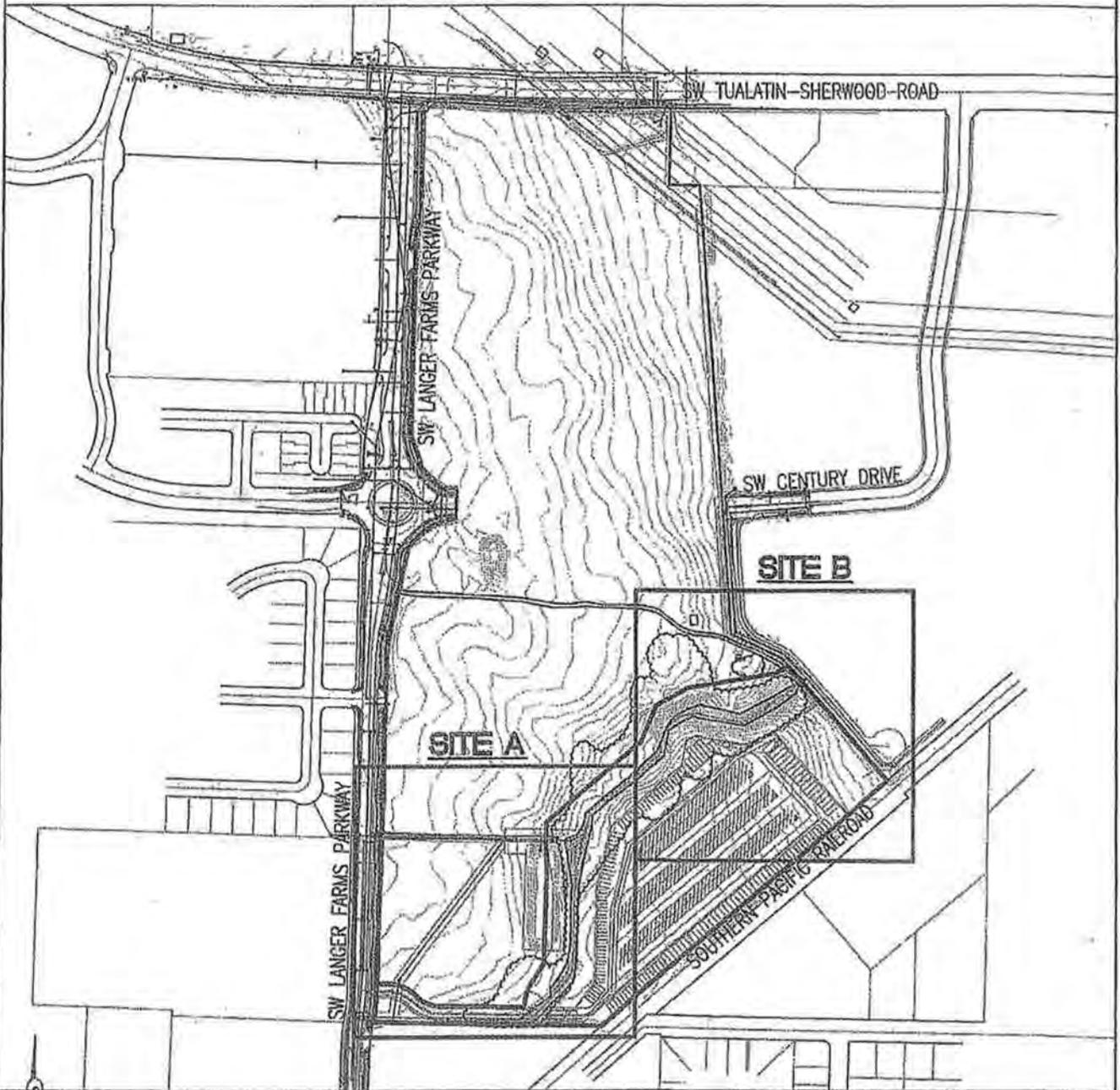
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SHERWOOD, OR 97140
PHONE: (503) 925-8799
FAX: (503) 925-8969

OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

Enclosure 1

SITE OVERVIEW AND INDEX MAP



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: QMP

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DWG NO.: 2929DSL 2/12

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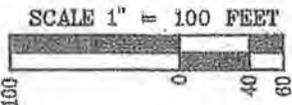
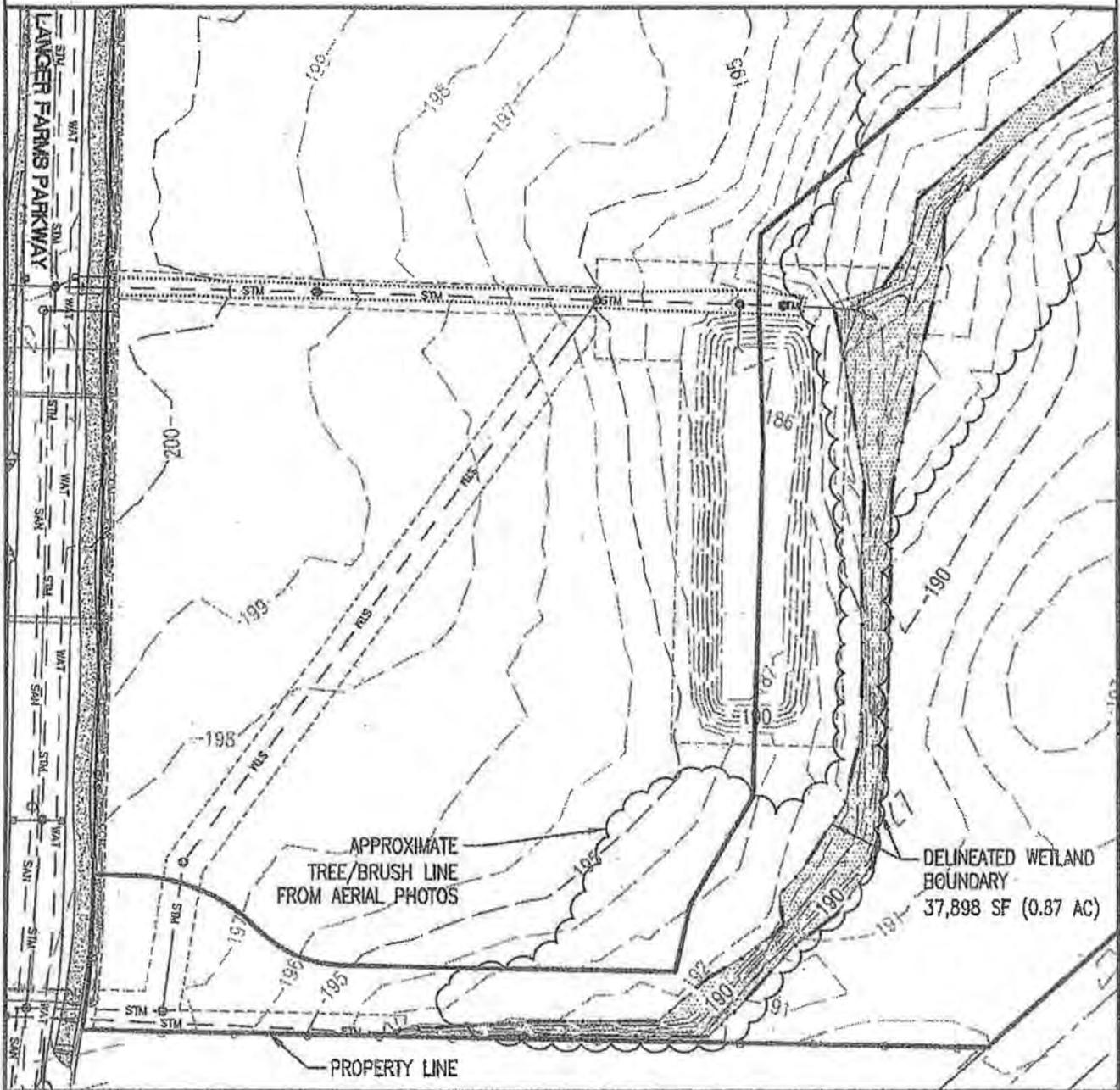


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SITE 'A' EXISTING CONDITIONS MAP



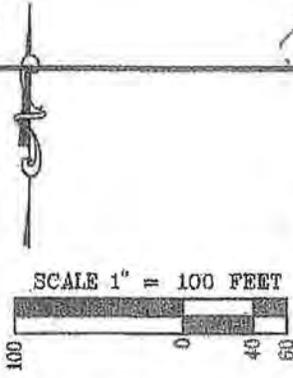
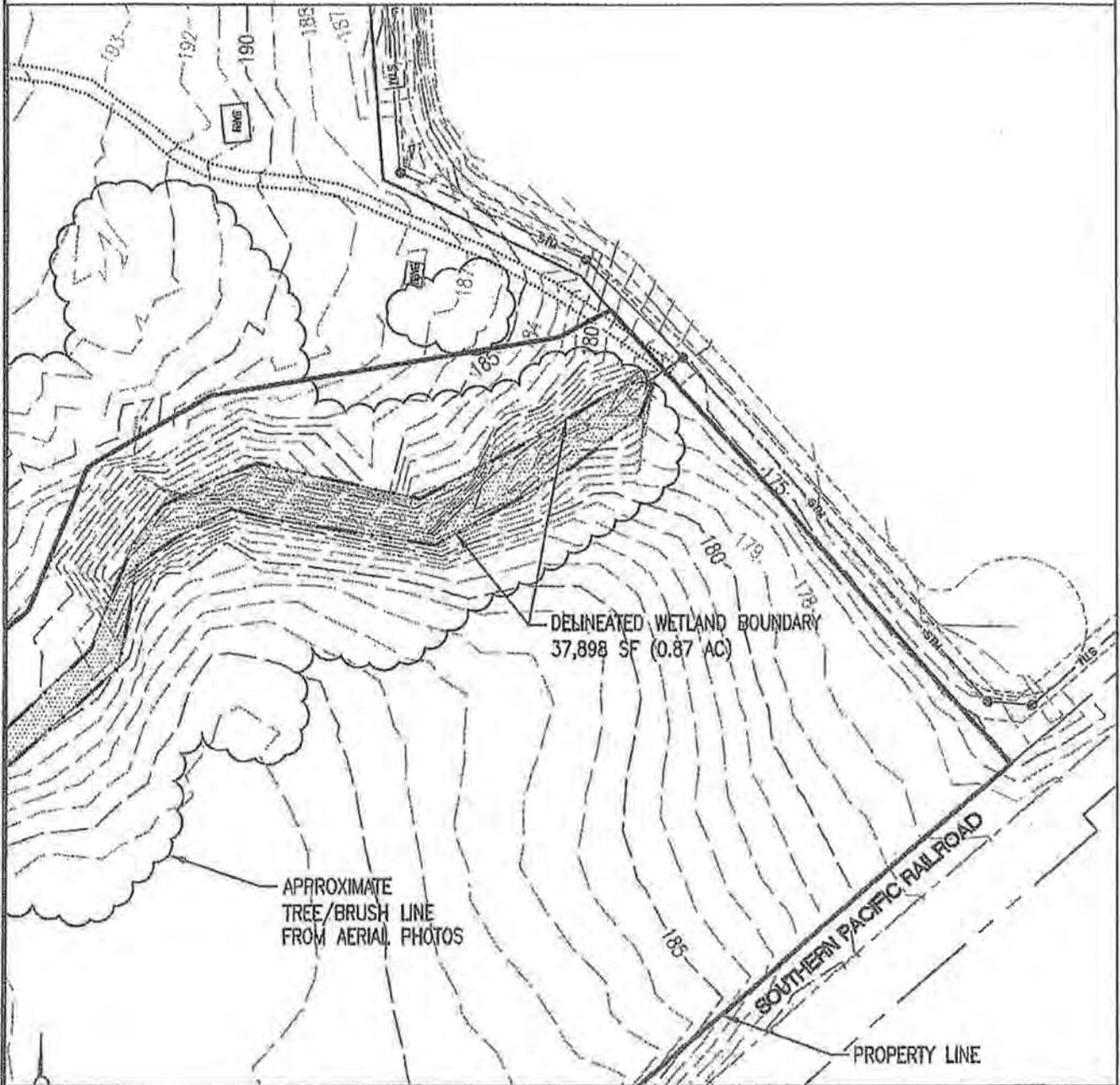
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JOB NUMBER: 2929
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SITE 'B' EXISTING CONDITIONS MAP



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: QMP

CHECKED BY: AHH

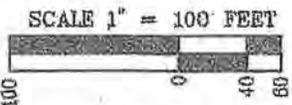
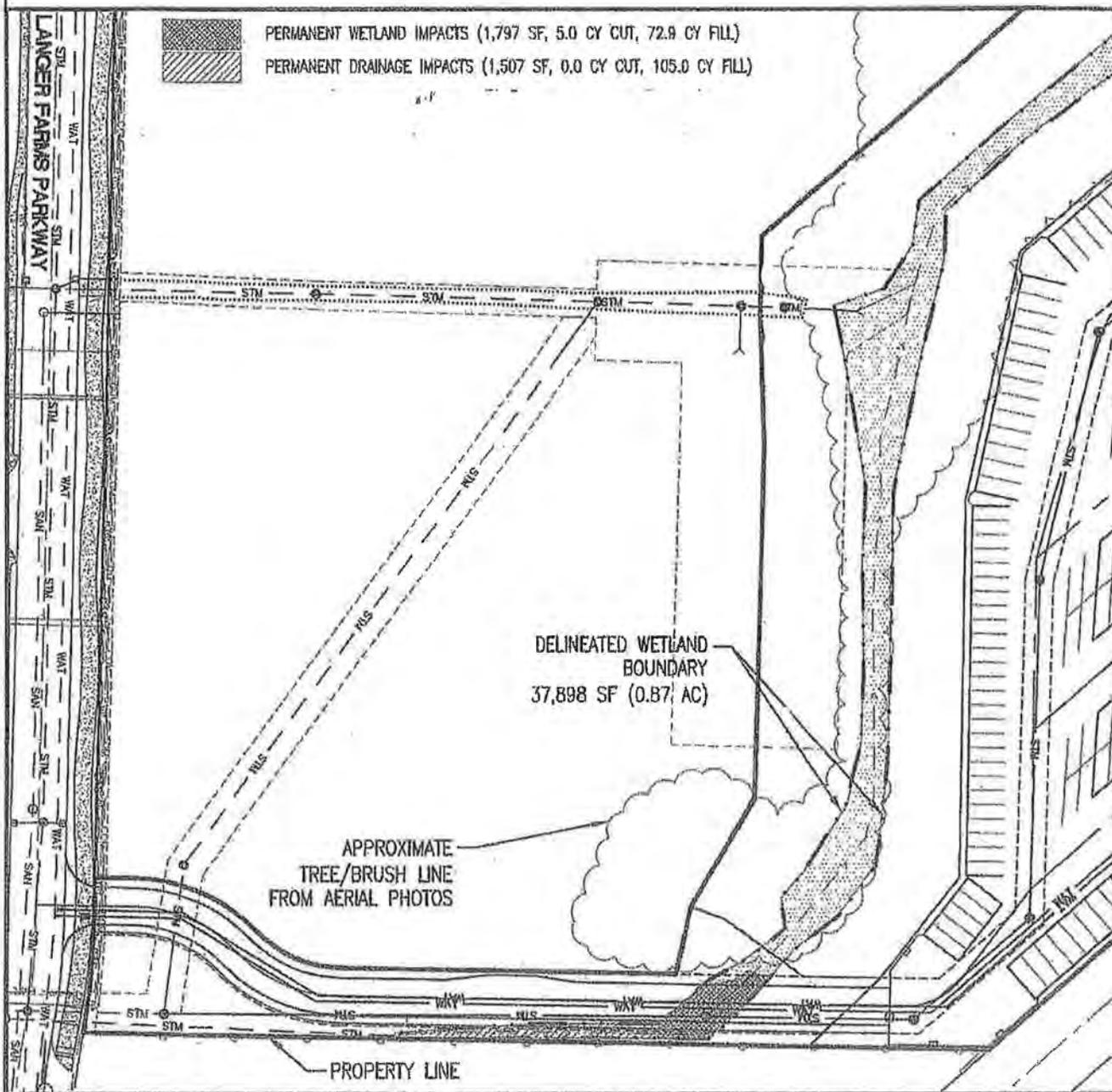
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SITE 'A' DEVELOPMENT PLAN



JOB NAME: LANGER FARMS
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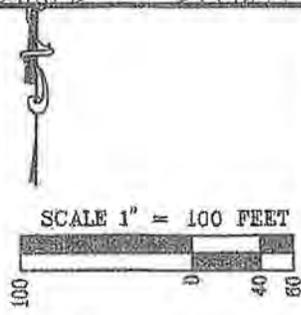
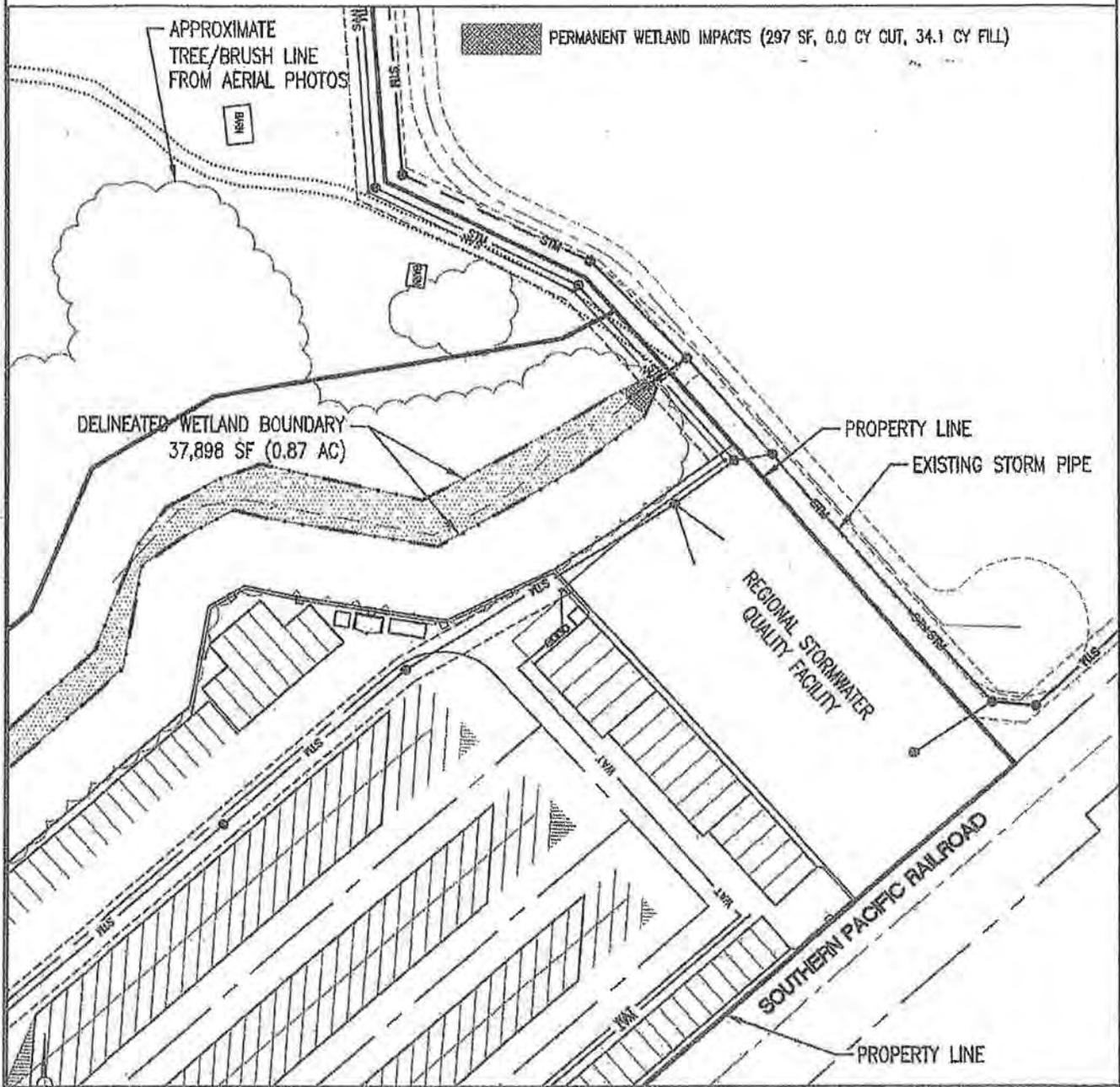
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SITE 'B' DEVELOPMENT PLAN



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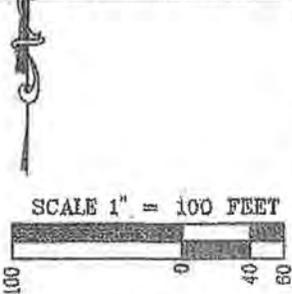
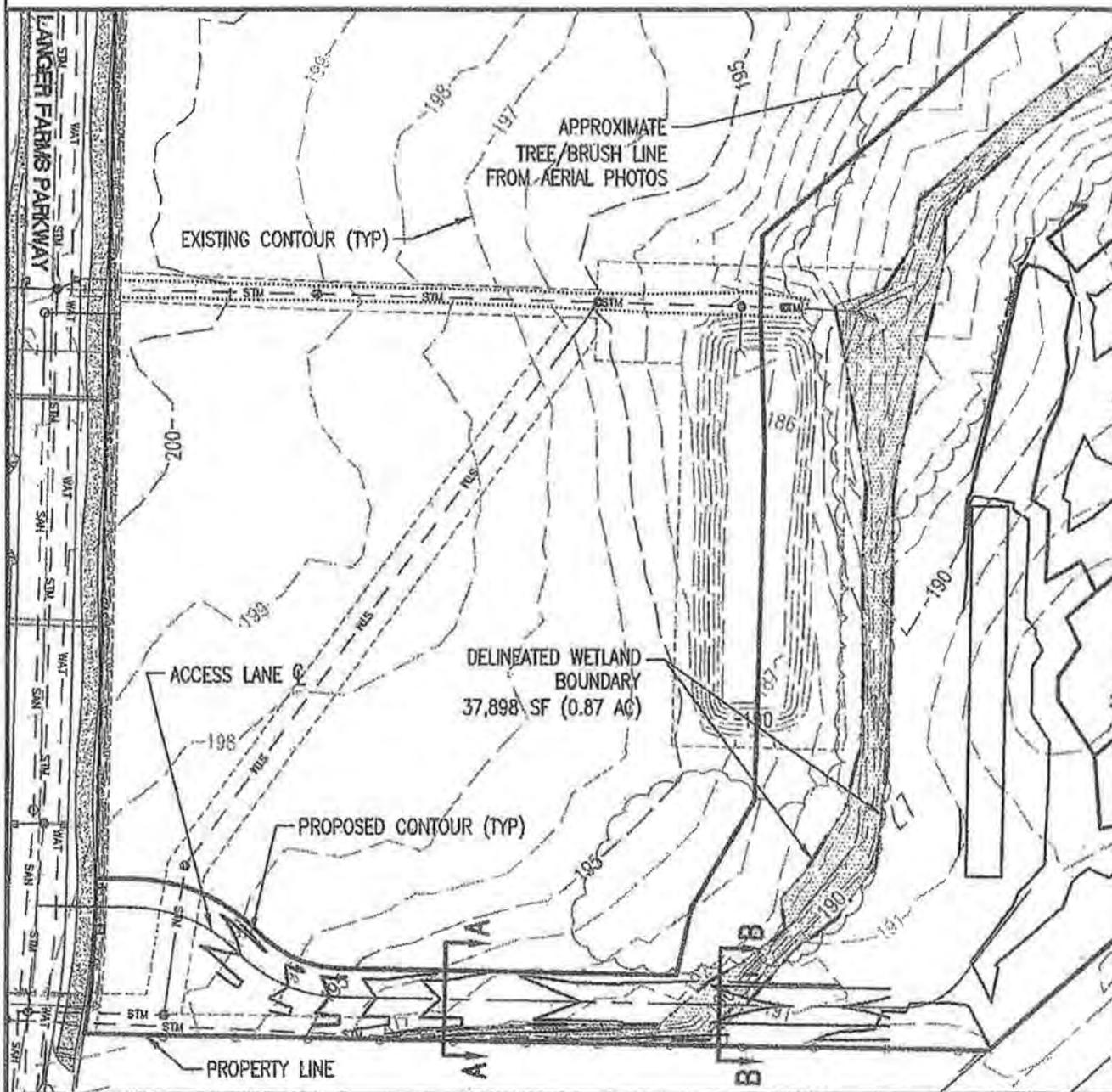
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SITE 'A' GRADING PLAN



JOB NAME: LANGER FARMS
JOB NUMBER: 2929
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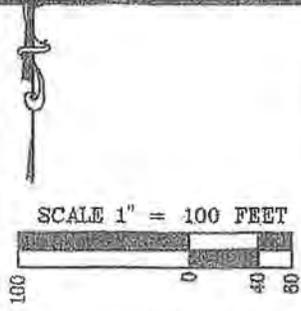
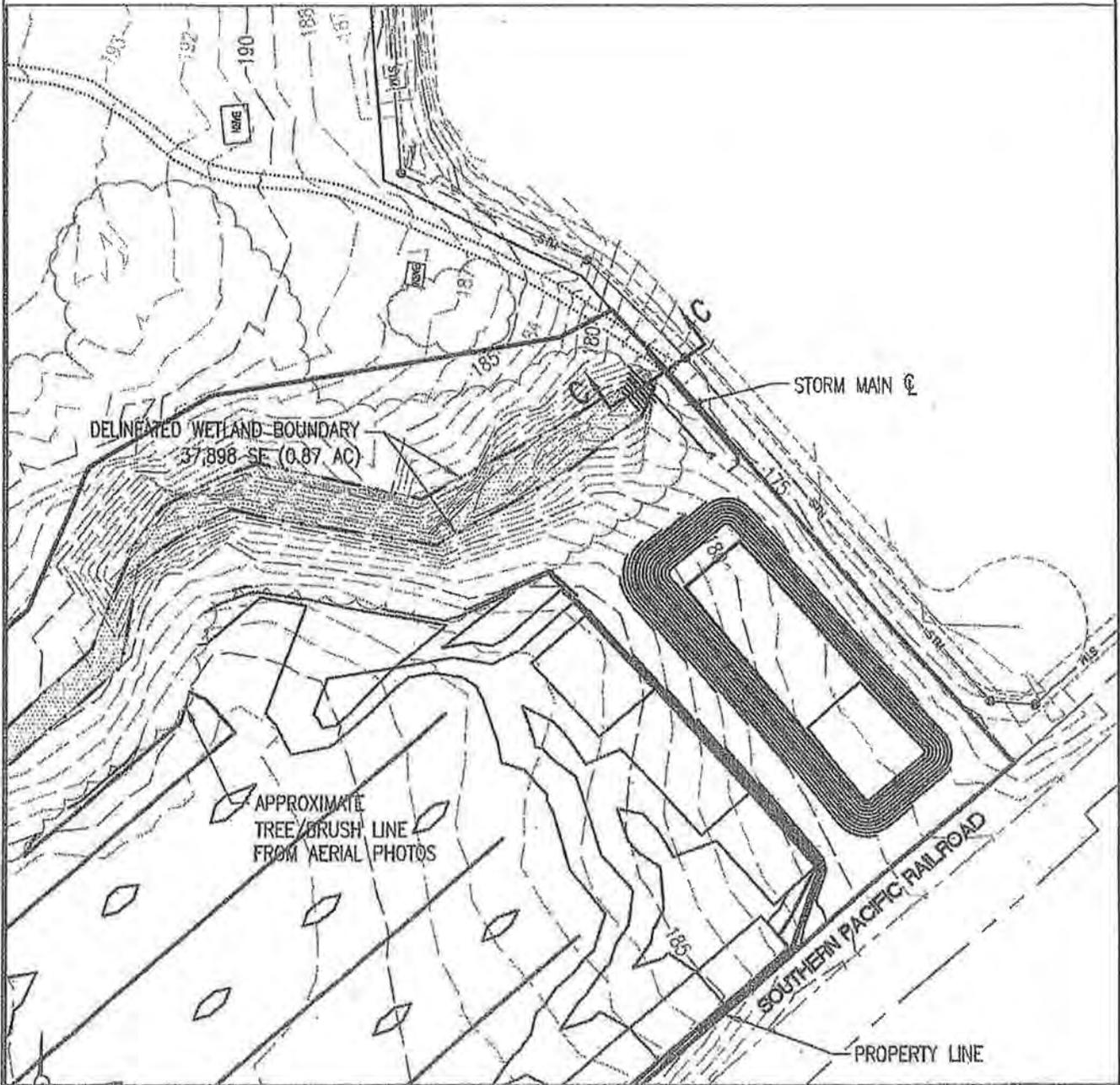
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SITE 'B' GRADING PLAN



JOB NAME: LANGER FARMS
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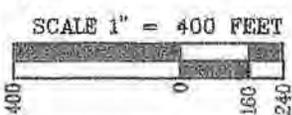
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AERIAL PHOTOGRAPH



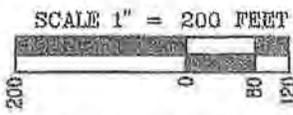
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AERIAL PHOTOGRAPH DETAIL



JOB NAME: LANGER FARMS

JOB NUMBER: 2929

DRAWN BY: QMP

CHECKED BY: AHH

DWG NO.: 2929DSL 10/12

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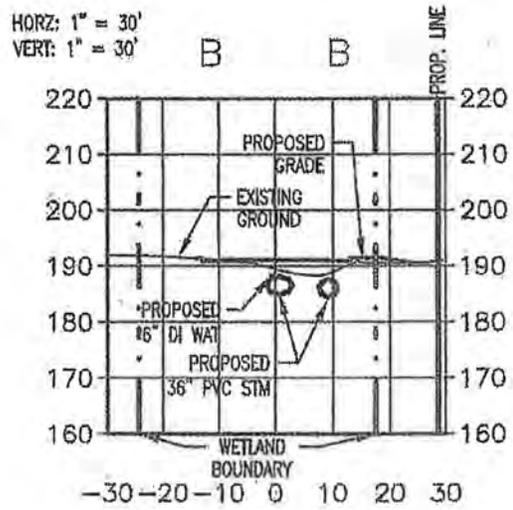
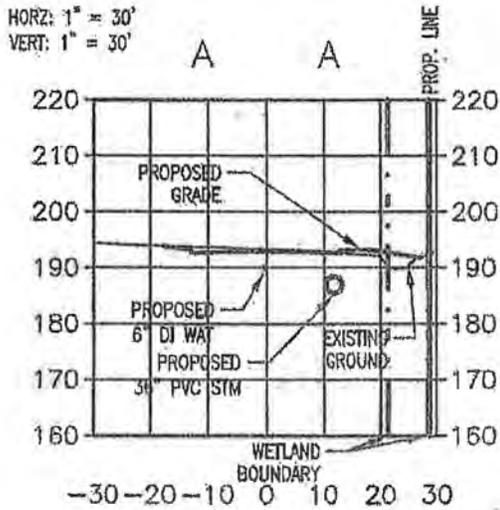
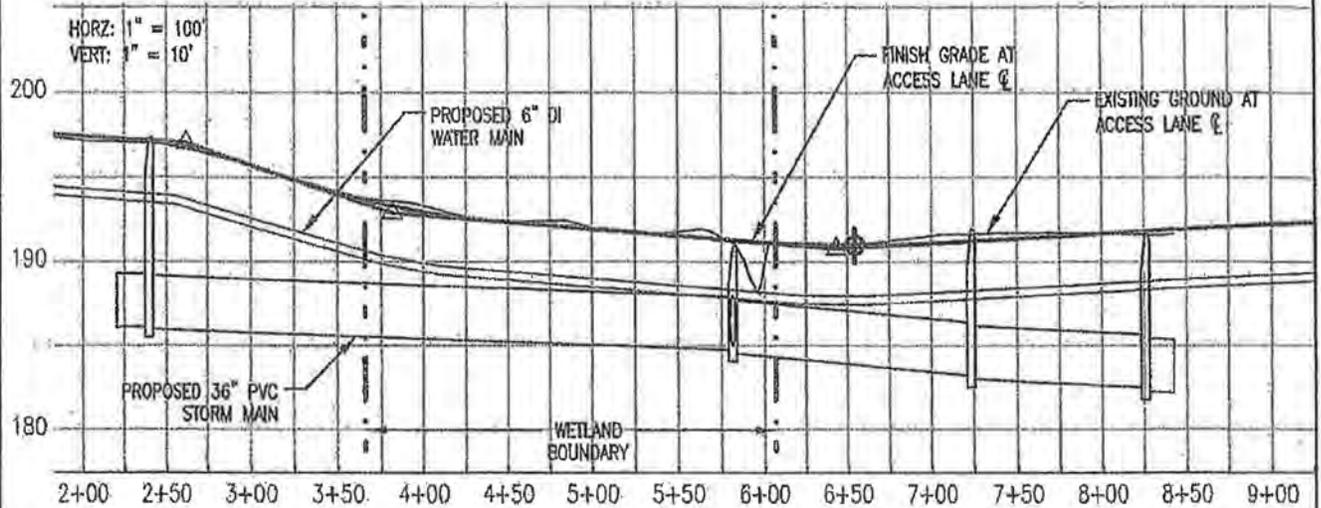


LICENSED IN OR & WA

13910 SW GALBREATH
DRIVE, SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 925-8799
FAX: (503) 925-8969

OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

SITE 'A' PROFILE AND CROSS SECTIONS



JOB NAME: LANGER FARMS
JOB NUMBER: 2929
DRAWN BY: QMP
CHECKED BY: AHH
DWG NO.: 2929DSL 11/12

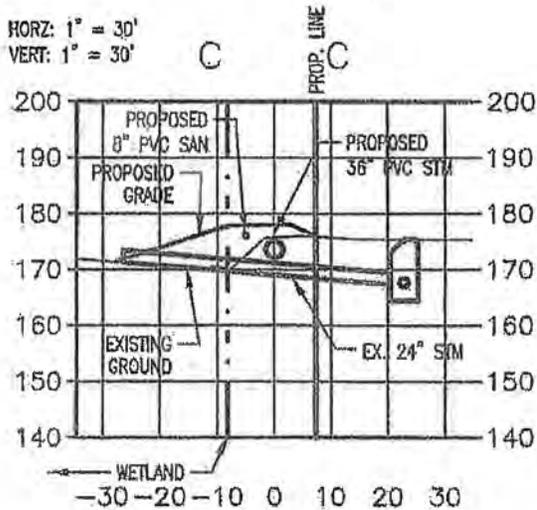
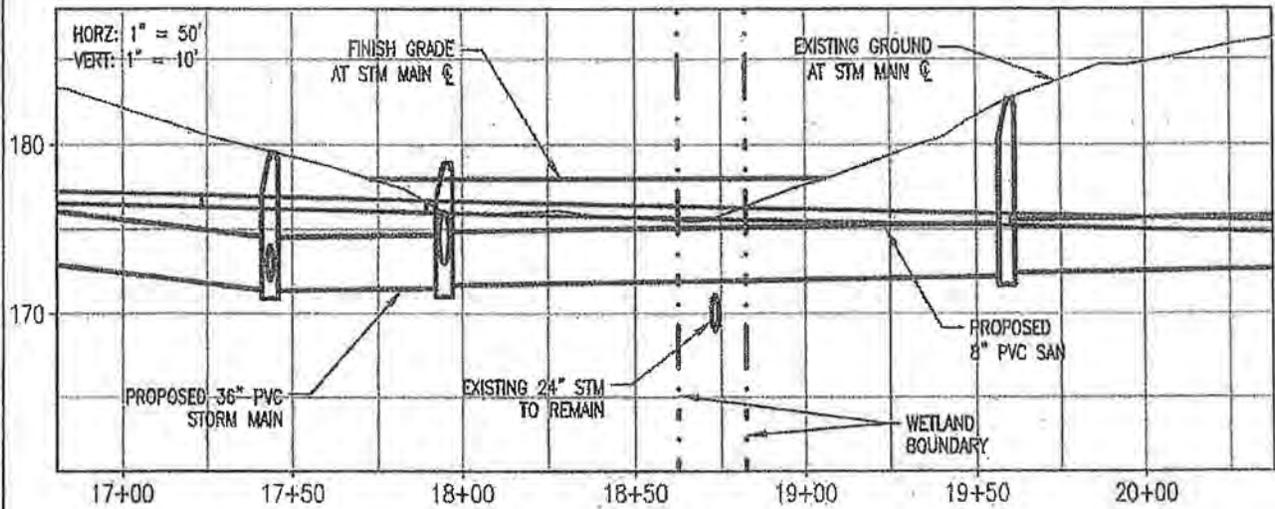
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SHERWOOD, OR 97140
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FAX: (503) 925-8969

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SITE 'B' PROFILE AND CROSS SECTION



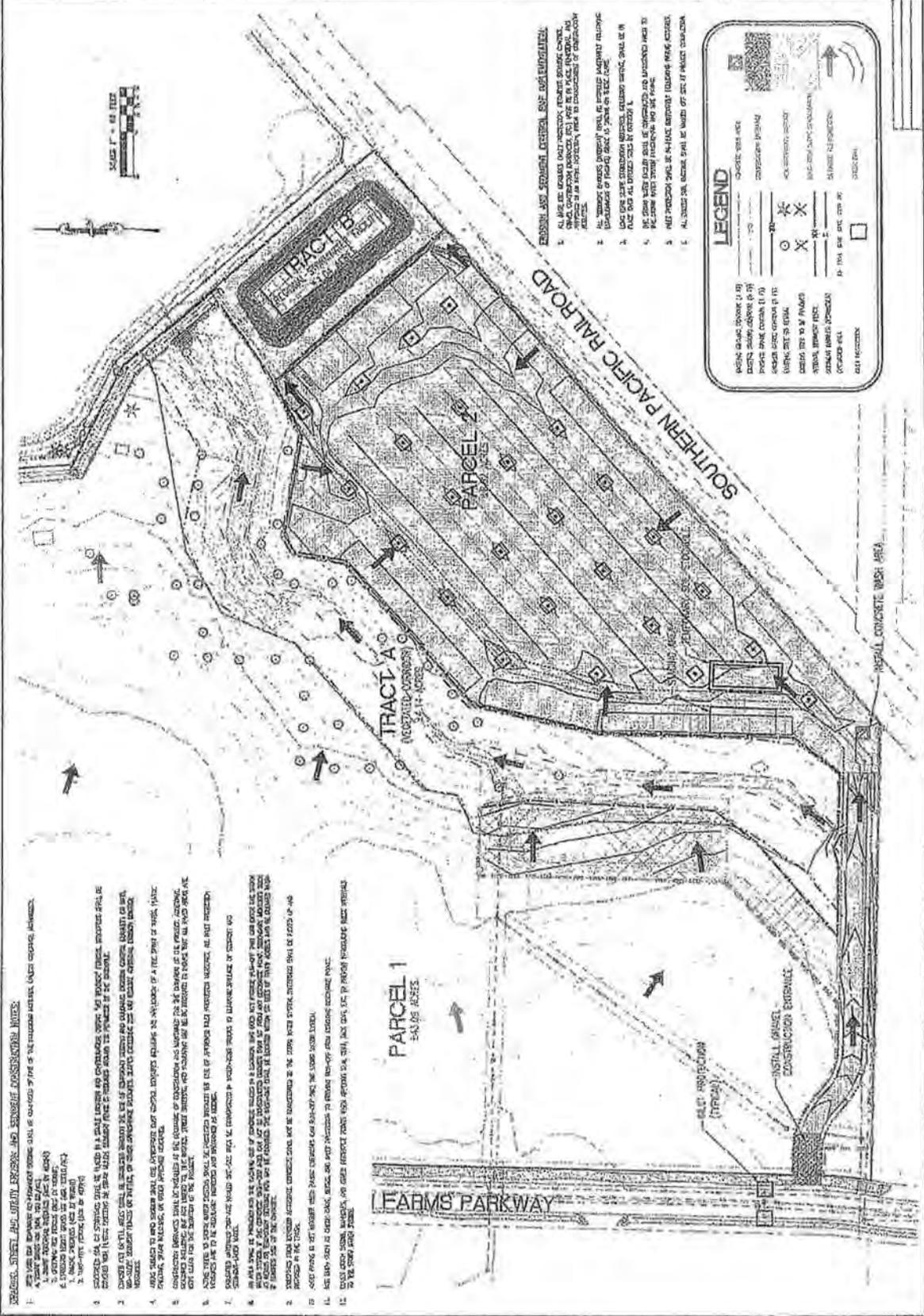
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DRAWN BY: QMP
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DWG NO.: 2929DSL 12/12

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 13910 SW GALBREATH DRIVE, SUITE 100
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 PHONE: (503) 925-8799
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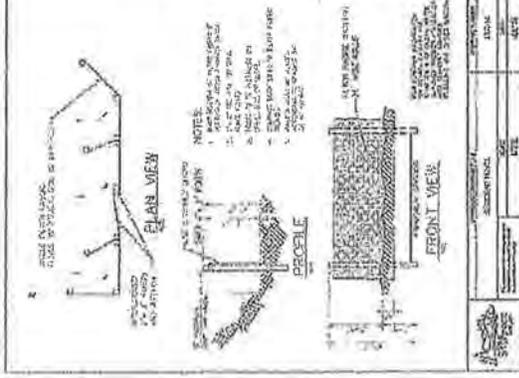
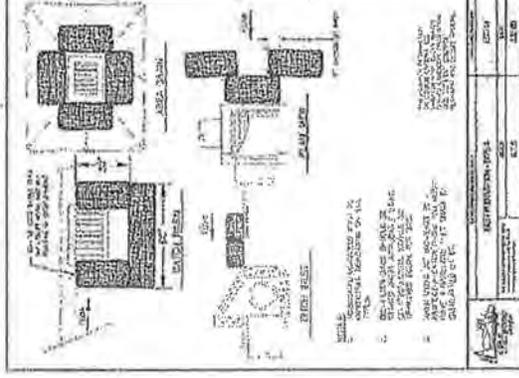
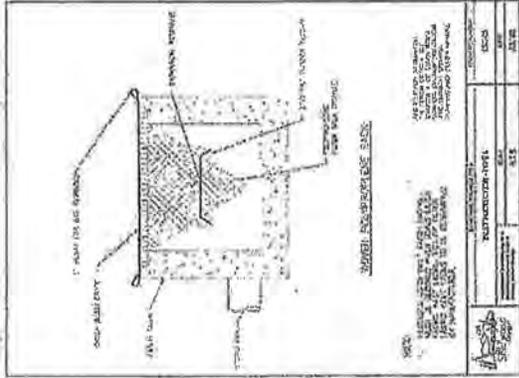
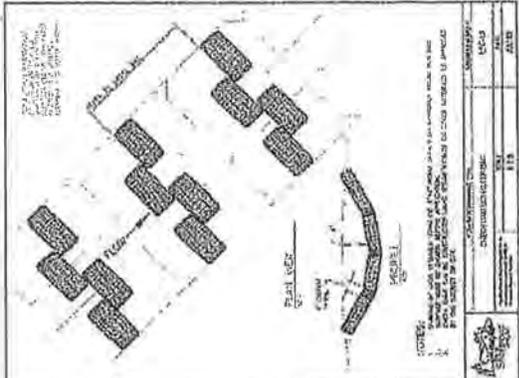
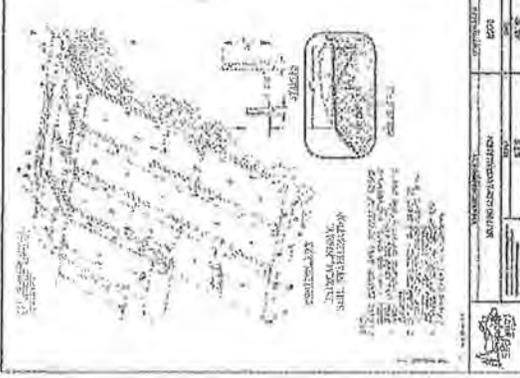
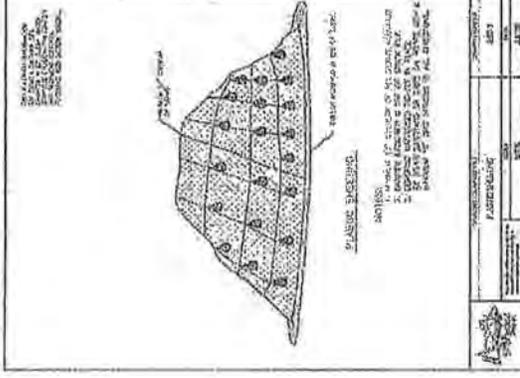
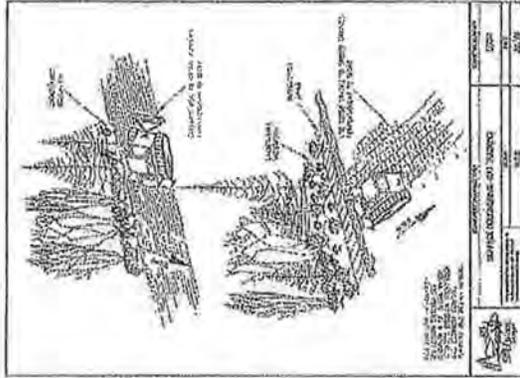
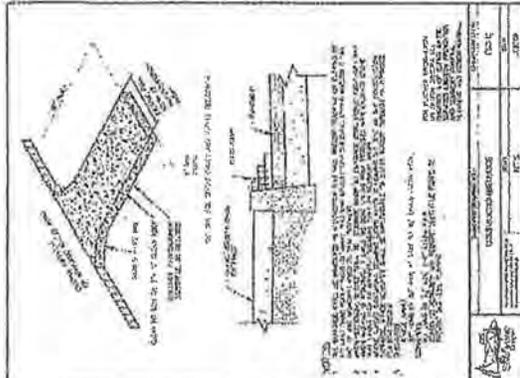


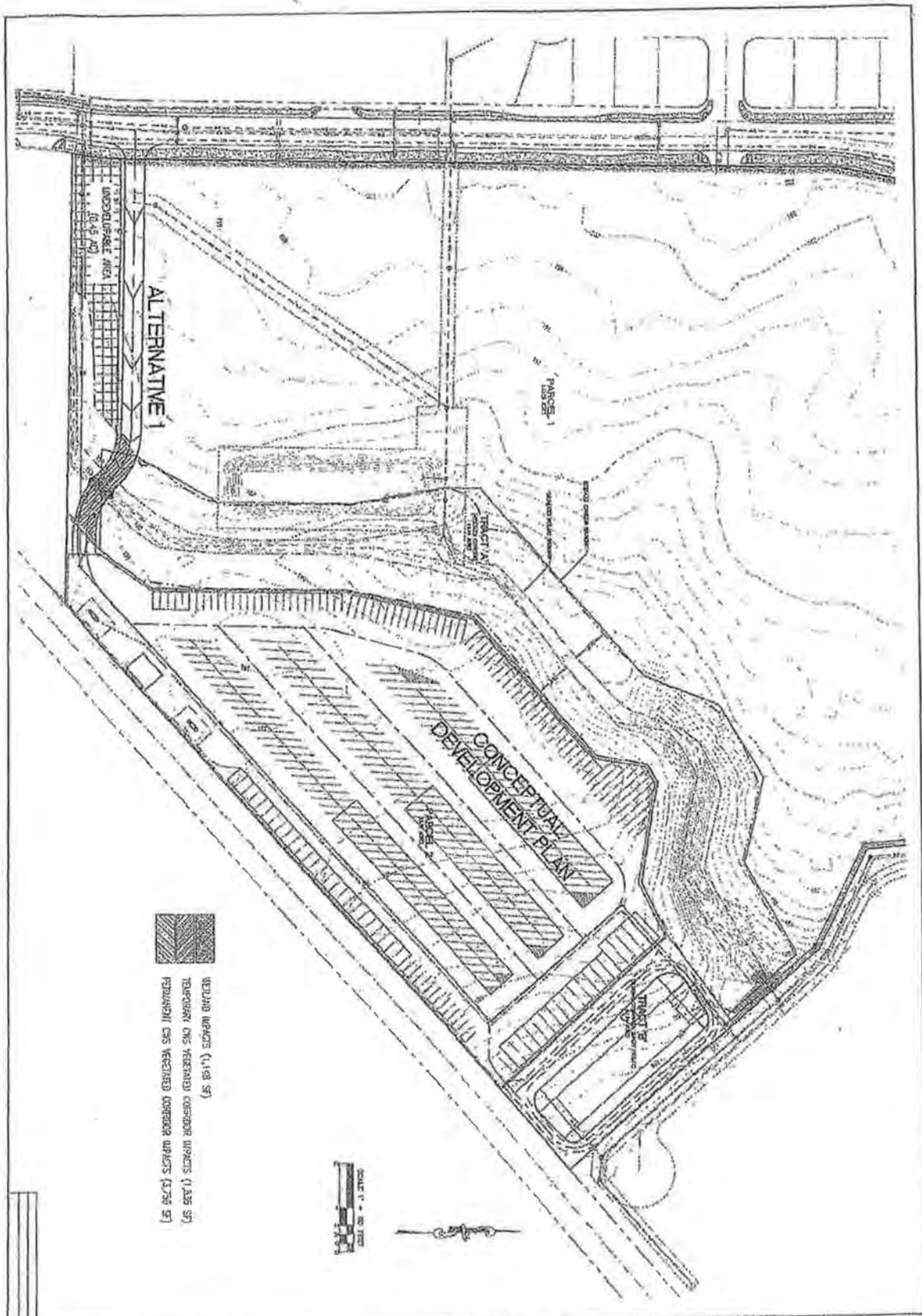
- GENERAL NOTES:**
1. THE GRADING AND SEDIMENT CONTROL PLAN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT AND THE CONSULTANT'S VISUAL INSPECTION OF THE SITE. THE CONSULTANT HAS NOT CONDUCTED A FIELD SURVEY OF THE SITE TO VERIFY THE ACCURACY OF THE INFORMATION PROVIDED.
 2. THE GRADING AND SEDIMENT CONTROL PLAN IS BASED ON THE ASSUMPTION THAT THE CLIENT WILL MAINTAIN THE GRADING AND SEDIMENT CONTROL MEASURES AS SHOWN ON THIS PLAN.
 3. THE GRADING AND SEDIMENT CONTROL PLAN IS BASED ON THE ASSUMPTION THAT THE CLIENT WILL MAINTAIN THE GRADING AND SEDIMENT CONTROL MEASURES AS SHOWN ON THIS PLAN.
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 12. THE GRADING AND SEDIMENT CONTROL PLAN IS BASED ON THE ASSUMPTION THAT THE CLIENT WILL MAINTAIN THE GRADING AND SEDIMENT CONTROL MEASURES AS SHOWN ON THIS PLAN.

- EROSION AND SEDIMENT CONTROL MEASURES:**
1. ALL AREAS OF EXPOSED SOIL SHALL BE PROTECTED FROM EROSION AND SEDIMENTATION BY THE INSTALLATION OF EROSION AND SEDIMENT CONTROL MEASURES AS SHOWN ON THIS PLAN.
 2. THE GRADING AND SEDIMENT CONTROL PLAN IS BASED ON THE ASSUMPTION THAT THE CLIENT WILL MAINTAIN THE GRADING AND SEDIMENT CONTROL MEASURES AS SHOWN ON THIS PLAN.
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LEGEND

Symbol	Description
Circle with cross	PROPOSED EROSION CONTROL MEASURE
Square with cross	PROPOSED SEDIMENT CONTROL MEASURE
Circle with dot	PROPOSED EROSION CONTROL MEASURE
Square with dot	PROPOSED SEDIMENT CONTROL MEASURE
Circle with cross and dot	PROPOSED EROSION CONTROL MEASURE
Square with cross and dot	PROPOSED SEDIMENT CONTROL MEASURE
Circle with cross and dot	PROPOSED EROSION CONTROL MEASURE
Square with cross and dot	PROPOSED SEDIMENT CONTROL MEASURE
Circle with cross and dot	PROPOSED EROSION CONTROL MEASURE
Square with cross and dot	PROPOSED SEDIMENT CONTROL MEASURE






 WETLAND IMPACTS (1.15 AC SF)
 TROPICAL OAK VEGETATION REMOVAL IMPACTS (1.15 AC SF)
 REMOVAL OF VEGETATION COVERING CONCRETE IMPACTS (3.25 AC SF)





**US Army Corps
of Engineers**
Portland District

2012 Nationwide (NWP) Regional Permit Conditions Portland District

The following Nationwide Permit (NWP) regional conditions are for the Portland District Regulatory Branch boundary. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns.

ALL NWPs –

- 1. High Value Aquatic Resources:** Except for NWPs 3, 20, 27, 32, 38, and 48, any activity that would result in a loss of waters of the United States (U.S.) in a high value aquatic resource is not authorized by NWP. High value aquatic resources in Oregon include bogs, fens, wetlands in dunal systems along the Oregon coast, native eel grass (*Zostera marina*) beds, kelp beds, rocky substrate in tidal waters, marine reserves, marine gardens, vernal pools, alkali wetlands, and Willamette Valley wet prairie wetlands.

NOTE: There are other types of wetlands in Oregon, such as mature wooded wetlands and tidal swamps, which are also considered as providing high value and functions to the State's aquatic ecosystems. Impacts to these waters will be evaluated on a case-by-case basis for potential authorization under a Nationwide Permit. For more information about the State's Wetlands of Conservation Concern" please visit http://oregonstatelands.us/DSL/PERMITS/form.shtml#Permit_Forms

- 2. Cultural Resources and Human Burials-Inadvertent Discovery Plan:** In addition to the requirements in NWP General Conditions 20 and 21 permittee shall immediately notify the Portland District Engineer if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and

Repatriation Act, are discovered. The permittee shall implement the following procedures:

- a. Immediately cease all ground disturbing activities.

- b. Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674).

- c. Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360-586-3077).

- d. Notify the Portland District Engineer. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery. Follow up the fax notification by contacting the Portland District Engineer representative (by email and telephone) identified in the verification letter.

- e. Failure to stop work immediately and until such time as the Portland District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

- 3. In-water Work:** In order to minimize potential impacts to water quality, aquatic species and habitat, in-water work will be limited by the following timing considerations:

- a. Permittee shall complete all in-water work within the preferred work window specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at:

http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_InWater_Work2008.pdf.

- b. If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a request to work outside of the preferred window to the Portland District Engineer in writing. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer. The District Engineer will coordinate with the appropriate agencies prior to finalizing a decision.
4. **Fish and Aquatic Life passage:** In addition to the requirements of NWP General Conditions 2 and 9, all activities authorized by a NWP shall not restrict passage of aquatic life temporarily or permanently. Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of the United States and which are generally present in and/or around waters of the United States.
- a. Activities such as the installation of culvert, intake structures, diversion structures, or other modifications to stream channel morphology must conform to fish passage standards developed by the ODFW and the National Marine Fisheries Service (NMFS). ODFW's standards can be found at OAR 635-412-0035; ODFW provides an overview at <http://www.dfw.state.or.us/fish/passage/> and NMFS provides an overview at <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf>.
5. **Fish Screening:** The permittee shall ensure that all intake pipes utilize fish screening that complies with standards developed by NMFS and ODFW ("Anadromous Salmonid Passage Facility Design", February 2008). <http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish-Passage-Design.pdf> or the most current version.
6. **Work Area Isolation and Dewatering:** Appropriate best management practices shall be implemented to prevent erosion and sediments from entering wetlands or waterways.
- a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows.
- b. Permittee shall provide for fish passage upstream and downstream of the worksite.
- c. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.
- d. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering the active stream channel.
- e. Upstream and downstream flows shall be maintained by routing flows around the construction site with a pump, bypass pipe, or diversion channel.
- f. A sediment basin shall be used to settle sediments in return water prior to release back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion of the streambank. Settlement basins shall be placed in uplands.
- g. Fish and other aquatic species must be salvaged prior to dewatering. The State of Oregon requires a Scientific Take Permit be obtained to salvage fish and wildlife. Permittee is advised to contact the nearest ODFW office. For further information contact ODFW at <http://www.dfw.state.or.us>.
7. **Dredging:** For any NWP-authorized activities, including but not limited to NWP 1, 3, 12, 13, 19, 27, 28, 35, 36, 40, and 41 that involve removal of sediment from waters of the United States permittee shall ensure that:

a. Prior to dredging, appropriate sediment characterization as to size composition and potential contaminants has been undertaken and the material is suitable for in-water disposal per the Sediment Evaluation Framework for the Pacific Northwest, 2009 (available at: <http://www.nwp.usace.army.mil/environment/sediment.asp>) or the most current version.

b. Permittee shall use the least impactful methodology and activity sequencing to ensure impacts to the aquatic system are minimized to the maximum extent practicable. Examples include using a hydraulic, closed-lipped clamshell bucket, toothed clamshell bucket, dragline and/or excavator.

c. Dredged or excavated material is placed where sediment-laden water cannot enter waterways or wetlands in an uncontrolled manner. The discharge associated with the return of sediment-laden water into a water of the United States from an upland disposal site requires separate authorization from the District Engineer under NWP 16.

8. Chemically Treated Wood: Permittee shall not allow wood products treated with biologically harmful leachable chemical components (e.g. copper, arsenic, zinc, creosote, chromium, chloride, fluoride, and pentachlorophenol) to be placed over or come in contact with waters or wetlands.

a. **New structures:** Wood may be permanently or temporarily sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood include untreated wood, steel (painted, unpainted or coated with epoxy-petroleum compound or plastic), concrete and plastic lumber.

b. **Removal of existing chemically treated wood:** Permittee shall prevent chemically treated wood debris from entering any waters or wetlands. In the event chemically treated wood debris inadvertently enters a water or wetland, permittee shall remove the material as soon as practicable and dispose of the material at an approved upland facility.

1) Permittee shall make every practicable effort to remove chemically treated wood piles in their entirety using a vibratory hammer.

i) In uncontaminated sediment, piling that breaks off during extraction shall be cut off at least three (3) feet below the surface of the sediment.

ii) In contaminated sediment, piling that breaks off above the surface shall be cut off at the sediment line. If the break occurs within contaminated sediment, no further effort shall be made to remove the pile. Any resulting hole shall be filled with clean, native substrate.

9. Mechanized Equipment: In addition to the requirements in NWP General Condition 11, permittee shall implement the following to prevent or limit aquatic impacts from mechanized equipment:

a. In all events use the type of equipment that minimizes aquatic impacts spatially and temporally.

b. Use existing roads, paths, and drilling pads where available. Temporarily place mats or pads onto wetlands or tidal flats to provide site access. Temporary mats or pads shall be removed upon completion of the authorized work.

c. Operate equipment from the top of a streambank and conduct work outside of the active stream channel, unless specifically authorized by the District Engineer.

d. Isolate storage, staging, and fueling areas, and operate and maintain equipment in isolation from waters, wetlands, and riparian areas.

e. Maintain spill prevention and containment materials with ready access at vehicle staging areas. Permittee and staff shall be trained to effectively deploy the measures. Spill response materials include straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags. In the event of a spill of petroleum products or other chemicals with potential to affect waters or wetlands, permittee shall immediately report the spill to the Oregon Emergency Response Service (OERS) at 1-800-452-0311 and shall implement containment and cleanup measures, as directed.

10. Deleterious Waste: In addition to the requirements in NWP General Condition 6, permittee shall not dispose of biologically harmful or waste materials into waters or wetlands. These materials include but are not limited to the following:

a. Petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete.

b. Discharge water created during construction activities (such as but not limited to concrete wash out, pumping for work area isolation, vehicle wash water, drilling fluids, dredging return flows, and sediment laden runoff) shall be treated to remove debris, sediment, petroleum products, metals, and other pollutants and discharged in a controlled fashion to avoid erosion. A separate Department of the Army permit and/or a National Pollutant Discharge Elimination System (NPDES) permit from Oregon Department of Environmental Quality's (DEQ) may be required prior to discharge. Permittee is directed to contact the nearest DEQ office (<http://www.deq.state.or.us/about/locations.htm>) for more information about the NPDES program.

11. Stormwater Discharge Pollution Prevention:

Activities that result in stormwater runoff passing over disturbed areas and impervious surfaces must include reduction measures, controls, treatment techniques and management practices to avoid discharge of soil, debris, toxics and other pollutants to waterways and wetlands.

a. **Erosion Control:** During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. For proper erosion control measure selection and implementation, the permittee is referred to DEQ "Oregon Sediment and Erosion Control Manual," April 2005, available at: http://www.deq.state.or.us/wq/stormwater/esc_manual.htm. Appropriate control measures and maintenance include, but are not limited to the following:

1) Permittee shall inspect and maintain control measures in good condition throughout construction and until permanent measures are well established. Permittee shall repair or replace any damages such as rips, broken stakes that result in loss of intended function. Permittee shall install additional control measures and reseed or replant with native and/or non-competitive species as necessary to achieve stabilization of the site. Spray-on mulches imbedded with benign sterile species may be used to temporarily stabilize the area until permanent controls are in place.

2) Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all components of installed control measures.

b. Post-Construction Stormwater Management: If the activity will result in creation of new impervious surfaces and federally listed aquatic species or their habitat may be affected by the proposed activity permittee shall forward a copy of the post-construction stormwater management plan (SWMP) to the Portland District Engineer for our consultation under the Endangered Species Act. A copy of the SWMP must be submitted to the DEQ for their review and approval prior to initiating construction.

1) Submittal of the post-construction stormwater management plan to DEQ at the same time the application is submitted to the Corps will streamline the project review. DEQ's Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications which involve impervious surfaces can be found at <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf>. This document provides information to determine the level of detail required for the plan based on project type, scope, location, and other factors, as well as references to assist in designing the plan and a checklist for a complete submission.

12. Upland Disposal: Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Portland District Engineer.

a. Final disposition of materials removed from waters and wetlands to uplands may require separate approvals under Oregon State Solid Waste Rules. For more information please visit DEQ's Solid Waste program at <http://www.deq.state.or.us/lq/sw/index.htm>.

b. Temporary upland stockpiles of excavated or dredged materials shall be isolated from waterways, wetlands, and floodwaters; stabilized prior to wet weather; and maintained using best management practices unless specifically authorized by the District Engineer.

13. Restoration of Temporary Impacts: To minimize temporal losses of waters of the UNITED STATES construction activities within areas identified as temporary impacts shall not exceed two construction seasons or 24 months, whichever is less. For all temporary impacts, permittee shall provide the Portland District Engineer a description, photos, and any other documentation which demonstrates pre-project conditions with the Preconstruction Notification.

b. Site restoration of temporarily disturbed areas shall include returning the area to pre-project ground surface contours. Permittee shall revegetate temporarily disturbed areas with native, noninvasive herbs, shrubs, and tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

c. Site restoration shall be completed within 24 months of the initiation of impacts (unless otherwise required by the specific NWP). However, if the temporary impact requires only one construction season, site restoration shall be completed within that same construction season before the onset of seasonal rains.

14. Permittee-responsible Compensatory Mitigation: When permittee-responsible compensatory mitigation is required by the Portland District Engineer to replace lost or adversely affected aquatic functions, the permittee shall provide long-term protection for the mitigation site through real estate instruments (e.g., deed restriction or conservation easement) or other available mechanisms. The appropriate long-term protection mechanism will be determined by the Portland District Engineer based on project-specific review and must be in place prior to initiating the permitted activity.

15. Inspection of the Project Site: The permittee shall allow representatives of the Portland District Engineer and/or DEQ to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

16. Sale of Property/Transfer of Permit:

Permittee shall obtain the signature(s) of the new owner(s) and transfer this permit in the event the permittee sells the property associated with this permit. To validate the transfer of this permit authorization, a copy of this permit with the new owner(s) signature shall be sent to the Portland District Engineer at the letterhead address on the verification letter.

NATIONWIDE SPECIFIC CONDITIONS:

NWP 3 – Maintenance

1. Permittee shall implement measures necessary to prevent streambed gradient alterations and streambank erosion.

NWP 5 – Scientific Measurement Devices

1. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cable within 30 days after research is completed.

NWP 6 – Survey Activities

1. Use of in-water explosives is not authorized.
2. Permittee shall isolate all in-stream exploratory trenching from the active channel.

NWP 12 – Utility Line Activities

1. Permittee shall install trench-blockers of a type and design sufficient to prevent the drainage of the wetland areas (e.g. bentonite clay plugs, compacted sand bags, etc.) where utility lines are buried within or immediately adjacent to wetlands and other waters.

2. Permittee shall remove and separately reserve the topsoil from the subsurface soils during trenching. Permittee shall place the reserved topsoil as the final surface layer in backfilling the trench.

3. Agency coordination, per Nationwide Permit General Condition 31 (d), is required where utility lines are proposed in estuaries to ensure there are no impacts to native shellfish beds.

4. Manholes placed in streams or other waterways require specific approval by the District Engineer.

NWP 13 – Bank Stabilization

1. Permittee shall include the use of bioengineering techniques and natural products (e.g. vegetation and organic material such as root wads) in the project design to the maximum extent practicable and shall minimize the use of rock, except when it is anchoring large woody debris. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern shall not be used for soil stabilization. Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

2. Riprap shall be clean (i.e. free of toxic contaminants and invasive species), durable, angular rock.

NWP 23 – Approved Categorical Exclusions

1. Pre-construction notification or other Corps-approved documentation is required for all activities which require a permit from the Portland District Engineer.

NWP 29 – Residential Developments

1. Wetland impacts associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc) shall not exceed one-fourth (¼) acre.

NWP 41 – Reshaping Existing Drainage Ditches

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

NWP 43- Stormwater Management Facilities

1. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.
2. This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements for purposes such as recreational lakes, reflecting pools, irrigation, etc.

NWP 44 - Mining Activities

1. Reclamation, when required, must be achieved within 24 months of completing the mining activity.
2. In-stream mining including bar scalping is not authorized by this NWP.
3. Permittee shall ensure site includes appropriate grade controls to prevent headcutting of streams or bank erosion.
4. The use of in-water explosives is prohibited under this nationwide.
5. Excavated materials may be temporarily stockpiled within the channel above the plane of the water surface for up to seven (7) days. Excavated materials shall not be stockpiled in wetlands or flowing water.

NWP 48 – Commercial Shellfish Aquaculture Activities

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed under this NWP.

NOTE: For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state submerged and submersible lands permittee is advised authorization may be required from the Oregon Department of Agriculture. For more information go to http://www.oregon.gov/ODA/FSD/program_shellfish.shtml

NWP 51– Land-Based Renewable Energy Generation Facilities

1. Agency coordination, per NWP General Condition 31 (d), is required for activities where aerial power transmission lines cross navigable waters.

NWP 52 – Water Based Renewable Energy Generation Pilot Projects

1. Agency coordination, per NWP General Condition 31 (d), is required for all activities proposed for verification under this NWP.

2. Activities authorized under this NWP shall comply with the siting requirements of the Oregon Territorial Sea Plan, which designates areas as suitable for such activities.

NOTE: The State of Oregon is updating its Territorial Sea Plan to identify areas suitable for renewable ocean energy. Once identified and adopted by the Land Conservation and Development Commission, the general public will be able to identify those areas using a Geographic Information Systems map layer.



**US Army Corps
of Engineers**
Portland District

Nationwide (NWP) Permit Conditions

33 CFR Part 330;
Issuance of Nationwide
Permits – March 19, 2012

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim

shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species.

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat

modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

20. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-

construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has

intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-

responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWP does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of

any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. Pre-Construction Notification.

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate

unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification:

The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP's and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the

district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP's, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides

that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to

jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement

of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.



State of Oregon
Department of
Environmental
Quality

Oregon Department of Environmental Quality (DEQ) 401 Water Quality (WQC) General Conditions

In addition to all USACE permit conditions and regional permit conditions, the following 401 Water Quality Certification conditions apply to all Nationwide Permit (NWP) categories certified or partially certified Additional 401 Water Quality Certification category specific conditions follow, which must also be complied with as applicable.

1) Turbidity: All Permittees must implement all reasonably available technological controls and management practices to meet the standard rule of no more than a 10 percent increase in project caused turbidity above background levels. However, if all reasonably available controls and practices are implemented by a permittee, turbidity exceedances of more than 10 percent above background are allowed for limited times depending on the severity of the increase, as specified in this condition.

a. Monitoring and Compliance Requirements: Permittee must monitor and record in a daily log stream turbidity levels during work below ordinary high water, compare turbidity caused by authorization actions to background levels, and adapt activities to minimize project-caused turbidity. Required monitoring steps include:

i. Identify two monitoring locations:

A. **Background location:** A relatively undisturbed location, approximately 100 feet upcurrent from the disturbing activity; and,

B. **Compliance location:** A location downcurrent from the disturbing activity, at approximately mid-depth, within any visible plume, at the distance that corresponds to the size of the waterbody where work is taking place as listed on the table below:

WETTED STREAM WIDTH	COMPLIANCE DISTANCE
Up to 30 feet	50 feet
>30 feet to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
LAKE, POND RESERVOIR	Lesser of 100 feet or Maximum surface dimension

ii. Determine Compliance:

A. At the start of work, measure turbidity at both locations and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity levels at each point and comparison. Permittee must also record in the daily log all controls and practices implemented at the start of the work.

B. During work, measure turbidity at both locations at the frequency directed in the tables below and record in the daily log date, time, location, tidal stage (if waterbody is tidally influenced), and turbidity measurements.

C. Turbidity measurements must be representative of stream turbidity when the activity is being conducted. Measurements cannot be taken during a cessation of activity.

D. If project caused turbidity is elevated above background, Permittee must implement additional controls and practices and monitor both points again as described below for either monitoring method. A description of the additional controls and the date, time, and location where they are implemented must be recorded in the daily log:

MONITORING WITH A TURBIDIMETER*		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 ST MONITORING INTERNAL	ACTION REQUIRED AT 2 ND MONITORING INTERNAL
0 to 5 NTU above background	Continue to monitor every 4 hours	Continue to monitor every 4 hours
5 to 29 NTU above background	Modify controls & continue to Monitor every 4 hours	Stop work after 8 hours at 5-29 NTU above background
30 to 49 NTU above Background	Modify controls & continue to Monitor every 2 hours	Stop work after 2 confirmed hours At 30-49 NTU above background
50 NTU or more above Background	Stop work	Stop work

VISUAL MONITORING*		
No plume observed	Continue to monitor every 4 hours	Continue to monitor every 4 hours
Plume observed within compliance distance	Modify controls & continue to Monitor every 4 hours	Stop work after 8 hours with an observed plume within compliance distance
Plume observed beyond compliance distance	Stop work	Stop work

**Note: Monitoring visually may require stopping work as soon as the visual plume exceeds the waterbody specific compliance distance. However, using a turbidimeter can allow work to continue based on more precise determination of the severity of the turbidity increase over time.*

iii. Work must **stop immediately for the remainder of the 24-hour period** if:

A. A visible turbidity plume extends beyond the compliance distance; or,

B. Turbidity is measured at the compliance point at:

I. 50 NTU or more over background at any time;

II. 30 NTU over background for 2 hours; or

III. 5-29 NTU over background for 8 hours.

iv. Work may continue if no visible plume is observed, turbidity measured at the compliance point is no more than 0-5 NTU above background, or additional control measures can be applied to keep the visible plume within the compliance distance, measured turbidity ranges, and durations listed in the tables above.

b. Turbidity Control Measures - The permittee must implement all reasonably available controls and practices to minimize turbidity during in-water work, which may include, but are not limited to:

i. Schedule, sequence or phase work activities so as to minimize in-water disturbance and duration of activities below ordinary high water;

ii. Install and maintain containment measures to prevent erosion of upland material to waterways and wetlands, isolate work areas from flowing waters, and prevent suspension of in-stream sediments to the maximum extent practicable;

iii. Apply control measures for all in-stream digging, including but not limited to: employing an experienced equipment operator; not dumping partial or full buckets of material back into the wetted stream; adjusting the volume, speed, or both of loads or hydraulic suction equipment; or by using a closed-lipped environmental bucket;

iv. Limit the number and location of stream crossing events. If equipment must cross a waterway, establish temporary crossing sites at an area with stable banks, where the least vegetation disturbance will occur, shortest distance across water, oriented perpendicular to the stream, and supplement with clean gravel or other temporary methods as appropriate;

v. Place excavated, disturbed, and stockpiled material so that it is isolated from the edge of waterways and wetlands and not allowed to enter waters of the state uncontrolled; and

vi. Apply other effective turbidity control techniques, such as those in Appendix D and throughout DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, <http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>.

c. Reporting: Copies of daily logs for turbidity monitoring must be made available to DEQ and other regulatory agencies upon request. The log must include:

i. Background NTUs or observation, compliance point NTUs or observation, comparison of the points in NTUs or narrative, and location, time, date, and tidal stage (if applicable) for each reading or observation.

ii. A narrative discussing all exceedances, controls applied and their effectiveness, subsequent monitoring, work stoppages, and any other actions taken.

2) Stormwater Discharge Pollution Prevention:

All projects that involve land disturbance or impervious surfaces must implement prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the state.

a. For land disturbances during construction, the permittee must obtain and implement permits where required (see: <http://www.deq.state.or.us/wq/stormwater/construction.htm>) and follow DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 (or most current version), <http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>.

b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided (including but not limited to NWP categories 3, 12, 14, 15, 28, 29, 31, 32, 36, 39, 42, 43, and 51). DEQ encourages prevention of discharge by managing stormwater on site through Low Impact Development principles and other prevention techniques. Assistance in developing an approvable stormwater management plan is available in DEQ's *Stormwater Management Plan Submission Guidelines for Removal/Fill Permit Applications Which Involve Impervious Surfaces*, January 2012 (or most current version), available at: <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf>.

c. In lieu of a complete stormwater management plan, the applicant may submit:

- i. Documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination Strategy (NPDES) Phase I or II Municipal Separate Storm Sewer System (MS4); or
- ii. Reference to implementation of a programmatic process developed to achieve these expectations, and acknowledged by DEQ as adequately addressing pollution control or reduction through basin-wide post-construction stormwater management practices.

3) Vegetation Protection and Restoration:

Riparian, wetland, and in-water vegetation in the authorized project area must be protected from unnecessary disturbance to the maximum extent practicable through methods including:

- a. Minimization of project and impact footprint;
- b. Designation of staging areas and access points in open, upland areas;
- c. Fencing or other barriers demarking construction areas;
- d. Use of alternative equipment (e.g., spider hoe or crane); and,
- e. Replacement - If authorized work results in unavoidable vegetative disturbance that has not been accounted for in planned mitigation actions; riparian, wetland and in-water vegetation must be successfully reestablished to a degree that it functions (for water quality purposes) at least as well as it did before the disturbance. The vegetation must be reestablished by the completion of authorized work.

4) Land Use Compatibility Statement: In accordance with OAR 340-048-0020(2) (i), each permittee must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using Block 7 of the USACE & DSL Joint Permit Application, signed by the appropriate local official and indicating:

- a. "This project is consistent with the comprehensive plan and land use regulations;" or,

- b. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.
- c. Rarely, such as for federal projects on federal land, "this project is not regulated by the comprehensive plan" will be acceptable.

5) A copy of all applicable 401 WQC conditions must be kept on the job site and readily available for reference by the permittee, their contractors, DEQ, USACE, NMFS, USFWS, DSL, ODFW, and other appropriate state and local government inspectors.

6) DEQ may modify or revoke these 401 WQC conditions, in accordance with OAR 340-048-0050, in the event that project activities are having a significant adverse impact on state water quality or beneficial uses.

Category Specific Conditions

In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.

NWP 7 – Outfall Structures and Associated Intake Structures:

7.1) The following actions are denied certification:

- a. Discharge outfalls that are not subject to an NPDES permit; and,
- b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water quality standards prior to discharge to waters of the state.

7.2) If a permittee cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines (at: <http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf>), the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 12 – Utility Lines:

12.1) For proposals that include directionally-bored stream or wetland crossings:

- a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state. Recycling using a tank instead of drill recovery/recycling pits is preferable;
- b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 800-452-0311.
- c. Prior to cleaning up drilling fluids spilled into waters of the state, cleanup plans must be submitted and approved by the regulatory agencies; and
- d. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.

NWP 13 – Bank Stabilization:

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means to protect an existing transportation-related structure.

13.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 14 – Linear Transportation:

14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means to protect an existing transportation related structure.

14.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 16 - Return Water from Contained Upland

Disposal Areas: Water quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 20, 33A, 33B, and 33C at: <http://www.deq.state.or.us/wq/standards/toxics.htm#Cur>.

16.1) Return to waters of the state of water removed with contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is denied certification.

16.2) Water removed with contaminated dredged material that could or does exceed chronic water quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

16.3) If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water quality criteria, return water discharge is not limited.

- a. The MET must be performed before dredging.
- b. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
- c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

NWP 20 – Response Operations for Oil and Hazardous Waste:

20.1) Coordination with DEQ's Emergency Response program is required. See: <http://www.deq.state.or.us/lq/cu/emergency/index.htm>.

NWP 22 – Removal of Vessels:

22.1) Coordination with DEQ's Emergency Response program is required. See: <http://www.deq.state.or.us/lq/cu/emergency/index.htm>.

NWP 31 – Maintenance of Existing Flood Control Facilities:

31.1) Projects at existing facilities in streams with Temperature TMDLs and that propose net permanent, riparian vegetation removal are denied certification.

31.2) To apply for certification for projects where riparian vegetation removal is unavoidable and vegetation cannot be re-established, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 38 – Cleanup of Hazardous and Toxic Waste:

38.1) For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry.

- a. For in-water isolation measures, the permittee is referred to Appendix D of DEQ's *Oregon Erosion and Sediment Control Manual*, April 2005 (or most current version), at: <http://www.deq.state.or.us/wq/stormwater/docs/esmanual/appxd.pdf>.

38.2) Discharge to waters resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

- a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,
- b. A Modified Elutriate Test (MET) may be performed for the known CoCs and if CoC concentrations are below DEQ chronic water quality criteria, return water discharge is not limited.

i. The MET must be performed before dredging.

ii. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.

iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: <http://www.deq.state.or.us/lq/hw/hwmanagement.htm>) or Solid Waste (see: <http://www.deq.state.or.us/lq/sw/index.htm>).

38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

NWP 41 - Reshaping Existing Drainage Ditches:

41.1) To the extent practicable, permittees must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

41.2) Following authorized work, permittee must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

NWP 42 – Recreational Facilities:

42.1) For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at:

<http://www.deq.state.or.us/wq/wqpermit/pesticides.htm>).

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied certification:

- a. In-stream stormwater facilities;
- b. Discharge outfalls not subject to an NPDES permit; and,
- c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

43.2) To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at:

<http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf>), the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied certification.

44.2) To apply for certification for a project without an NPDES permit, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition 12.1) must be applied.

DEPARTMENT OF THE ARMY
Corps of Engineers, Portland District
Regulatory Branch

Inadvertent Discovery Plan (IDP)

Background

Traditionally, tribes have managed the lands in Oregon for thousands of years. Although these lands are now broken up into segments of various ownerships and managing agencies, Native Americans still retain a strong connection to their ancestral lands. For Oregon tribes, archaeological/burial sites are not simply artifacts of the tribe's cultural past, but are considered sacred and represent a continuing connection with their ancestors. Native American ancestral remains, funerary objects, sacred objects and objects of cultural patrimony associated with Oregon Tribes are protected under state and federal law. These laws recognize and codify the tribes' rights in the decision-making process regarding ancestral remains and associated objects. Therefore, both the discovered ancestral remains and/or archaeological objects should be treated in a sensitive and respectful manner by all parties involved.

It is the policy of the Corps Regulatory program to work effectively with Native American Tribes, landowners, resource agencies, historic preservation organizations, stakeholders, applicants and the public to comply with the National Historic Preservation Act and other applicable laws and regulations, Executive Orders, Presidential Memoranda, and policy guidance documents, and to efficiently process permit applications so that development projects can proceed for the good of the Nation's economic health and national security. Respectful and meaningful coordination and consultations between the Corps, Native American Tribes, and the State Historic Preservation Office are conducted as we strive to balance economic needs with historic preservation concerns.

This IDP ensures all parties involved, during inadvertent discovery of cultural materials, are contacted and fulfill their obligation under state and federal laws, including but not limited to:

National Historic Preservation Act (NHPA) – [16 USC 470] [36 CFR 60]
Native American Graves Protection and Repatriation Act – [25 USC 3001] [43 CFR 10]
Indian Graves and Protection Objects – ORS 97.740-S 97.760
Archaeological Objects and Sites – ORS 358.905 – 358.955
Procedures for the Protection of Historic Properties – [33 CFR 325 – Appendix C]
Consultation and Coordination with Indian Tribal Governments – [Executive Order – 13175]

Suspend Work

Cultural Resources and Human Burials: In the event evidence of human burials, human remains, cultural items, suspected cultural items, or historic properties, as identified by the National Historic Preservation Act, are discovered and/or may be affected during the course of the work authorized, the Permittee shall **Immediately Cease All Ground Disturbing Activities.**

Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

Notification Process for Permittee and/or Archaeological Monitor

The person(s) making the discovery shall immediately notify the permittee(s), the Corps of Engineers, and other appropriate agencies as necessary.

- Notification to the Portland District Regulatory Branch shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery, provide the Permittee's name, Corps Permit No., and the archaeological monitor's contact information for follow-up purposes.
- Follow up the fax notification with an email and phone call to the Corps of Engineers Project Manager identified in the permit letter.

Notification Process for Corps Project Manager

The Project Manager or person(s) designated to manage the inadvertent discovery shall immediately notify the following agencies:

- Oregon State Historic Preservation Office, Dennis Griffin, office phone (503) 986-0674.
- Washington Department of Archaeology and Historic Preservation, Greg Griffith, office phone (360) 586-3073.
- Oregon State Police [if human remains are found], Sgt. Chris Allori, office phone (503) 731-3020, cell (503) 708-6461.
- Commission on Indian Services (CIS) [provide the list of appropriate Native American Tribes], Karen Quigley, Director, office phone (503) 986-1067.

Tribes:

- Confederated Tribes of the Grand Ronde Community of Oregon, Michael Karnosh (503) 879-2383 cell (971) 237-7200, Briece Edwards – (503) 879-2084 cell (503) 437-5126
- Confederated Tribes of the Warm Springs Reservation of Oregon, Sally Bird (541) 553-3555.
- Confederated Tribes of the Siletz Reservation, Oregon, Robert Kentta (541) 351-0148.
- Confederated Tribes of the Umatilla Reservation, Oregon, Carey Miller (541) 276-3629; Teara Farrow (541) 276-3629; Eric Quaempts (541) 276-3447.
- Cow Creek Band of Umpqua Tribe of Indians, Jessie Plueard (541) 677-5575 ext. 5577.
- Coquille Tribe of Oregon, Nicole Norris (541) 756-0904.
- Klamath Tribes, Oregon, Lillian Watah (541) 783-2219 ext. 159; Perry Chocktoot (541) 783-2210 ext. 178.
- Confederated Tribes of Coos Lower Umpqua and Siuslaw Indians of Oregon, Agness Castronuevo (541) 888-7513.
- Fort Bidwell Indians Community of the Fort Bidwell Reservation of California, John Vass (530) 279-6310.
- Smith River Rancheria, California, Suntayea Steinruck (707) 487-9255 ext. 3180.
- Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon, Theresa Peck (541) 573-1375.
- Nez Perce Tribe of Idaho, Vera Sonneck (208) 843-7313.
- Yakama Indian Nation, Thalia Sachtleben, (509) 865-5121 ext. 6074.
- Cowlitz Indian Tribe, Washington, Dave Burlingame, (360) 577-6962.

The Corps 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 Registry of Historic Places. In addition, the Corps will coordinate a Site Avoidance Plan (SAP) and/or a Scope of Work (SOW) with the SHPO/DAHP, the tribe(s) and the permittee to avoid or excavate the archaeological/burial site. In the event the Corps decides to delegate their cultural resource protection responsibilities to another federal or state agency, the Corps shall contact the interested parties and provide those parties with the appropriate new contact person(s).

Plan of Action (POA)

In the event human burials, human remains, cultural items, suspected cultural items, or historic properties, as identified by the National Historic Preservation Act, are discovered and/or may be affected during the course of the work authorized, the archaeological monitor, and/or designee, has the authority to temporarily stop all ground disturbance activities to further inspect the material(s). If an isolated artifact (defined as fewer than 10 artifacts by the Oregon SHPO) is identified, the monitor shall determine whether sufficient quantities and/or evidence of artifacts warrant presence to define a site. If upon closer examination the materials discovered are not consistent with human burials, human remains, cultural items, suspected cultural items, or historic properties, as identified by the National Historic Preservation Act, the monitor will allow work to proceed but with caution and at a slower rate until the monitor is confident no sites are represented.

Upon positive identification of human burials, human remains, cultural items, suspected cultural items, or historic properties, as identified by the National Historic Preservation Act, the monitor will maintain the cease work order, make efforts to secure the discovery location, and immediately notify the permittee and/or designee of the positive discovery as defined in the notification process above.

Human Remains POA

If human burials and/or human remains are discovered, the monitor will treat the remains with sensitivity and respect, ensure all unauthorized personnel have vacated the site location in a safe manner, make reasonable efforts to secure the location, and stabilize the remains if necessary, e.g. they are endangered of falling out a trench wall. Every reasonable effort will be made by the monitor(s) to ensure the remains are not physically handled or examined by unauthorized personnel until the proper notifications have been made. Reference is made to the Tribal Position Paper on Human Remains found on SHPO's website at:

http://www.oregon.gov/OPRD/HCD/ARCH/docs/Tribal_position_paper_on_Human_Remains.pdf.

Treatment Plan (TP)

A treatment plan (TP) will be developed between the Corps, SHPO/DAHP, Tribe(s) and the Permittee during consultation to ensure the proper handling and curation of human remains and/or cultural items is clearly outlined and agreed upon. The TP will define the items found; develop a strategy for handling/moving human remains and/or cultural items; develop a strategy for determining whether additional human remains and/or cultural items are endangered; determine if additional testing is necessary to identify site boundaries; and, determine the disposition of the human remains and/or cultural items. The TP will be agreed upon by all parties involved before any future ground disturbance activities resume.

Construction related activities and/or ground disturbance activities shall not resume until authorization from the Corps has been given.

This plan was developed to ensure the safeguarding of our Nation's heritage through inadvertent discovery, and to ensure the Corps' Tribal-Trust responsibilities are met with Diligence, Responsiveness, Reliability, Accuracy, and Respect to our fellow government agencies.

COMPLIANCE CERTIFICATION

U.S. Army Corps of Engineers, Portland District
CENWP-OD-GP
P.O. Box 2946
Portland, Oregon 97208-2946

1. Permittee Name: Barry Cain/ Langer Gramor LLC
2. County: Washington County
2. Corps Permit No: NWP-2012-165
3. Corps Contact: Compliance and Enforcement
4. Type of Activity: Nationwide Permit (NWP) No. 39 (Commercial and Institutional Developments).

Please sign and return form to the address above:

I hereby certify that the work authorized the above referenced permit has been completed in accordance with the terms and conditions of said permit and that required mitigation is completed in accordance with the permit conditions, except as described below.

Signature of Permittee

Date

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there “*may be*” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

A. REPORT COMPLETION DATE: JUNE 25, 2012

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Attn: Barry Cain
 Langer Gramor LLC
 19767 SW 72nd Avenue, Suite 100
 Tualatin, OR 97062

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Langer Gramor LLC, NWP-2012-165

D. PROJECT LOCATION(S), BACKGROUND INFORMATION, AND WATERS:

State: Oregon
 City: Sherwood
 County: Washington
 Name of nearest waterbody: Unnamed Palustrine Riverine flow through drainage.

Identify amount of waters in the review area: PSS/PFO/ RFT = 0.87 acre.

Name of any water bodies on the site that have been identified as Section 10 waters: Tualatin River
 Tidal:
 Non-Tidal:

Waters of the U.S.

Waterbody	Latitude (dd.ddd °N)	Longitude (dd.ddd °W)	Cowardin Class	Area (Acres)	Length (Feet)	Width (Feet)
Fringe wetlands/ Waters	45.362	-122.8339	PSS/PFP/ RFT	0.87 acre		

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

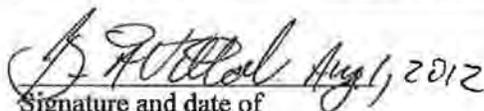
- Office (Desk) Determination. Date: June 25, 2012
- Field Determination. Date(s):

F. SUPPORTING DATA:

Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Conducted by Schott and Associates and dated June 2007. One wetland map submitted.
- Data sheets prepared/submitted by or on behalf of the applicant/consultant. 7 data sheets
 - Office concurs with data sheets/delineation report.
 - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps:
- Corps navigable waters' study:
- U.S. Geological Survey Hydrologic Atlas: 17090010.
 - USGS NHD data.
 - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite quad name: OR-SHERWOOD.
- USDA Natural Resources Conservation Service Soil Survey. Citation:
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs: Aerial (Name & Date):
or Other (Name & Date):
- Previous determination(s). File no. and date of response letter:
- Other information (please specify):

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.


Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining the signature is impracticable)

G. EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.